

# Human Rights and Democracy in Sri Lanka

## Threats to Journalists, Human Rights Defenders and Civil Society

A Brief Overview of  
Challenges and Proposed Reforms



CENTRE FOR POLICY ALTERNATIVES  
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**Human Rights and Democracy in Sri Lanka  
Threats to Journalists, Human Rights Defenders and Civil Society**

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The articles in this publication are contributed by different media professionals and activists. The views expressed by these authors are their own and do not necessarily reflect the views of the Centre for Policy Alternatives.



The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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# Acronyms

BHC	- British High Commission
CID	- Criminal Investigation Department
COLIO	- Chief Official Language Implementing Officer
CPA	- Centre for Policy Alternatives
FMM	- Free Media Movement
FR	- Fundamental Rights
HRCSL	- Human Rights Commission of Sri Lanka
ICCPR	- International Covenant on Civil and Political Rights
OLC	- Official Language Commission
OLIO	- Official Language Implementing Officer
OLP	- Official Language Policy
PTA	- Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979
TID	- Terrorists Investigation Division
UDHR	- Universal Declaration of Human Rights

# Forward

The purpose of the project *Promoting Human Rights and Democratic Values in Sri Lanka* is to reinforce the freedom of media, access to information and freedom of expression by strengthening journalistic practices while developing a sustainable shared platform for civil society, media, regional and national level organisations, and human rights defenders who will actively work together to strengthen and leverage each other's capacities towards creating alternative spaces for protection and inclusive political participation, and pushing for reversal of human rights violations, and threats to fundamental freedoms.

Despite this project being a short-term initiative, we all were committed to make it the basis for a long term social and policy discourse on human rights and fundamental freedoms of people in Sri Lanka. A number of journalists, human rights defenders, and representatives of civil society in the past and at present have contributed immensely to the broader discussion and advocacy on human rights. CPA and FMM together have made an effort under this project initiative to bring journalists, human rights defenders and representatives of civil society together and strengthen their linkages with a robust strategy of shared and collective advocacy against injustices. CPA and FMM approached a number of stakeholders and formed a platform to share incidents of injustices and continue the push for the rights of journalists, human rights defenders, and representatives of civil society. A mobile phone Application was designed as part of this initiative, to securely collate and convey increased targeting and repression of journalists, human rights defenders, and civil society activists both physically and online in Sri Lanka undermining the principles of democracy, human rights and the rule of law.

I take this opportunity to thank Dr. Paikiasothy Saravanamuttu, the Executive Director of the Centre for Policy Alternatives, for his support and valuable guidance towards successfully accomplishing this intervention. This project titled "*Promoting Human Rights and Democracy in Sri Lanka*" would not have been a reality unless the British High Commission extended its generous support and collaboration for which I extend my special appreciation on behalf of CPA and FMM. Special thanks go to all the members of FMM for their commitment to

ensure achievement of the objectives of the project. Further, I extend my sincere thanks to the journalists, human rights defenders, civil society activists who contributed with articles and the translators who did a tremendous job producing this publication in all three languages. I wish to extend my wholehearted appreciation to the research team who supported with analysing and writing of a brief overview of challenges and proposed reforms, staff of the Outreach Team, peer staff of CPA and all other colleagues who supported in this initiative.

We strongly believe that recommendations of this publication will be treated constructively by the policy makers and other concerned parties from a perspective of fundamental human rights and freedoms and action will be taken where policy reforms are necessary.

***Lionel Guruge***

Senior Researcher

Centre for Policy Alternatives

March 2022

# Introduction

Everyone, by virtue of her or his state of being human, is entitled to universally accepted fundamental human rights. Therefore, the common understanding of human rights and fundamental freedoms is of the greatest importance for the full realisation of the right to life with dignity. Historically, there have been a number of documents in the global arena that have reiterated the assertion of human rights since 1215 beginning with, among others, the Magna Carta, the first document to put into writing the principle that the king and his government was not above the law. However, despite the general and literal acceptance of rights of individuals, actions of rulers in many countries across the globe, including Sri Lanka, prove that exclusion, discrimination, and violation of human rights based on inter alia, color, gender, language, religion, profession and political opinion in general remained overlooked in society.

Having passed an era marked by violation of human rights more than the protection of the same, the continued discourse on human rights paved the way for the Universal Declaration of Human Rights (UDHR) of the United Nations in 1948. It was proclaimed as a common standard for all peoples and all nations to promote respect for these rights and freedoms by progressive measures. Article 1 of the UDHR states that,

Article 1 – UDHR<sup>1</sup>

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

The preamble of the UDHR states, “...Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which **human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...**” underlining the significance of “Freedom of Speech”.

1. <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

Further, Article 19 of both UDHR and International Covenant on Civil and Political Rights (ICCPR) guarantees the 'Freedom of Expression' making its significance on its own while the same is indispensable in achieving other human rights.

In the context of Sri Lanka, notably, the fundamental rights chapter of the constitution has guaranteed "*the freedom of speech and expression including publication*" by its Article 14(1) (a).<sup>2</sup> However, violation of, inter alia, the freedom of speech, expression and publication has always been a factor for many journalists, human rights defenders and members of civil society to suffer the pain of persistent disrespect of insensitivity towards human rights of successive governments of this country.

Freedom of speech in combination with freedom of peaceful assembly and association, naturally become essential grounds for raising voices against a range of violations and imminent threats of violation of a broad spectrum of human rights. Violation of those rights undoubtedly leaves ample space for impunity, corruption and maladministration. Therefore, in any governance system that curtails the right to freedom of speech, expression and publication, the spirit of democratic values is indisputably put at risk. These fundamental rights and freedoms are essential to maintain even the minimum standards of democracy and for society to trust in its government. Further, segments of society that are usually vocal against injustice and advocate for equality can be the worst affected when threats override the fundamental freedoms.

As with elsewhere across the globe, in Sri Lanka too, journalists, civil society actors and human rights defenders play a significant role in upholding democratic values, inter alia, mainly through their fundamental right to freedom of speech and expression including publication. However, the Sri Lanka country context is such that a number of journalists, civil society actors and human rights defenders have come under unprecedented scrutiny, threat and intimidation leaving grave consequences on the democratic space in the country.

Targeting and repression of journalists, civil society actors and human rights defenders both physically and online in Sri Lanka is an assault on the principles of democracy, human rights, and the rule of law. Despite the fundamental rights and freedoms enshrined in the constitution of the country, the policies and practices in real life demonstrate a persistent inconsistency. That is between rights articulated in books and violations inflicted on human rights and freedoms, mainly on freedom of speech and expression including publication, peaceful assembly, association, freedom of movement and of choosing one's residence within Sri Lanka. The lack of law enforcement, impunity, and the absence of equal protection of law in combination with lack of legislative and policy reforms to address serious concerns on human rights and shrinking democratic space, have compounded the challenges faced by journalists, civil society actors and human rights defenders in recent times.

Article 4(d)<sup>3</sup> categorically states that,

- 
2. <https://www.parliament.lk/files/pdf/constitution.pdf>
  3. <https://www.parliament.lk/files/pdf/constitution.pdf>



*“...the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided”* by the Constitution and thus, it reiterates the duty of the government in ensuring an enabling environment for citizen to realise the sense of these rights.

However, the concerns on the role of successive governments in Sri Lanka in establishing a socio-political environment that is conducive particularly for journalists, human rights defenders and civil society and people in general, to function without the fear of being suppressed remain valid and alarming till present. The risks and threats faced by journalists, human rights defenders and civil society actors is a significant indication of the distressing vulnerability of society as a whole in the country.

The table given below includes fundamental rights and freedoms as provided in chapter III of the Constitution of Sri Lanka.

<b>Fundamental Rights and Freedoms</b>	
Freedom of thought, conscience and religion	Freedom of speech and expression including publication
Freedom from torture or cruel, inhuman, or degrading treatment	Freedom of peaceful assembly
Right to equality before the law and the equal protection of the law	Freedom of association
Right to non-discrimination on grounds of race, religion, language, caste, sex, political opinion, or place of birth	Freedom to form and join a trade union
Right not to be arrested excepted according to procedure established by law, and to be informed of the reason for the arrest	Freedom to manifest one's religion by observance, practice and teaching
Right not to be kept in custody without a judicial order for longer than the period prescribed by law.	Freedom, by oneself or in association with others, to promote one's own culture and use one's own language
Right of a person charged with an offence to be heard in person or through an Attorney-at-Law at a fair trial by a competent court	Freedom to engage in any lawful occupation, profession, trade, business or enterprise
Right not to be punished with death or imprisonment except by order of a competent court made in accordance with procedure established by law	Freedom of movement and of choosing one's residence within Sri Lanka
Right to be presumed innocent until proven guilty	Freedom to return to Sri Lanka
Right not to be punished retrospectively	

Journalists, human rights defenders, and civil society actors are often in the front line of the protection of human rights in incidents which inflict detrimental consequences on the general public. Those segments of society have an intrinsic capacity to demonstrate how significant respecting human rights is and why those should be treated as universal, by their efforts in communicating to society on case studies that would otherwise be concealed, and by drawing special attention to the worst atrocities, helping the affected seek redress and emphasising the need for reform. Even in a less democratic context, they can disclose violations and imminent threats of violating human rights to the public domain but do so at a great deal of risk to themselves. In particular, investigative journalism is core, inter alia, to expose corruption, abuses of public property, violations of fundamental rights and freedoms, impunity that undermines the independence of the judiciary and the public trust in law enforcement agencies. Any kind of threat specifically to journalists, civil society and human rights defenders will certainly result in promoting “bad” governance and fostering impunity while it eventually leads to undermining the rule of law of the country.

What presents through the series of articles in this publication respectively is a combination of unprecedented threats and hindrances to the role of journalists, human rights defenders, and civil society actors in performing their mandate and protecting the right to life with dignity of people in society at large.

Accordingly, this publication consists of a brief analysis of the key issues and challenges faced by journalists, civil society and human rights defenders in Sri Lanka based on a series of articles authored by human rights defenders. Additionally, issues related to human rights of people identified through 237 human rights complaints made to the Human Rights Commission of Sri Lanka have also been taken into consideration and analysis in this report. However, this publication is not an exhaustive analysis on the human rights situation in Sri Lanka or the issues and challenges connected to human rights and fundamental freedoms faced by journalists, human rights defenders and civil society actors. It serves only as a snapshot of the bigger issue of the continued shrinking of space for enjoying the human rights and fundamental freedoms by citizens, and the gaps in some legislative and policy frameworks about which civil society in general are seriously concerned and have advocated reforms for over decades.

The last section of the publication consists of the series of articles written by a number of journalists and human rights defenders. Although these articles are based upon certain real-life experiences of individuals or groups of individuals, the essence of matters being discussed are applicable to the overarching right to life with dignity of citizens and the indispensable need for accountable governance.

Due to unfortunate practical constraints at the time of printing (March 2022) a few articles have had to be omitted from the print version of this report. However these and more case studies are available in their entirety in the electronic version of the CPA and FMM websites.

# Freedom of speech and expression including publication

Freedom of expression is an essential element of democracy. Article 19 of the UDHR<sup>1</sup> states, *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”* Ensuring freedom of expression is also an international obligation of Sri Lanka under Article 19(2) of the ICCPR.<sup>2</sup> It states, inter alia, *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*

Freedom of speech and expression including publication is fundamental to ensure the freedom of media. Article 14(1)(a)<sup>3</sup> of the Constitution of Sri Lanka guarantees it within its fundamental rights. However, there is a growing concern in relation to continuing incidents across the country that add up to the list of violations of freedom of speech and expression including publication. Threats and challenges to freedom of expression of journalists, human rights defenders and civil society activists have become a regular issue that repeatedly surfaces in Sri Lanka. Therefore, it serves as an indicator of the deficiency of democratic space and the failure of the government to protect the fundamental rights of its citizens.

The articles written by a number of journalists and human rights defenders contained in this publication demonstrate that the legitimate right to freedom of expression including dissent is curtailed to an unprecedented level, largely by the misappropriation of legal provisions of the ICCPR Act and the PTA. Not only those articles, but also numerous media reports and other reports on human rights of Sri Lanka are of serious concern in terms of threats to freedoms

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1 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

2 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

3 Article 14 of the Constitution of Sri Lanka, <https://www.parliament.lk/files/pdf/constitution.pdf>

of expression. The Human Rights Commission of Sri Lanka notes in its annual report 2019,<sup>4</sup> as follows:

*“...Of the complaints received during the year (2019), those relating to the infringement of personal liberty were the highest (at 1629). **The second highest number of complaints (at 1240) related to the violation of other civil and political rights, such as freedom of expression, association, religion, and assembly...**”*

Chandani Dissanayake, a journalist contributing to this publication has highlighted the growing tendency of threats to freedom of expression and publication. An article of his describes the arrest and legal proceedings against Delankage Sameera Shakthika Sathkumara, a writer whose short story titled “Ardha” was published on Facebook. He was taken in on allegation that the said publication was an offence punishable under Section 291 (b)<sup>5</sup> of the Ceylon Penal Code and Article 3(1) of the International Covenant on Civil and Political Rights Act No. 56 of 2007. This incident has given rise not only to potential threats to freedom of expression and publication, but also threats to a range of fundamental rights enshrined in Chapter III of the Constitution.

Writer Ruwan Laknath Jayakodi,<sup>6</sup> explaining the contradictions in police objections to granting bail to Sathkumara, highlights in his article that,

*“Article 10 of the Constitution guarantees the freedom of thought and conscience (a short story is partly the product of both). The right under Article 14(1)(a) can be restricted, among others, in the interests of religious harmony, and in relation to defamation or incitement to an offence as per Article 15(2), and public order as per Article 15(7). Further, Article 14(1)(f) provides for the freedom to enjoy and promote one’s own culture (short stories which fall within the realm of literature are an aspect of culture) and use one’s language (the medium in which the short story is written) while Article (14)(1)(g) allows one to engage in a lawful occupation and profession (short story writing and publishing falls within the scope of a lawful occupation and profession).”*

Sathkumara, through a fundamental rights petition to the Supreme Court (SC/FR/167/2019) claims that his (SC/FR/167/2019) as per Articles 12(1) dealing with the right to equality and the equal protection of the law, 13(1) concerning freedom from arbitrary arrest, and 14(1) (a) of the Constitution which provides for the freedom of speech and expression including publication (includes short stories), have been infringed.

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4 <https://www.hrcsl.lk/wp-content/uploads/2020/01/Annual-Report-2019.pdf>

5 291B. Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.  
[https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/\\$FILE/Penal%20Code.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/$FILE/Penal%20Code.pdf)

6 <https://www.colombotelegraph.com/index.php/contradictions-in-police-objections-to-granting-bail-to-shakthika-sathkumara/>

The whole objective of the ICCPR is to ensure that human beings enjoy civil and political freedom in accordance with the UDHR and its Article 19 specifically guarantees the 'Freedom of Expression'. However, the ICCPR Act No. 56 of 2007 which intended to give effect to certain Articles in the ICCPR through national legislations is now known to be widely used to restrict the rights and freedoms guaranteed by the same Covenant. Observing the misapplication of the section 3(1) of the ICCPR Act, even the HRCSL has acknowledged the risk of negative impact on fundamental rights and freedoms and thus has taken steps to formulate guidelines for the Police Department on 'Arbitrary Arrest and Detention' in 2019.

Journalist Tharindu Uduwaragedara, in his article in this publication, "*A month of Inaction*" on the attack on senior journalist Chamuditha Samarawickrama states that,

*"This government sees 'the use of the freedom of expression' as a 'crime' and the violation or threat to the right to use the freedom of expression is not seen as a crime. It has become a norm for senior officers of the top police investigative agencies to go behind those who express their ideas while resorting to lethargic investigation patterns by police stations when someone is threatened for exercising the freedom of expression."*

Tharindu, highlighting the lethargic progress of investigations into this case, quotes an unnamed retired senior DIG who says "*If a proper investigation had been carried out, perpetrators behind the attack on Chamuditha's house could have been arrested 48 hours after the attack. Even with his face covered, it's clear that there are plenty of places to follow up.*"

The puzzle, as to whether the delay in identifying perpetrators of this incident, is to be understood as a failure of the manner in which investigations are conducted by law enforcement authorities or a matter of the will to carry out a full-scale investigation. Undue delay in bringing the perpetrators before the law of the land naturally lead to proliferation of insecurity among journalists, human rights defenders and civil society at large in exercising freedom of expression. On the other hand, it is also an indicator of the shrinking democratic space for such watchdogs in particular that compels self-censorship. Further, it encourages the perpetrators to enjoy the maximum benefit of impunity creating an even more comfortable zone for such brutal attacks to be inflicted on individuals and institutions voicing against injustices.

Commenting on the investigations carried out into the attack on journalist Chamuditha, co-cabinet spokesman and minister in charge of media, Dullas Alahapperuma once had stated, "*If Sri Lanka Police fails to find those responsible for the recent attack on journalist Chamuditha Samarawickrama's residence, as media minister he would not hesitate to accept the government's responsibility and take any decision necessary.*"<sup>8</sup>

In the context of unceasing threats and intimidations on journalists such as the one on Chamuditha's residence, it is no wonder that the World Press Freedom Index in 2021, has placed Sri Lanka at 127 out of 180 countries across the world.<sup>9</sup>

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7 Article titled "*Months of Inaction*", by Tharindu Uduwaragedara

8 <https://economynext.com/journo-attack-sri-lanka-media-minister-ready-to-accept-govt-responsibility-if-investigations-fail-91673/>

9 <https://rsf.org/en/sri-lanka>

The Global State of Democracy Indices (GSDI) is a database maintained by the International Institute for Democracy and Electoral Assistance, which tracks 116 indicators related to democratic freedom in 165 countries. The GSDI includes eight indicators centred around free expression, including whether the government censors the media and whether the expression of one's personal culture is repressed. As per the methodology of computing the score, these metrics are combined into a single value ranging from a low of 0.00 to a high of 1.00. Despite its name, freedom of speech is not specifically limited to verbal communication—rather, it also includes other forms of expression, such as written communication, social media posts (Facebook, TikTok, YouTube), the arts (photography, stage plays, musical performances, painting, dance), personal actions (political protests, flag burning). Sri Lanka recorded a score of 0.5.<sup>10</sup>

It is important to understand that the freedom of speech and expression including publication is not an absolute right as it applies to ideas of all kinds, including those that may be deeply offensive. While both the FR chapter of the constitution and international instruments such as the UDHR and ICCPR protect freedom of expression, there are instances where speech can legitimately be restricted under the law – such as when it violates the rights of others, or, advocates hatred and incites discrimination or violence. As per Article 15(2) of the constitution, *“The exercise and operation of the fundamental right declared and recognized by Article 14(1)(a), the freedom of speech and expression including publication, shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.”* Similarly, Article 15(7) also imposes such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. However, any restrictions on freedom of expression as provided by law, should only be used when there is a compulsion to do so for that purpose.

In strengthening the democratic processes and ensuring transparent accountable governance, it is vital to have journalists involved in investigative journalism report on policy issues, monitor the implementation of development plans and potential injustices to communities whose voices are mostly unheard. Further, the role of journalists, human rights defenders and civil society activists and their collaborations with state and corporate sectors are to be seen as integral aspect's of promoting democratisation. As demonstrated by journalists who contributed with articles and have raised concerns of a range of rights of people, investigative journalism benefits realisation of rights of broader society while it alerts the public on potential threats to their rights and freedoms. Therefore, the freedom of speech and expression including publication is indispensable as it helps realisation of other human rights and fosters democracy and good governance.

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<sup>10</sup> <https://worldpopulationreview.com/country-rankings/countries-with-freedom-of-speech>

The Supreme Court judgement in *Deshapriya and Another V. Municipal Council Nuwara Eliya and Others*<sup>11</sup> in 1995 held that,

*“The 2nd respondent took away these copies of the “Yukthiya” while acting under colour of her office as Mayoress of the Nuwara Eliya Municipal Council. The seizure was therefore by executive or administrative action. Her motive was to discourage an anti-government newspaper for political ends. The seizure directly prevented the publication of one issue of the ‘Yukthiya’ not entirely but in just a small part of Sri Lanka and related only to 450 copies of the newspaper. The Freedom of Speech and Expression, including publication of the Editor and Proprietor was thereby abridged, even though not totally denied.”*

Most importantly, it further stated that,

*“The right to support or to criticise governments and political parties, policies and programmes is fundamental to the democratic way of life; the freedom of speech and expression is one “which cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions”; and democracy requires not merely that dissent be tolerated, but that it be encouraged.”* making it very clear that freedom of speech and expression is one of the indispensable grounds for meaningful democracy in the country.

Meaningful democracy requires not merely that dissent be tolerated, but that it be actually promoted. This has been an overdue expectation. Examples of encouraging dissent in Sri Lanka can hardly be seen, as opposed to more of otherwise. For instance, following a briefing to the European Parliament’s sub committee on Human Rights, on the human rights situation in Sri Lanka, by well-known human rights activist and human rights defender Ambika Satkunanathan, the Ministry of Foreign Affairs<sup>12</sup> strongly criticised her, accusing her of testimony<sup>13</sup> "akin to LTTE propaganda" and "stoking hatred among communities" adding that she was spreading "dangerous fallacies about Sri Lanka in the international community". Following this a group of human rights organisations local and regional, jointly expressed their profound concerns about the statement by the Sri Lankan Ministry. Ms. Ambika has been a Commissioner to the Human Rights Commission of Sri Lanka from October 30, 2015 to March 7, 2020.<sup>14</sup> The legitimate assumption would be that her progressive work on human rights must have undoubtedly been a criteria for her to be appointed as a member of the HRCSL in the past. Unfortunately, even the freedom of speech and expression of a former Commissioner to the HRCSL came under criticism of the government, as opposed to tolerating the dissent as mentioned in the judgement above. Such a statement also exposes Satkunanathan to a

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11 *Deshapriya and Another V. Municipal Council Nuwara Eliya and Others*, [1995] 1 Sri L.R.  
<https://www.lawnet.gov.lk/wp-content/uploads/2016/11/034-SLLR-SLLR-1995-V-1-DESHAPRIYA-AND-ANOTHER-v.-MUNICIPAL-COUNCIL-NUWARA-ELIYA-AND-OTHERS.pdf>

12 <https://mfa.gov.lk/fm-refutes-claims-ambika/>

13 [https://multimedia.europarl.europa.eu/en/webstreaming/droi-committee-meeting\\_20220127-0900-COMMITTEE-DROI](https://multimedia.europarl.europa.eu/en/webstreaming/droi-committee-meeting_20220127-0900-COMMITTEE-DROI)

14 <https://www.hrsl.lk/about/members-of-the-commission/>

heightened risk of threats, attacks, and persecution in Sri Lanka. Joint statements of human rights organisations expressed that,

*“The Sri Lankan government’s statement attacking Ambika Satkunanathan for her testimony to the European Parliament’s Sub-Committee on Human Rights exemplifies threats faced by human rights defenders, particularly when they engage with foreign and international forums, and it further shows the government’s refusal to address the ongoing serious human rights violations taking place in the country. Instead of trying to silence those who seek to defend human rights, the government should give serious consideration to their input and contributions and take urgent action to ensure that they can work in a safe environment without fear of reprisals.”<sup>15</sup>*

Therefore, in conclusion, the state has a legitimate responsibility to protect the freedom of speech and expression including publication, in order to ensure the existence of democratic space. To this end, the right of access to information is very decisive. A long-standing struggle and sustained advocacy of various human rights actors has led to the introduction of the Right to Information (RTI) as an integral part of the Fundamental Rights chapter of the Nineteenth Amendment to the Constitution.<sup>16</sup> Subsequently, the Right to Information Act. No. 12 of 2016 was passed in Parliament and the implementation of the said Act commenced with effect from 03.02.2017 as per regulations promulgated by the Minister under Section 41 (2) of said Act.<sup>17</sup>

A number of journalists, human rights defenders and representatives of civil society at large currently use RTI to access information that is either of individual or public significance. RTI is an essential aspect in investigative journalism too. Journalists, human right defenders and civil society institutions are deeply concerned of a growing trend where the seeking of information via the RTI Act is becoming a threat not only to the freedom of expression but to the safety and security of information seekers.

Rahul Samantha is a journalist extensively and effectively using the RTI in his writings. Rahul, who contributed with an article<sup>18</sup> to this publication states that,

*“The lives of the applicants have been exposed to severe risk when inquiring information regarding environmental degradation, with the officials in the public*

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15 Sri Lanka: Organisations express solidarity with human rights defender Ambika Satkunanathan, <https://www.fidh.org/en/region/asia/sri-lanka/sri-lanka-organisations-express-solidarity-with-human-rights-defender>

16 14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen’s right held by:- (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law; (b) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council; R(c) any local authority; and (d) any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a), (b) or (c) of this paragraph.  
<https://www.parliament.lk/files/pdf/constitution.pdf>

17 Gazette (Extraordinary) No. 2004/66 of 3rd February 2017. [http://documents.gov.lk/files/egz/2017/2/2004-66\\_E.pdf](http://documents.gov.lk/files/egz/2017/2/2004-66_E.pdf)

18 Article titled “Citizens seeking information also need protection” by Rahul Samantha



*authorities sharing information about applicants to the perpetrators involved in these illegal activities. This reflects the close relationship between the perpetrators and public officials.*

*Similarly, on several occasions when information was requested from the Bureau of Mines and Geology on the issuance of permits for sand mining, an officer from the Ambalantota office had given my information to the relevant sand smugglers. The sand smugglers visited my house on several occasions and asked me not to divulge information or expose their activities. There could have been a serious consequence to my life during that Period.”*

RTI always plays a significant role as an effective tool, in strengthening the democratic values and good governance, creating ample space for questioning the transparency and accountability of actions of public authorities. However, the ingrained culture of non-disclosure or secrecy of information by the public authorities of the Sri Lankan style of governance remains a major challenge. If the threats faced by information seekers, mainly journalists and human rights defenders, are not addressed with due examination, it can drastically reduce the use of RTI thereby undermining the realisation of objectives of introducing RTI as a fundamental right.

# Arbitrary arrest, detention and torture

The freedom from torture is an absolute right, which cannot be compromised under any circumstances, and the full content of the right and the protection of the Article 11 of chapter III of the constitution must be available to everyone, including convicted criminals or those accused of crimes. Even where physical harm is not very serious or fatal, the psychological trauma suffered by the victims (and their families) can be sufficient for a violation of Article 11.

Article 13(1) of the constitution states that *“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”* Further, other provisions of Article 13 provide the due process to be followed in arresting, detention, and penalising. However, incidents in contravention of both Articles 11 and 13 continue to occur and while those detrimentally impact on personal liberty in general, the adverse consequences on journalists, human rights defenders and civil society activists advocating for human rights is increasingly alarming. The Human Rights Commission of Sri Lanka (HRCSL) in its ‘Prison Study Report’<sup>1</sup> acknowledges that the Commission received a large volume of complaints from prisoners alleging they experienced misconduct by police officers while in police custody. The report further states that,

*“A number of allegations were received alleging the failure of police officers to follow due process standards during arrest and detention, including the failure to produce arrest warrants or reasons for the arrest to the detainee, and the prevention of contact with family and legal representatives while in police custody. Some prisoners stated they only became aware of the charges against them when they were produced in court. Prisoners also alleged they were held in police custody for longer than the 24-hour limit, before being produced before a magistrate, and this was executed by altering dates/times of arrest on the police records or court document.*

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1 Prison Study Report, Part V, The Criminal Justice Process, 21. Arrest and Detention, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

*A large number of inmates described being asked to provide a signature on a blank piece of paper onto which a confession would be written or typed by the police; the contents of the statement are not informed to the suspect. Inmates reported being subject to intimidation and threats of physical violence, suspension of meals in custody, prolonged detention without bail, and threats to the security of their families when they resisted providing a statement as requested. The failure to follow process standards during arrest and detention was widely reported by PTA prisoners. The patterns in the arrest process narrated by the interviewees illustrated that it did not adhere to due process safeguards, with many reported being abducted from their homes, workplaces or while travelling, families not being provided an arrest receipt or provided information on the place of detention, being held in unauthorized places of detention, and being subjected to torture and forced to sign confessions in a language they did not understand.”*

The fact that there is actually no legal provision ensuring the provision of details of reasons for arrest at the time of arrests, is in violation of not only the fundamental right under Article 13(1) but also the country’s international commitment to adhere to rights guaranteed under Article 9(2) of the ICCPR.

Given the growing number of unlawful arrests, particularly recorded in the aftermath of the Easter Sunday attack, the HRCSL issued a guideline in relation to arbitrary arrests:

Guideline Item number four (4) of the HRCSL dated 2<sup>nd</sup> July 2019 to the Police Department regarding ‘Arbitrary Arrests’ states that, *“It is vital that the arrests are made not before, but after receiving credible information based on expert analysis and opinion, and on reasonable suspicion.”*<sup>2</sup>

The universally recognised right to be free from torture is an integral element of the supreme law of this country. The Constitution of Sri Lanka has recognised ‘Freedom from Torture’ as part of its Chapter III, on fundamental rights.<sup>3</sup> This right is inherently linked with a person’s dignity. Further, in terms of the remedies for infringement of the right enshrined in Article 11 of the Constitution, every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement by executive or administrative action. However, the trend, by law enforcement authorities, of preventing legal representatives and family members from accessing the persons arrested specifically under the Prevention of Terrorism Act (PTA), has become a serious concern in seeking legal remedies by victims. The fundamental human rights of detainees, to be able to seek legal assistance

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2 “It is trite law that arbitrary arrests violate the Constitution. We wish to highlight the judgement of the Supreme Court in Naomi Michelle Coleman v. The Hon. Attorney General S.C (FR) Application 13612Aru S.C.M 15.11.2017 where Ms. Coleman’s arrest, detention and deportation due to displaying a tattoo of the Buddha was held to be violative of Article 12(1) and 13(1) of the Constitution and resulted in compensation and costs being required to be paid amounting to Rs. 800,000/-. The Supreme Court found that there was no possibility of a public outcry, though the police so alleged, due to the display of such a tattoo.”, Guideline of the HRCSL dated 2nd July 2019 to the Police Depart regarding ‘Arbitrary Arrests’ [https://www.hrsl.lk/wp-content/uploads/2020/02/HRCSL-issues-guidelines-on-arrests\\_-\\_english.pdf](https://www.hrsl.lk/wp-content/uploads/2020/02/HRCSL-issues-guidelines-on-arrests_-_english.pdf)

3 Article 11, Constitution of Sri Lanka, <https://www.parliament.lk/files/pdf/constitution.pdf>

and lodge complaints against the police and be provided information on the progress of the investigation of their allegations, while they are being held in detention- should essentially be guaranteed.

A joint statement by civil society actors on the arbitrary arrest of Attorney-at-Law Hejaaz Hisbullah<sup>4</sup> states that,

*“The fact that Mr. Hizbullah has not been allowed to meet his lawyers without the presence of CID officers despite a written request submitted on the 15th of April, is cause for grave concern as the right to legal representation is an important element of the right to due process, to which every person is entitled according to Article 13 of the Constitution of Sri Lanka. Unimpeded access to legal counsel is also a statutorily guaranteed right to any person arrested in Sri Lanka.”*

For the most part, journalists involved in investigative journalism and human rights defenders including lawyers who monitor human rights violations, speak about injustices and the alert public act as “watchdogs” simply due to their role in divulging such incidents when occurring or when there are imminent threats of occurring. Rekha Nilukshi Herath, a journalist contributing<sup>5</sup> to this publication quotes a comment made by Attorney-at-Law Sanjaya Wilson Jayasekara who appeared pro bono for the case of poet Ahnaf Jazeem,

*“Terrorism or extremism arises out of the injustice and inequality in this society. This system was created by these rulers themselves. When the people raise their voices against the ruling class, they use the judiciary, police, and prisons to crush dissent. These institutions are being used against the public. Whatever the Constitution says about rights, even the fundamental rights of the people are being suppressed, based on state security. These laws should be repealed.”*

This shows the crucial need for action from the legislators to ensure the continued violations of human rights under the guise of existing legal provisions of laws such as PTA, are stopped. In order to establish a meaningful sense of the spirit of the fundamental rights enshrined in the constitution, there should be a genuine political will to end the continuing experiences of violations of rights and freedoms in the fundamental rights chapter which appear to be the norm, while protecting those has become the exception.

Article 11 of the constitution is unique because as per the Article 83, any bill for the amendment or for the repeal and replacement of or which is inconsistent with any of the provisions of, inter alia, Article 11, shall require two thirds of majority in the Parliament (including those not present) and should be approved by the people at referendum. It demonstrates how significant the freedom from torture is, as a fundamental right despite it not having received due recognition from law enforcement agencies in practice.

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4 Joint Statement on the Arrest and Arbitrary Detention, Sri Lanka Brief, <https://srilankabrief.org/sri-lanka-arrest-and-detention-of-attorney-at-law-hejaaz-hizbullah-is-arbitrary-interference-of-his-legal-practice-joint-statement/>

5 Article titled “Arbitrary Arrests under PTA”, by Rekha Nilukshi Herath

As part of the commitments by Sri Lanka towards international obligations,<sup>6</sup> too, ensuring freedom from torture is the responsibility of the State. Further, the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment,<sup>7</sup> has entered into force for Sri Lanka with effect from February 2, 1994. Article 2(1) of this Convention imposes a legitimate responsibility of all member states to take effective, administrative, judicial or other required measures to prevent acts of torture in any territory under its jurisdiction.<sup>8</sup> Recognising the necessity to make legislative provision to give effect to Sri Lanka's obligations under the said Convention, the Sri Lankan Parliament passed the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

The emphasis on the importance of the right to be free from torture is reflected by Section 2(5) of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 which states that *“an offence under this Act shall be a cognizable offence and a non-bailable offence, within the meaning, and for the purposes, of the Code of Criminal Procedure Act, No. 15 of 1979.”* Further, Section 3(a) and (b) states that *“... any act constituting an offence under the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, was committed (a) at a time of state of war, threat of war, internal political instability or (b) any public emergency or on an order of a superior officer or a public authority shall not be a defence to such offence.”*

The Human Rights Commission of Sri Lanka (HRCSL) is an institution mandated to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights.<sup>9</sup> Further, Section 11(d) states that the HRCSL will take steps to *“monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention.”* At the same time, Section 28 of the HRCSL Act elaborates the duty to inform the Commission of arrests and detentions under the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security Ordinance;<sup>10</sup> with power being given to the Commission to inspect to obtain information<sup>11</sup> and impose sanctions on any person who wilfully omits the duty imposed by Section 28(1). Official data of HRCSL indicates that in 2018, it received 449 complaints, of which 400 were of torture (physical and mental) cases and 49 were incidents of degrading treatment.<sup>12</sup>

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6 Article 7 of Part III, International Covenant on Civil and Political Rights (ICCPR), <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>

7 Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with Article 27 (1). <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

8 Article 2(1) of Part I, *ibid.*

9 Section 10(b), Human Rights Commission of Sri Lanka Act, No. 21 of 1996. <https://www.hrsl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

10 Section 28(1), *ibid.*

11 Section 28(2), *ibid.*

12 HRCSL, Details of Complaints received by HRCSL, Head Office and Regional Offices. <https://www.hrsl.lk/wp-content/uploads/2020/01/Annual-Report-2019.pdf>

This reiterates the fact that several legislative frameworks provide ample space for law enforcement authorities to ensure the right to be free from torture. Despite these legislative provisions and institutional establishments such as the HRCSL being in place, many victims of torture remain helpless and lack access to justice. Rekha Nilukshi Herath, in her article titled “Arbitrary Arrests under PTA” quotes a comment of Ruki Fernando, a civil society activist about his experience in accessing legal assistance when arrested under PTA several years ago *“After being arrested, I immediately sent a message to several people. They acted immediately and made various interventions. We were arrested and released a few days later. This was due to the support we received from Sri Lanka and other countries. About five officials of the Human Rights Commission came to see us at that time. Around five legal teams came to see us. But we were not given a chance to meet them”*.

One of the critical issues faced by victims of torture is the lack of opportunity to effectively bring their grievances to the relevant law enforcement structures in the existing legal framework. This is because the investigative functions and provision of redress to victims of torture are far from adequate, mainly because most such incidents of torture are alleged to originate from institutions *themselves* within law enforcement, including but not limited to the police/CID/TID.

Absence of a well-planned strategy and a corresponding action plan to ensure collaboration of the police, medical officers, officials of the Attorney General’s Department and the judiciary to act against infringements of the right to be free from torture is another challenge. On the contrary an attitude of collusion can often be seen with officers of such institutions routinely protecting each other against investigations of such cases.

Sajeewa Wijeweera is a journalist concerned about human rights of people and public interest and thus reports in his article<sup>13</sup> of an incident which shows potential alleged connection of police in torturing an individual at Akmeemana, Galle. In this reporter’s article, he quotes the mother of the victim, a 63-year-old, saying her youngest son is unable to do any work after he was brutally assaulted and tortured by the police.

*“The police came and abducted my son in the middle of the night on 20 December 2010. We were all asleep. Four uniformed men came, woke him and tied him with the same sheet he was sleeping and took him all the while assaulting him. They also scolded me in filth. Five police officers arrived. It was obvious to me that they were drunk. On the way, my son was beaten with rods. He was seriously injured. The next day he was released on police bail and sent to a doctor. From there he was informed to go to Karapitiya Hospital and even underwent an operation at the hospital. The senior officials in the police have threatened him and told him to tell that he had fallen and injured himself without mentioning that he was assaulted by the police. They have said if not they would kill him. Therefore, my son had told the doctors at the hospital that he had fallen. However, the real story is that it was the police who tortured my son. Now we are helpless. The son, who earned some money by doing odd labour work, can no longer work.”*

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13 Article titled “Another Akmeemana Torture Case”, by Sajeewa Jayaweera

Although the OIC Maduranga Arumapperuma of Akmeemana Police rejects the alleged torture incident as noted by the writer, these alleged remarks by the victim's side and the presence in media of numerous other cases of allegations of torture levelled against the Sri Lankan Police indicate that the violence is an entrenched feature of the criminal justice process in Sri Lanka, with persons who are arrested being subject to violence in police custody and remand prison. Violence in police custody was found to be an inherent element through a number of articles written by journalists and human rights defenders to this publication. Torture is inflicted to extract information, forced confessions and evidence from detainees. This challenge of admissibility of confessions has not even been addressed in the proposed amendment to the recently brought PTA

Lack of training and sensitisation on the legislative framework and the international obligations of various stakeholders combating torture, for officers in law enforcement institutions, medical personnel, and officials of relevant public institutions who may be involved in matters connected to arrest, interrogation, detention, treatment and imprisonment has also led to these issues remaining unaddressed. Lack of legal actions initiated by the Attorney General's Department against persons who have violated the fundamental rights enshrined in Article 11 of the Constitution, under provisions of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 have also contributed to the persistence of torture.

Comprehensive knowledge building programs for judges and lawyers about the domestic and international commitments towards victims of torture, and the responsibility of the State to protect the right to be free from torture and to promote the application of all potential legal provisions and principles against acts of torture, can reduce the severity of this issue. Lack of legal assistance to survivors of torture to initiate civil litigations seeking compensation from perpetrators of torture result in perpetrators going unpunished.

The abusive and arbitrary manner in which the provisions of the PTA have been used in the past has provided enormous examples that justify the voices of journalists, human rights defenders and civil society in demanding for a complete abolition of the PTA.

As Rekha Nilukshi notes in her article, Ahnaf Jazeem, a poet and teacher from the East of Sri Lanka, was arrested in May 2020 under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA). Initially arrested in connection to his Tamil-language poetry anthology, titled Navarasam, which the authorities alleged to be instigating racial hatred and promote terrorism, Jazeem was finally granted bail after almost 18 months from his arrest.

Further, as part of an interview with *The Morning*,<sup>2</sup> following his release on bail, Ahnaf responded to the two questions as mentioned below and it reiterates the sheer need for addressing endless issues of using the provisions of the PTA which undermines the fundamental human right to freedom of expression including publication, the rule of law and the right to life with dignity.

*Q. What do you plan to do now? Are you going to stop writing?*

*Ahnaf: "In this country, you cannot speak or write. Writing is my hobby. If you cannot write, then you cannot live. We cannot live like cattle. I will never stop writing. I was writing while I was in detention, and I am writing even more after I was released – I will continue to write against injustice."*

*Q. What are your thoughts about the PTA?*

*Ahnaf: "They should release everybody under the PTA – they just arrest people and then frame them. We cannot live as long as the PTA is there."*

Ahnaf is one amongst many who feels insecure in the face of laws such as PTA which is a true reflection of the deterioration of the democratic values of the country. Unfortunately, as a symbolic response to the long accumulated pressure from the broader civil society and international levels, the recently brought amendment to the PTA, ([http://documents.gov.lk/files/bill/2022/2/178-2022\\_E.pdf](http://documents.gov.lk/files/bill/2022/2/178-2022_E.pdf)) has also failed to address core issues of the PTA. Therefore, the potential threats to journalists, human rights defenders and civil society can no longer be ignored until robust legislative and policy level reforms are brought in this regard.



# Overlooked issues of the PTA: Amendment or rescindment

Given the persistent concerns raised nationally and internationally by human rights organisations about the need for holistic reforms regarding the implementation of the PTA, an amendment to the PTA was brought. However, a range of civil society organisations including CPA,<sup>1</sup> legal experts,<sup>2</sup> journalists<sup>3</sup> and human rights defenders<sup>4</sup> have raised further concerns and made analysis that shows the said amendment has brought hardly any constructive reform to address the shortcomings of the PTA that undermines fundamental rights and freedoms of people. Therefore, many individuals and institutions call for repeal of the PTA and in the interim an immediate moratorium on the use of PTA.

Apart from civil society, the Human Rights Commission of Sri Lanka (HRCSL) too has called for the abolition of the Prevention of Terrorism Act (PTA). This was conveyed through a statement issued on the briefing of the diplomats from 8 -10 February on HRCSL's Road Map for 2022, held at its headquarters. It states, *“Notwithstanding the amendments already suggested by the government, the HRCSL advocates the complete abolition of the PTA.”*<sup>5</sup>

The growing and all-encompassing comments and suggestions of the amendment brought to the PTA mirror the voices of many individuals repeatedly surfacing through the suppression brought on by implementation of PTA. There are several core issues that relentlessly hinder the freedoms of speech, and expression, including publication, among others, particularly of journalists, human rights defenders and civil society activists. A few of such include, but not

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1 A Commentary: Prevention of Terrorism (Amendment) Bill, January 2022, Centre for Policy Alternatives, <https://www.cpalanka.org/wp-content/uploads/2022/01/Final-PTA-Amendment-2022.docx-1-1.pdf>

2 Initial reactions to PTA Amendment Bill: Failure to reform, Ermiza Tegal, <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

3 Article titled “Rights defenders pressure not to amend anti-terror law”, by Quintus Colombage

4 PTA reform: A farce in multiple acts, Ambika Sathkunanathan, <https://www.themorning.lk/pta-reform-a-farce-in-multiple-acts/>

5 HRCSL calls for abolition of Prevention of Terrorism Act, Ada Derana.lk, <http://www.adaderana.lk/news/80637/hrsl-calls-for-abolition-of-prevention-of-terrorism-act>

limited to, issues related to admissibility of confessions, lack of judicial supervision during investigations, no guaranteed access to legal consultation/support, ability to take persons out of judicial custody for investigation resulting torture, and excessive powers of the Minister to issue restriction orders limiting civil liberties.

The range of issues that remain unaddressed reiterate the significance and urgency of greater political will to repeal the PTA. HRCSL, in a statement recently issued underscoring the need for abolition of the PTA, notes that:

*“The Commission believes that the offence of terrorism should be included in the Penal Code with a new definition for terrorism. It is explicitly for those who threaten or use violence unlawfully to target the civilian population by spreading fear thereof to further a political-ideological or religious cause. The Commission advocates that terrorism should be investigated under the General Law of the country with necessary amendments. The Commission also supports that it is not required to exclude the application of the Evidence Ordinance for the offence of terrorism. The indefinite period of detention violates the Constitution.”<sup>6</sup>*

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6 PTA: HRCSL takes a contrary view to that of the govt., The Island, <https://island.lk/pta-hrcsl-takes-a-contrary-view-to-that-of-the-govt/>

# Discrimination, freedom of peaceful assembly and lack of equal protection of the law

Article 12 (2) of chapter III of the Constitution of Sri Lanka 1978 states, *“No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.”* Article 12(1) protects the right to equality and states *“All persons are equal before the law and are entitled to the equal protection of the law.”* Article 14(1)(b) guarantees the freedom of peaceful assembly. All these constitutional guarantees in combination with respective internal obligations under UDHR and ICCPR are of utmost significance particularly for journalists, human rights defenders and civil society activists to exercise their, inter alia, freedom of speech and expression including publication. Any hindrance to above mentioned fundamental human rights can undoubtedly be a threat to broader civil society.

Any decision on the part of the government to either exclude or prevent journalists from meetings in which decisions related to development and well-being of the lives and livelihoods of people can be construed as a threat to the press freedom. An increasing development in relation to the space for media in district coordinating committee meetings has been a concern to which urgent attention of policy makers is essential. The paradox in the context of RTI is that on one hand, the Presidential Secretariat<sup>1</sup> states that officials with decision making powers are to attend district and regional development meetings to implement people-centric projects while on the other hand, the journalists are prevented from attending such meetings curtailing the people’s right to know about decisions taken in such forums.

Journalist Rekha Nilukshi Herath, who contributed an article states that, “According to our research in March 2022, journalists have been allowed to cover coordinating committee meetings in certain districts of Sri Lanka. However, in some districts there are still meetings that are held behind closed doors and journalists are kept out...when asked about this, Nuwara Eliya District Secretary G.K.G.A.R.P.K. Nandana said: “Denying journalists access to district

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1 <https://www.presidentsoffice.gov.lk/index.php/2021/02/20/it-is-mandatory-for-officials-with-decision-making-powers-to-attend-district-and-regional-development-committee-meetings/>

coordinating committees is not an issue in Nuwara Eliya. Journalists were not allowed to visit district coordinating committees in Sri Lanka from the beginning. We have been instructed to conclude the Coordinating Committee and summon the media for a briefing with the Chairman of the Coordinating Committee and the team. That is the process," he said. If the so-called 'instruction' is not to allow the journalists, it hinders people's right to know the manner in which decisions are taken. Further, it also undermines journalists' right to freedom of expression.

Contrary to the statement of the Nuwara Eliya District Secretary journalists were in fact allowed to attend District Coordinating Committees until recently. The provision 25 of the circular issued by the Ministry of Home Affairs under Home Affairs Circular 06/2017 dated 22 May 2017, entitled "Holding District Coordinating Committees and Divisional Coordinating Committees" signed by the then Secretary, Ministry of Home Affairs, Neil de Alwis, read as follows:

*"Media personnel of the respective division or district may participate in Divisional/District Coordinating Committee meetings. A list of names of those media personnel should be made available with the Divisional/District Information Officers. It is the duty of the Divisional/District Secretariat to provide necessary facilities correctly to said media personnel."*

However, the observation is that inclusion or exclusion of journalists in divisional or district level coordinating committee meetings varies. As journalists could potentially be the source of information to channel constituents of decisions of public representatives and government officials, obstruction to that can adversely affect press freedom.

Journalist Mangalanath Liyanarachchi, in an article<sup>2</sup> submitted to this publication, highlights the gaps in law enforcement, justice and equal protection of law in relation to an incident of attack on journalists reporting the passenger ferry capsised under tragic circumstances in the Kurunjankeni lagoon in Kinniya, Trincomalee, November 2021. He says,

*"Attacks on journalists are not new to us, but there has been a steady growth of incidents reported so far. The monthly reports released by the Free Media Movement reveal that there has been a series of incidents reported from the areas of Mullaitivu, Chilaw, Hambantota, Batticaloa, Kurunegala and Colombo since January this year."*

The writer quotes Attorney-at-Law Jagath Liyana Arachchi, commenting on the Kinniya incident who states, *"The public will receive accurate news only if journalists have the opportunity to access the correct information. The state or the political apparatus often obstruct journalists, but in the Kinniya situation, it is the people themselves that have infringed on the access to information, which is a sad state of affairs. In this case, both the obstruction of journalists' access to information and the violation of the public's right to information can be interpreted as a violation of human rights. I also see the failure to arrest those who attacked journalists as a denial of equal protection to journalists before the law."*

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2 Article titled "Attacking the Messenger", by Mangalanath Liyanarachchi

In a context in which the proceedings of injustices related to law enforcement are not effectively, equally and justly addressed in the legal system, a number of journalists, human rights defenders and civil society activists have been compelled to approach the HRCSL presenting their grievances. In many cases, choosing the HRCSL as the last resort also reflects the fact that many individuals whose human rights are violated are not financially strong enough to challenge through filing formal fundamental rights cases in the Supreme Court. Further, this poses a question about the functions of the Human Rights Division established in April 2002 within the Police Department. It is the responsibility of the Police to ensure the enforcement of law in a manner that everyone has the equal protection of the law. If the duty of the Police itself leads to violation of human rights, then the functions and the progress of the Human Rights Division of Police need to be assessed. The reason being that it holds the preliminary objective of preventing human rights violations committed by Police officers when performing their routine duties, and to preserving the human rights of the public.<sup>3</sup>

Mangalanath in his article quotes Abdul Salam Yashin who had logged a complaint with the Kinniya Police under reference number CIB (1) 10/291 on 20 November 2021 regarding the attack. Yashin, expressing his frustration at lethargic law enforcement stated that, *“Even though I lodged a complaint with the police, they have not been able to arrest anyone. The Kinniya police have not even responded to the complaint lodged.”*

The indication of either slow or zero progress and lack of commitment to bring the perpetrators before the law within a reasonable time easily leads to diminishing public trust in the law enforcement process and institutions. Additionally, lack of compliance with due process in arrests and detention is a concern and a threat particularly for individuals voicing against injustices and using freedom of expression to bring such injustices out to the public domain.

Journalist Prinyanjith Alokabandara, in his article submitted to this publication, quotes Attorney-at-Law Amila Egodamahawatte who appeared on behalf of Shehan Malaka Gamage who is a social activist, arrested for a comment made regarding the Easter Sunday attack:

*“Attorney-at-Law Amila Egodamahawatte: Previously, when Shehan Malaka was asked to appear before the CID, several lawyers had appeared for him. Fathers of the Catholic Church had represented him. Therefore, the CID had ample opportunity to contact Shehan through them.*

*If all citizens were treated equally before the law, Shehan Malaka Gamage would have received equal opportunity. He was arrested on the road in a very dramatic manner. As such, Shehan Malaka has not been treated equally as a person who clearly respects the law. Even his charge is only stated fully when he repeatedly asked them for the charge after being forced into the vehicle.”*

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3 The establishment came to light by the Police Gazette (II) 1304 dated 27th August 2003. <https://www.police.lk/index.php/item/21>

Attorney-at-Law Viranjana Herath, highlighting the growing tendency of threats to press freedom, states in his article, *“According to the Free Media Movement's Press Freedom 2020 report, 58 threats to media freedom were identified that year, and by 2021 the number had risen to more than 80 such incidents. According to the Monthly Media Monitoring Report compiled by the Free Media Movement for the year 2021, there have been 40 incidents related to the safety and security of journalists while more than 80 of these can be identified as threatening or detrimental to media freedom overall.”*

Further, it was also observed that the language issue has become a serious concern particularly in the Northern and Eastern regions for aggrieved parties in receiving equal protection of law. Joseph Naya, a journalist who highlights this matter states in his article that,

*“One of the most important departments is the police. However, most of the police officers and the officers in charge (OICs) of the police stations in the Mannar District are staffed by Sinhala speaking officers. The majority of them do not have the ability to deal with the language spoken by the people in the area, making it difficult for the public to come to the police stations to attend to their work or lodge complaints. They are faced with severe difficulties in dealing with the police as a result.”*

Attorney-at-Law, Viranjana Herath stressed that the discrimination against Coastal aborigines and the threats to their right to life is a serious matter in a situation where every citizen of Sri Lanka has universally recognised human rights also guaranteed as fundamental rights chapter in the Constitution. He further stressed that the government should be responsible for protecting the heritage of their descendants and treating them as citizens of Sri Lanka without discrimination.

The issue of Coastal Veddas provide evidence for discrimination which is in contravention with constitutional provisions of Article 12(1) and (2). The voices of people suppressed by discrimination reiterate that it occurs mainly due to administrative decisions. The insensitivity to basic human rights and lack of respect to diversity by decision-making authorities have led the identities of an indigenous community almost to extinction. There is an absence of careful attention regarding the composition of specific public institutions that are mandated to take decisions affecting the various requirements of multi-cultural people. A serious concern is the lack of space for equal opportunities for representing and holding decision-making positions by representatives of concerned communities in such institutions. Furthermore, minority representation in civil service should not be symbolic and biased, rather it should be active and impartial providing for proportionate representation which will increase the legitimacy over government decisions and increase trust in government on the part of minorities.

The politicisation of law enforcement leads to undermining the rule of law and diminishes public trust in law enforcement authorities and the administration system. State decisions that lead to intentional or inadvertent discrimination continue to create a perception undermining equal protection under the law for all communities in a multi-cultural society.

Freedom of peaceful assembly is fundamental to democracy. It underlines the importance of exercising this right not only in the frame of civil and political rights but also for the realisation

of cultural, social and economic rights. It further enhances the democratic space for people particularly in a multi-ethnic country like Sri Lanka, among other things, to express and share opinions, to come together with respective dissent and diversity, to reflect dissent through peaceful demonstrations. Article 14(1)(b) of the constitution protects freedom of peaceful assembly while Sri Lanka has an international obligation to the same under Article 21 of the ICCPR. Despite these protections, space for peaceful assembly in the country in the recent past, particularly amid the COVID-19 pandemic, has faced a number of restrictions.<sup>4</sup> Additionally, the legality of such restrictions is questionable<sup>5</sup> considering the fact that freedom of assembly is a fundamental right which shall only be restricted as prescribed by law as per Articles 15(3) and 15(7) of the Constitution.

Asela Kuruluwansa in one of his contributions<sup>6</sup> to this publication outlines the discriminatory treatment to Ramachandra Mekhala who was one among 22 members of the families of prisoners to be recognised at an event organised by the Human Rights Office in Kandy for their resolve to fight for survival amidst the challenges while seeking justice for the imprisoned. The Human Rights Office in Kandy planned to honour Mekhala too for courage in facing life despite all these obstacles, at the said annual event to coincide with World Human Rights Day. The police obtained a restraining order from the court and banned the event in particular singling out Mekhala. She is the daughter of Krishnasamy Ramachandran, who is serving his sentence in prison for the bomb attack of the Temple of the Sacred Tooth Relic.

Attorney-at-Law Suren DE Perera, a human rights activist, made the following comment in relation to the suspension of the said event. *“Some of the fundamental rights enshrined in the Constitution have been violated by not allowing this event to take place. Foremost among these is the right to freedom of speech and expression. Freedom of employment has also been violated. This is part of the profession of the person who is organising it.”*

Further, Asela quotes human rights activist Ruki Fernando who stated that, *“This is discrimination on the one hand and very inhumane on the other. There is a principle that family members should not be held accountable or punished for a crime that a person may or may not have committed. Mekhala has experienced severe discrimination several times by society based on the punishment meted out to her father.”*

The handful of incidents as highlighted above, among many, echo the threats to freedom from discrimination, freedom of peaceful assembly and the right to equal protection of law. None of these individual incidents can be ignored as they together provide evidence for the concerns regarding the democratic space of the country.

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4 Sri Lanka bans protests and public meetings, July 6, 2021, Colombopage.  
[http://www.colombopage.com/archive\\_21A/Jul06\\_1625587252CH.php](http://www.colombopage.com/archive_21A/Jul06_1625587252CH.php)

5 Comment: Legality of the State Response to the Right to protest in the Light of the COVID-19 Pandemic, November 2021.  
<https://www.cpalanka.org/wp-content/uploads/2021/11/CPA-comment-on-right-to-protest-2.pdf>

6 Article titled “Decades of Discrimination”, by Asela Kuruluwansa

# Violation of language rights and lack of implementation of Official Language Policy

One of the core methods of communication of humans is through human language. Human language, at present, has become a subject closely affiliated with economic, social, political and cultural factors that are connected to peoples' lives. Similarly, language has become a pivotal feature of reflection of the fundamental rights and dignity of people.

Article 12 (2) of chapter III of the Constitution of Sri Lanka 1978 states, “No citizen shall be discriminated against on the grounds of race, religion, **language**, caste, sex, political opinion, place of birth or any such grounds.” Articles 18 to 25 of chapter IV of the Constitution provides for the use of official and national languages. Further, the foremost responsibility for proper implementation of official languages policy has been placed by the Extraordinary Gazette notification No. 1620/27 dated 2009.09.25 and the Public Administration Circular No. 18/2009 dated 2009.11.25 respectively.

Language rights are closely connected with the RTI and freedom of speech and expression including publication. With the introduction of the Nineteenth Amendment to the Constitution,<sup>1</sup> the right to access information was made an integral aspect of fundamental rights under Chapter III of the Constitution. The preamble of the RTI Act states that:

*“WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.”<sup>2</sup>*

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1 Article 2 of the Nineteenth Amendment to the Constitution, May 15, 2015.  
<https://www.parliament.lk/uploads/acts/gbills/english/5974.pdf>

2 Preamble, Right to Information Act, No. 12 of 2016.



Language rights, as enshrined by the Constitution, is a fundamental prerequisite when it refers to “*people of Sri Lanka*” as the demographics of the country is obviously multi-linguistic. The procedure for obtaining information as stipulated by Section 24 of the RTI Act refers to identifying the nature of the form and language in which the citizen prefers<sup>3</sup> access to information, thereby indirectly implying the definite need for ensuring the language rights of the citizen in order to exercise the right to information effectively. Even though citizens are able to make preference of language to request information, the absence of compelling and mandatory provisions within the legal framework of the RTI Act requiring public authorities to provide information in the language of the applicant's choice is a continuous hindrance for citizens in a multi linguistic society to equally exercise the right of access to information as a fundamental right. This, in turn, is linked to the “fundamental right to equality” guaranteed by the Constitution and the Official Language Policy.

The legal obligation of the respective public authorities is to give the information in the language in which the same is maintained. Thus, information received by all citizens may not be in the language of their preference, making it difficult for them to make optimum use of the benefit of the right to information as a fundamental right.

In the context of freedom of expression and publication and situations in which journalists, human rights defenders and civil activists are arrested under laws such as the PTA and ICCPR Act, language issues between officials of law enforcement agencies and persons subject to investigation raise serious concern on potential deprivation of personal liberty simply based on language barriers. The Prison Study<sup>4</sup> of the HRCSL states that,

*“However, the Commission received numerous allegations alleging collusion between police officers and JMOs, or JMOs not being able to communicate with PTA prisoners due to language barriers. Thus, PTA prisoners would not enjoy the right to a fair trial due to the ineffective safeguards in place during their period of administrative detention, which would enable confessions obtained under torture being admissible in court. During the trial process too, PTA prisoners reported facing numerous challenges to the full enjoyment of their right to a fair trial, including long delays and the inability to understand the language of court proceedings.”*

Further, journalists, human rights defenders and concerned citizens seeking information, in particular face another challenge due to language issues when exercising their RTI. Journalist Sanath Priyantha, in an article<sup>5</sup> contributed to this publication states, “*Although my language medium is Sinhala, I reside in the Tamil Divisional Secretariat area. Recently, I forwarded the RTI 01 application to the Tamil Divisional Secretariat for the information required. A few days later I received the RTI 2 reply form. It was written in Tamil. I had to find someone who knew the Tamil language to read the article...As I didn't receive needed information, I then prepared*

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3 Section 24(5)(b), Right to Information Act, No. 12 of 2016.  
[https://www.rti.gov.lk/images/resources/RTI\\_Act\\_Sri\\_Lanka\\_E.pdf](https://www.rti.gov.lk/images/resources/RTI_Act_Sri_Lanka_E.pdf)

4 Prison Study by the HRCSL"  
<https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

5 Article titled “*Language barriers to accessing information*”, by Sanath Priyantha.

*an appeal in Sinhala and forwarded the appeal to the Divisional Secretary by registered post. A few days later the appeal was answered, and it was also written in Tamil.*" The writer highlights the other side of the issue, and it gives an idea as to how Tamil speaking communities face the same issue when accessing information in areas such as Nuwaraeliya, Gampaha, Kurunegala, Anuradhapura and Polonnaruwa while he notes that the issue is more serious in Northern and Eastern regions.

Policymakers thus need to recognise the critical need for multifaceted policy and practice related reforms within the overall premise of implementing the right to information law in the country. Ensuring language rights is without doubt one such prerequisite to enabling citizens to enjoy the right to information and freedom of expression. Regrettably, the mandate of the Right to Information Commission,<sup>6</sup> is not broad enough to make directions in that regard.<sup>7</sup> However, as per the provisions made in Section 37 of the Act, the Commission can provide recommendations on the impact of implementation gaps of other policies such as the 'Official Language Policy' and propose potential measures to be addressed by the legislators in its annual report to the Parliament.<sup>8</sup> Therefore, to ensure a socio-political environment in which the freedom of expression can be meaningfully exercised, issues and challenges of language rights should be addressed with high priority at policy and implementation spheres.

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6 Section 11, Right to Information Act, No. 12 of 2016.

7 Section 15, *ibid.*

8 Section 37, 'Commission to prepare a report of its activities', *ibid.*

# Summary analysis of human rights cases submitted to HRCSL

This project facilitated an extensive training and knowledge building on human rights, types of potential violation of human rights and remedial mechanisms available within the existing constitutional and legal framework. As a result, a range of issues related to violations of human rights and fundamental freedoms of journalists, human rights defenders and citizens emerged during training and consultation sessions.

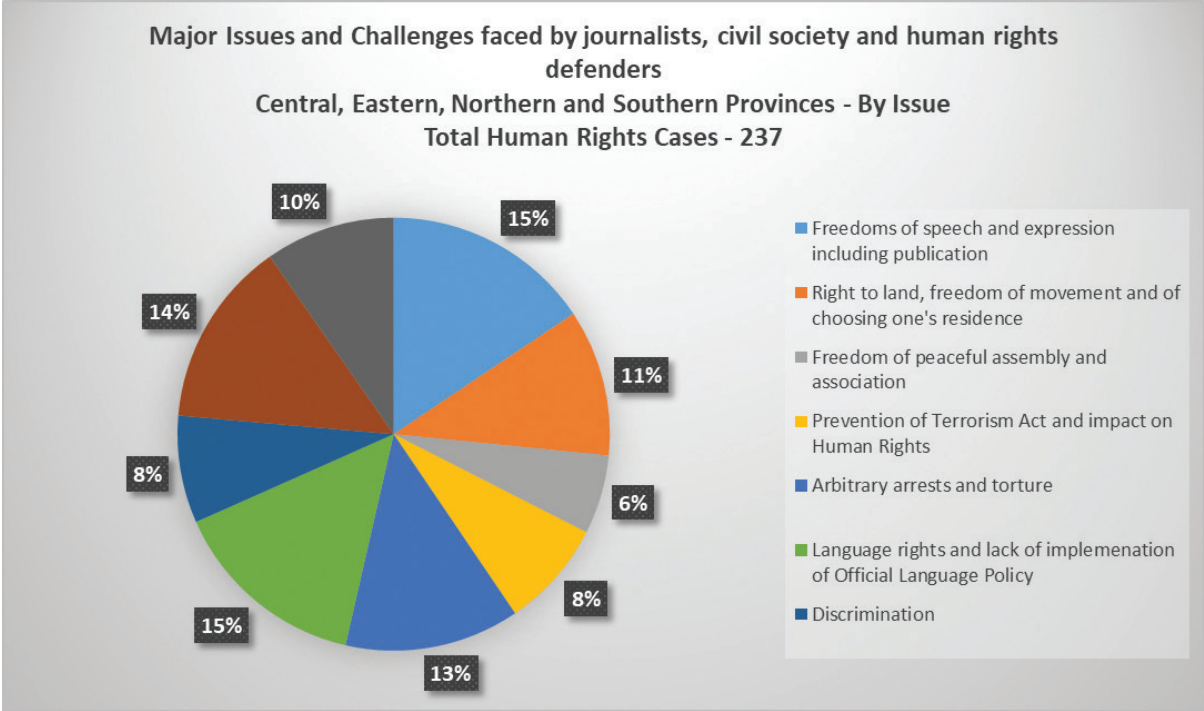
With the glimmer of hope of justice, many showed determination to explore the existing mechanisms such as approaching the Human Rights Commission for remedies while others appeared to have lost their trust in law enforcement agencies due to unsatisfactory results of complaints. Further, lack of effective law enforcement and impunity have also caused a serious trust deficit between citizens and law enforcement agencies.

Among many complaints made to the Human Rights Commission on a diverse range of violation of human rights, 237 cases were taken into consideration in this publication to identify the type of major threats to journalists, human rights defenders and citizen activists in the Central, Eastern, Northern and Southern provinces.

A wide range of issues that emerged have been clustered into six themes while the detailed issues brought to the Human Rights Commission are explained in the later part of this publication. Journalists, human rights defenders and members of civil society have sought remedies from the Human Rights Commission on threats and infringements of right to freedom of speech and expression including publication, right to land, freedom of movement and of choosing one's residence, freedom of peaceful assembly and association, the adverse impact of the PTA on human rights, arbitrary arrests and torture, and language rights.

The consultation training series for Human Rights Defenders conducted by Centre for Policy Alternatives and Free Media Movement early 2022 in the Central, Eastern, Northern and Southern provinces indicated that incidents of threats to fundamental freedoms and violation of human rights are taking place across the country although the magnitude of those vary.

However, out of the cases submitted to the Human Rights Commission, 74 cases were from the Eastern Province followed by 77 incidents of violation of human rights recorded from the Northern region. Further, 45 human rights cases were filed by journalists and human rights defenders from the Central province while 41 such cases were submitted by those who represented the Southern province.

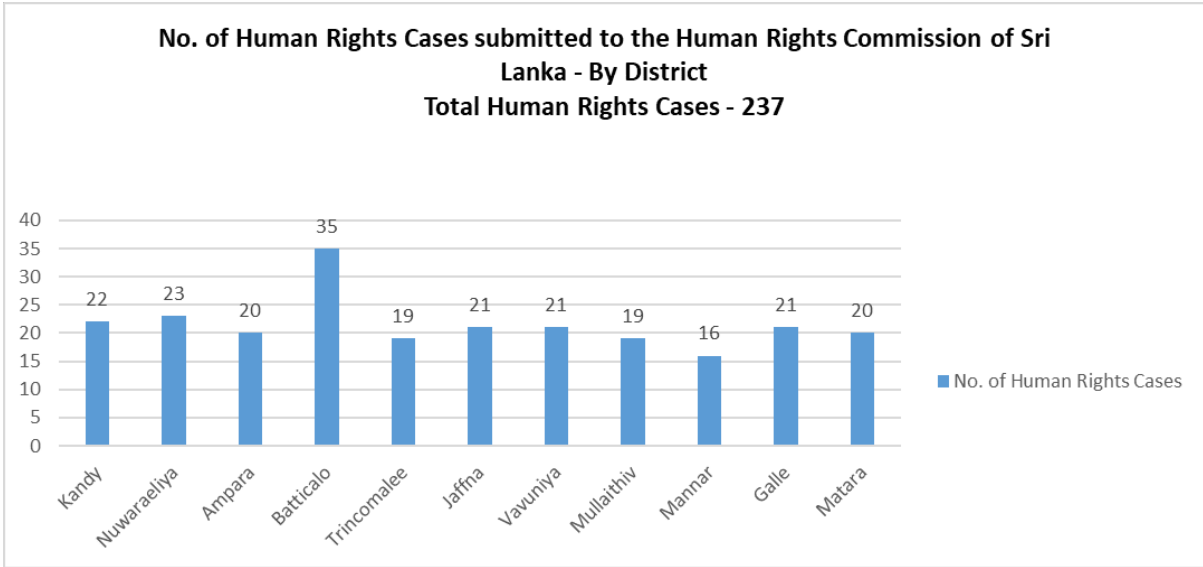


The chart above elaborates the type of core issues raised mainly by journalists, human rights defenders and members of civil society at large. Though this is not an exhaustive list of all violations of human rights and threats to fundamental freedoms, the variety of challenges in the sphere of human rights in the country indicates the gravity of the issue. It echoes the shrinking space, inter alia, specifically for freedom of expression and publication, freedom from arbitrary arrests, freedom from torture, right to equal protection of the law, right to access information, language rights, right to land, freedom of movement and of choosing one's residence.

A great deal of trust deficit on fair and effective law enforcement was re-emphasised by journalists and human rights defenders while the impunity which encourages human rights violations to proliferate throughout the country has remained a bitter reality of many in seeing a glimpse of hope of justice and equal protection of law.

Mangalanath Liyanarachchi, a journalist in one of articles<sup>1</sup> written to this publication, highlights the gaps in law enforcement, justice and equal protection of law in relation to

1 Article titled "Attacking the messenger", by Mangalanath Liyanarachchi.



an incident of attack on journalists reporting the passenger ferry capsized under tragic circumstances in the Kurunjankeni lagoon in Kinniya, Trincomalee, November 2021. This article states that,

“Attacks on journalists are not new to us, but there has been a steady growth of incidents reported so far. The monthly reports released by the Free Media Movement reveal that there has been a series of incidents reported from the areas of Mullaitivu, Chilaw, Hambantota, Batticaloa, Kurunegala and Colombo since January this year.”

The table given below is a summary of issues highlighted by persons who allege that their human rights are violated under various circumstances.

<b>Core issues highlighted by journalists, human rights defenders and members of civil society through formal human rights cases submitted to the HRCSL</b>
Violating the right to receive information. Threatening and intimidation faced mainly by journalists and human rights defenders when accessing information and disclosing in the public domain.
Barriers to the freedom of the media including violating the right to freedom of expression and publication, by threatening and intimidation. State actors disclosing identities journalists requesting information through RTI to illegal actors/smugglers/perpetrators putting the lives of journalists and human rights defenders at risk.  Journalists being prevented from attending the District Development Committee Meetings of the government and thus their ability to access information with public significance and report on decisions of district administrations is curtailed. Citizens are also deprived of their right to be informed of the decisions that affect their lives and livelihoods.
Violating the right to freedom of expression and publication while the right to peaceful assembly and freedom of association have also been violated by the state.
Violation of right to equality and thus the fundamental right of <i>“All persons are equal before the law and are entitled to the equal protection of the law”</i> has been infringed by the state.
Disclosure of information/expressing opinions via social media has led to unnecessary calls for investigations and compelling civil society activists and human rights defenders to impose self-censorship of their right to freedom of expression.
Violating the freedom of media by threatening and intimidating and preventing the access to information of people.
Violating the right to land and property by public officials abusing power and forceful and unjust evacuations of communities. Further, the freedom of movement and of choosing one’s residence have also been violated by administrative decisions.
Violation of freedom of thought, conscience and religion including the freedom to have or adopt a religion or belief of one’s choice as enshrined by Article 10 under Chapter III of the Constitution of Sri Lanka.
Undue influence on journalists preventing their right to freedom of expression and publication while the journalists are assaulted, and their media equipment is destroyed by politically motivated people.
Violating the right to freedom of expression and publication through influencing and discouraging human rights defenders, civil society activists and journalists to voice or advocate against violation of human rights and issues of democratic governance.

Violating the right to land and the freedom of movement of excluded and indigenous communities in the country while the right to equality has also been violated through discrimination. Rights of indigenous communities/producers to use their land for cultivation/livelihood has been hindered. The issue has further been worsened due to unfair implementation of law, by law enforcement authorities.
Violating the language rights of Tamil communities due to the lack of implementation of Official Language Policy and thus violating the right to education of children.
Public officials unduly influencing journalists for disclosing potential corruption and misuse of powers.
Discrimination on the basis of ethnicity in allocating lands for residential purposes and forceful acquisition of lands to change the ethnic demographics villages in the Eastern province.
Violating the right to receive documents in the language of one's choice (Eg: Birth Certificates) mainly due to ineffective implementation of the Official Language Policy. Discrimination on the basis of language.
Violating the right to receive important personal correspondence of communities in the estate sector.
Violating the right to access and receive equal treatments in the health sector services and hindrances to exercise the right to access information in the estate sector.
Discrimination in relation to receiving the benefits of infrastructure development by communities in the estate sector. Non-disclosure of information related to infrastructure development activities by state authorities and undue influence and interrogation of the journalists who are accessing the information of public authorities and exercising their freedom of expression.
Violating the rights to freedom of occupation of villagers with complete neglect of regularising the distribution of fertiliser in the estate section. Unfair and discriminatory decision making of the public authorities causing violation of the right to equality of people in the estate sector.

## General observations

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- The gravity of the issue on "Discrimination" based on language, race and religion was observed more in the Central, Northern and Eastern regions. The feeling of insecurity of minority communities was also highlighted by communities.
- The effectiveness, fairness, impartiality and equality in relation to enforcing law and order were unsatisfactory and individuals and institutions voicing against social injustice are vulnerable to suppression.
- The role of media/journalists has been severely restricted in relation to incidents of human rights of people and when disclosing malpractices and corruption of government authorities. Politically motivated and led groups acting against the journalists, human

rights defenders and representatives of civil society and their work on rights of people and injustices faced by them.

- The issues related to “Land Rights” and “Language Rights” were more common in the Eastern and Northern provinces thereby putting communities in serious trouble in ensuring their livelihoods. They have grave implications for their wellbeing, peace, education of their children etc. and the lack of responsible remedies has led to diminish their trust in law enforcement authorities and the public service of the country.
- The lack of trust in remedial mechanisms and law enforcement authorities and their functions which have not demonstrated sufficient credibility, fairness and justice for many journalists, human rights defenders and civil society activists, was prevalent among the HR cases.
- Knowledge gaps were visible on the available remedial mechanisms and legal protections for victims of human rights violations to ensure they act in challenging injustices such as illegal or arbitrary arrests, detentions, interrogations, forceful confessions, torture, threats and intimidations.
- Undue influence of politicians and government officials in preventing journalists, human rights defenders and civil society activists from accessing information and disclosing information that impact civil, political, economic, social and cultural rights of people is recognised to be an alarming concern.
- Disclosing the identities of information seekers, particularly of individuals involved in investigative journalism, to third parties, especially alleged perpetrators, by the officials of public authorities leaving the lives of former at risk. Journalists and human rights defenders frequently use the fundamental right of access to information on a range of issues and subsequently disclose potential unaccountable activities of public authorities. Unfortunately, there is a growing tendency of officials of such public authorities in divulging identities of journalists, human rights defenders and civil society activists to parties connected with such unaccountable actions. This has been identified as a serious concern which will unquestionably undermine the value of right to information nullifying its objective of fostering a culture of transparency and accountability in public authorities. Giving effect to the right of access to information would promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.



# Recommendations

The recommendations have been drawn based on the core issues and challenges highlighted by journalists and human rights defenders in their respective articles. The types of threats that exist and hinder the democratic space to exercise fundamental rights, mainly counting freedom of speech and expression including publication, freedom from discrimination, right to equality, right to information and freedom of peaceful assembly enshrined in chapter III of the constitution have been considered in articulating these recommendations.

As this brief overview is not an exhaustive analysis of the human rights situation in Sri Lanka, the corresponding recommendations too are framed within the scope of core issues raised by journalists, human rights defenders and members of civil society.

## **Freedom of speech and expression including publication**

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- The Government should take immediate action to assess the incidents related to violation of freedom of speech and expression including publication. To this end, the Human Rights Commission of Sri Lanka should conduct a national level study and document the issues and challenges of exercising the freedom of speech and expression including publication and provide recommendations in line with the country's international obligations. As part of this process, media stakeholders with the representation of mandated state institutions should design and implement a “National Media Policy.”
- The Government should take measures to prevent attacks against freedom of expression in situations where there is a potential risk of these occurring and in specific situations where the law enforcement authorities know or should have known of the existence of a real and imminent risk of such violations.
- The Ministry of Mass Media in collaboration with the law enforcement authorities, the Human Rights Division of the Police Department in particular, and the HRCSL should take

action to establish a mechanism in which potential threats to freedom of expression including publicization of journalists, human rights defenders and civil society actors can be raised and discussed.

- Allegations related to violation of freedom of expression should be treated with high priority and law enforcement agencies should act with greater sensitivity to allow the aggrieved to lodge complaints. Further, the officials of the Police Department should carry out impartial investigations on alleged violations or threats to press freedom and bring perpetrators to justice.
- The Government should ensure that no punitive or repressive measures are imposed that detrimentally affect the freedom of expression and dissent including the freedom of criticising the government on policy matters affecting the rights and fundamental freedoms of people.
- The Ministry of Mass Media should take the lead role to expand the Sri Lanka Press Council mandate into an “Independent Media Commission” with the mandate and enforceable powers to ensure the fundamental right of freedom of expression of journalists are ensured. Such independent commission shall only be answerable to the parliament while the mandate and the powers should be sufficient to address issues and grievances in the media sector enabling media freedom.

### **Arbitrary arrest, detention and torture**

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- The government, notwithstanding that it recently brought amendments, should take action to repeal the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979. Additionally, a policy decision should be taken not to implement the provisions of PTA to arrest, detain and prosecute people as an interim arrangement to ensure the protection of freedom of speech and expression including publication in particular.
- The Government should take immediate action to review the incidents of arbitrary arrests and torture in conjunction with the unjustifiable use of the various controversial provisions particularly of the PTA. Accordingly, all detainees under PTA should be facilitated with the required permitted access to consultations with their legal counsels.
- The Government should take action to address issues that hinder officials of the Human Rights Commission from approaching persons arrested and detained under PTA for their independent observations.
- The HRC should conduct public awareness raising on the available legal remedies for victims subjected to torture and promoting a zero-tolerance policy towards torture. Such initiative should entail robust strategy to train officials in law enforcement agencies having mandate to engage in arrests, detention, interrogation, prosecution and incarceration.
- Guidelines issued by the Human Rights Commission on ‘Arbitrary Arrest and Detention’ in 2019 should effectively be implemented to minimise the undue violation of human rights of people that occur in implementing PTA.

- Immediate and impartial investigations and enforcement of administrative and penal sanctions against perpetrators of violations of fundamental rights and freedoms should be done and all potential gaps in law enforcement allowing continued impunity should be brought to an end.
- The Human Rights Commission should support the Human Rights Division of the Police Department so that its mandated tasks can be meaningfully implemented and periodic reviews should be done to ensure that any HR violations occurring in processes such as arrests, detentions, interrogations and prosecutions, are minimised.
- The Government should take necessary action to amend the ICCPR Act, No. 56 of 2007 and broaden its scope to ensure that all civil and political rights enshrined in ICCPR are included in the domestic law.
- Well-designed training and sensitisation programs should be implemented targeting the officials of the Police Department about the ICCPR Act and all possible measures taken to avoid misapplication of Section 3(1) and (2).
- Policymakers should thoroughly assess the discretionary power vested in the Attorney General to decide whether to indict the perpetrators: accordingly introduce necessary reforms to bring checks on decisions of the Attorney General not to indict specific alleged perpetrators, particularly with political affiliations and influence.
- The HRCSL should be further strengthened to conduct investigations, on its own motion, in regard to infringements or imminent infringements of the right to be free from torture as provided by Section 14 of the HRCSL Act. The Sub-Committee on 'Prevention of Torture and Custodial Violations' appointed by the HRCSL in 2016 should further be resourced to make a rigorous assessment on the status quo of torture in Sri Lanka and make recommendations to enhance the role of HRCSL in combating torture.

### **Discrimination, freedom of association and lack of equal protection of law**

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- The government should take all necessary action to protect the right to equality as enshrined by the fundamental rights chapter of the Constitution. All issues related to discriminatory treatments, particularly from law enforcement agencies and executive and administrative arms on freedom of expression, publication, movement, peaceful assembly and association of journalists, human rights defenders and civil society at large, should be addressed.
- The Ministry of Mass Media in collaboration with the Ministry of Home Affairs should review different practices by various officials organising Divisional/District Coordinating Committee meetings and take a policy decision to provide democratic space and opportunity for journalists to attend such meetings. The right of access to information of divisional and district level development plans and decisions and freedom of expression including publication should be upheld.

- The Ministry of Mass Media in collaboration with the RTI Commission should review the matters connected to allegations of officials in public authorities disclosing the identities of information seekers to third parties or alleged perpetrators involved in illegal business activities. Necessary guidelines should be designed and implemented to prevent threats derived from exercising the fundamental right to access information and freedom of expression, particularly by journalists, human rights defenders and civil society activists.
- The Government, the Eastern provincial administration in collaboration with Batticaloa district administration should take immediate action to address issues faced by 'Coastal Aborigines (Veddhas)' related to their identity, rights to land and freedom of movement. An independent commission in close collaboration with the HRCSL should initiate a comprehensive and transparent investigation into alleged violation of the rights of the communities belonging to Coastal Veddhas and ensure that they are not further discriminated against.
- Authorities should pay careful attention to the composition of specific public institutions that are mandated to take decisions affecting the sentiments of multicultural peoples. Therefore, the recruitments to such institutions (including but not limited to, the Department of Archaeology, the Museum, Department of National Archives, Departments of Buddhist, Hindu, Muslim and Christian Religious Affairs, Office for National Unity and Reconciliation, Central Cultural Fund, National Film Corporation and Official Language Commission) should demonstrate the space for equal opportunities for representing and holding decision making positions.

### **Violation of Language Rights and lack of implementation of Official Language Policy**

- Actions required guaranteeing that all documents such as forms, applications, guiding notes, instructions, notices and other templates issued by public institutions particularly in Northern, Eastern and Central provinces are in compliance with Sri Lanka's Official Language Policy and as per the provisions stipulated in PA Circular No. 22/91 dated June 17, 1991.
- The Ministry of Mass Media, in collaboration with the RTI Commission, should review the challenges faced by people mainly due to language issues of officials in public authorities in exercising their right to access information. Further, action should jointly be taken with the Official Language Commission to address issues of discrimination and right to equality based on the language.
- Long term and short term actions should be taken to manage the challenges of lack of staff with necessary bilingual competencies as per the provisions made in PA Circular No. 07/2007 dated May 28, 2007 and PA Circular No. 01/2014 dated January 21, 2014 and to fill all vacant translator positions in all public institutions, particularly in law enforcement agencies. Language issues on the part of officials in law enforcement agencies should not be a contributory factor particularly for journalists, human rights defenders, artists, writers and civil society activists, to be subject to arbitrary arrests or detentions.

- The functions of Chief Official Language Implementing Officer (COLIO) and Official Language Implementing Officer (OLIO) of all public authorities should be regularised in line with the Extraordinary Gazette Notification 1620/27 dated September 25, 2009 and Public Administration Circular No. 18/2009 dated November 25, 2009.
- Authorities should strengthen the institutional framework of the Official Language Commission by converting it to an independent commission. Such an independent commission should have a clear mandate with enforceable powers to hold officials who do not comply with the implementation of the language policy to account.

***Thusitha Siriwardana***

*Attorney-at-Law*

1 <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

2 <https://www.themorning.lk/tid-officers-said-im-a-terrorist-because-i-didnt-own-buddhist-books-ahnaf-jazeem/>



# Articles by journalists, HR defenders and CS Activitsts

## Freedom of speech and expression including publication

### The right to write

**“This great nation  
with freedom to think,  
Write, speak, and show dissent”**

Are the words of this song sung by the legendary singer Nanda Malani a reality of the people? A closer examination reveals the ground reality of the challenges and intimidations faced by the creative artiste.

Writer Delankage Sameera Shakthika Sathkumara was jailed for his compilation of creative short stories. This is the first time such an incident has been reported in the country. The freedom of speech and publication available for creative work in Sri Lanka can be understood clearly when observing Shakthika Sathkumara's case.

Shakthika Sathkumara publishes a short story titled ‘Ardha’ on the third week of March 2019 on social media, during an era in which Sri Lanka gets on the bandwagon of social media usage as an advanced milestone in communication.

About two weeks after the short story was published, on the 1st of April, the author was called to the Polgahawela Police in Kurunegala. He was arrested by the police following a complaint by a monk, alleging that he had caused harm to Buddhist philosophy.

Shakthika Sathkumara was remanded on 1 April 2019 with the idea, "We have the right medicine for his madness. Bring him in immediately- we have the proper treatment for him." He was taken in on suspicion, alleging it was an offence punishable under Section 291 (b) of the Ceylon Penal Code as indicated in the B report B7073 / 19 and Articles 2 (1) and 3 (1) of the International Covenant on Civil and Political Rights Act No. 56 of 2007. He was charged with “propagating hatred and incitement of racial or religious violence,” and he faced up to ten years imprisonment

He was in remand custody for 130 days and was released on bail on 5 May 2019, after his wife Malalage Yanusha Lakmali filed a fundamental rights petition with the Supreme Court and a complaint with the Human Rights Commission (HRC).

On 22 April 2019 Sathika Sathkumara's wife filed a complaint on his behalf with the Human Rights Commission under complaint number HRC 1140/2019. The fundamental rights petition SCFR 167/2019 was also filed in the Supreme Court on 29 April 2019, while the human rights complaint against him was being heard. Shakhika Sathkumara's wife has also filed a bail application HBA / 46/2019 in the Kurunegala Provincial High Court on 8 May 2019. Shakhika Sathkumara, who was remanded for 130 days, was granted bail on 5 August 2019, and released on bail on 8 August.

One hundred and thirty days had elapsed since his imprisonment. By this time, he was close to losing his job. He had to wait several months to be reinstated as a public servant. During this time, his career progression and plans had completely stalled in addition to the family economic challenges. As a public servant and as a freelance writer, he is currently preparing for a lawsuit to claim compensation for damages caused to him as a public servant and an independent author.

He is demanding Rs. 20 million as compensation for his unlawful arrest, detention, prosecution based on hate, and damage to character, reputation and social status. In this complaint, he states that as the first creative artist to be imprisoned for presenting an independent piece of work, it could have an impact on his mental health as well as on his physical health.

Before filing the case, the petitioner had been duly informed under Section 461 of the Civil Procedure Code with Section 881 of the Police Ordinance and ordered to refrain from writing books until the verdict of the case was announced.

Accordingly, his compensation case has been adjourned till 25 April.

Sathkumara, who is traumatised, says that for independent creations to develop, they must be able to emerge freely, without being confined to a frame, religiously, politically and socially.

While creative pieces of work have been censored in the past Shakhika Sathkumara's case goes down in history as the first time that a creative artist has been imprisoned. However, there has been a trend where after this incident, several other artists were imprisoned. It restricts freedom of expression and publication in Sri Lanka. This is a challenge to the United Nations Declaration of Human Rights regarding the right to freedom of expression and publication that human beings are entitled to in a democracy.

This incident raises the question of whether there is freedom of expression and writing in our country. When you look at history, going back to the time of Galileo, people were severely punished for making various statements, and even imprisoned for speaking out about religion. The fact that it remains the same today is an indication of the weaknesses in the governance system.

When the rulers fail to create a conducive environment for creativity, the advancement towards a progressive society remains minimal without the contribution of the creative writers as social critics.



Although the writer desires to see the world as one canvass, it is not his role to protect religion or politics or caste. If a writer is prosecuted or harassed based on the impact of creative work on religion, caste, or political system then a successful creation will not develop.

The freedom of speech and writing in our country is at grave risk, which poses several challenges for creative artists in the future.

Instead of protecting fundamental human rights, this highlights the violation by the State on this fundamental freedom while trying to protect all other areas.

■ ***Chandani Dissanayake***

# A month of police inaction

## No proper investigation by police

### One month passes since Chamuditha's family was intimidated!

Sachithra Weerasekera, the son of Sarath Weerasekera, the Minister of Public Security in charge of the Sri Lanka Police, wrote in a Facebook post on Valentine's Day, February 14, '*Let us condemn those who insulted us with stones and excrement.*'

'If a proper investigation had been carried out, perpetrators behind the attack on Chamuditha's house could have been arrested 48 hours after the attack. Even with his face covered, it's clear that there are plenty of places to follow up," said a retired senior D.I.G. This retired officer with experience in criminal investigation as well as a scientific educational background shared this view with us about two days after the attack on the house of journalist Chamuditha Samarawickrema on 14 February 2022 at around 2.00 am. The attack was carried out by masked men in a WagonR car using stones and excrement.

At the time of writing, it has been almost a month since the incident. However, what is important is that the perpetrators who threatened Chamuditha, his wife and children, have not yet been arrested. As a journalist, the writer can clearly say that such threats cannot be underestimated. To some, such threats may seem simple. But we journalists do not know 'karate' or self-defence. We are used to talking, writing, etc. and not for using physical force. The lives of many of us are very peaceful, simple, and sober. So when someone comes to the house and does something like this, it is a frightening experience that traumatises us, even when we recollect it later.

How weak is the Sri Lanka Police if no arrests are made even after 648 hours, forgetting the 48 hours as mentioned by the aforementioned police officer? If not, as stated by the Minister of Mass Media and Information, the fact that no one has been arrested shows that the government is responsible for this attack?

The former retired Senior DIG, who commented earlier, shared with us two main areas through which the perpetrators can be located during these investigations:

One of them is the phone call investigation. The incident happened at around 2.00 am in the morning. This is a time when telephone calls are very rare. The retired officer said, 'It is inevitable that a call would be exchanged between those who came at that time. That is the normal pattern of crime. Therefore, you have to investigate the telephone calls exchanged at that time through the telephone towers in the nearby area. The number of suspects can be limited by making a list and checking the numbers,' said the retired criminal investigator.

"It's not going to take long," he said.

The other area pointed out was the CCTV cameras.

When we inquired from the current police media spokesman Nihal Thaldewa on 10 March, he said: 'I have not received any reports of arrests so far. Investigations are being conducted with the available data. The new situation is being reported to the Magistrate's Court. Investigations are being carried out by the Piliyandala Police. There are no reports yet about the CCTV cameras sent to the University of Moratuwa when checked two days ago. At present telephone numbers are being checked by the respective phone companies. Even new calls are monitored again. The Telephone investigation is in that process. We are receiving more data.'

Accordingly, no significant progress has been made in these investigations until March 10.

We inquired about this from journalist Chamuditha Samarawickrema. He commented:

'We went to court and filed a motion regarding security. As a result, I was given an officer. It was not given by the police. The court ordered the Victims' Protection Division to provide protection. So, it was given.

Three or four days later, two policemen had been provided. It was given because there was no answer to give when the question was asked in Parliament. But the two officers were removed.

I am not aware if they are conducting an investigation. They said that they had checked eighty CCTV cameras. Some of them are in my house. They are the ones that contain the footage of the attack. The problem was that they came with their faces covered.

I have not been updated on the current situation. Now there is no confidence that an investigation will be carried out.

The Media Minister has already said that the government should be held accountable if they are unable to apprehend the perpetrators from the investigation. That in itself is enough. Nothing more is needed.

They ask me as to whom I am suspicious about? Whom to suspect? I have told them that I cannot say that. I cannot target a certain person. We do a lot of programs. Those who are targeted by us get angry. People sling mud at me for taking money. But we have taken money for a very small number of programs. I talked about a lot of things from the garlic scam onwards.

Usually, a lot of people talk about an issue on the surface and finish the story. But we do a series of programs about that issue. Issues such as garlic and gas are examples.

Some are trying to ascertain the connection. Some are looking at whether it was done for financial gain. Whether someone is behind the scenes and directing. But if there is such a thing, it should be revealed now.

There is no party to suspect. If I had to list, I could list hundreds. But there is no point in just saying that.

As far as I know some who came to my programs have been questioned. Those who talked about land fraud have said that they were questioned.

Take the gas issue, for example, Litro Chairman Thushara Jayasinghe inquired from someone *how come I am still free*, and that post was shared with a group that was shared with me. But I cannot doubt that. One can never really suspect someone just like that. '

However, Chamuditha raised a very important question. It is a question as to why the CID or CCD does not conduct this investigation.

A senior police official, who did not want to be named, pointed out that the Criminal Investigation Department (CID) and the Colombo Crimes Division (CCD) deal with telephone service providers. He said that sometimes those agencies have links to get the information instantly of people who have not even committed any crime.

He further pointed out that if an institution such as the CID or CCD requests such data, it will receive a quicker response than the response received from a telephone inquiry made by a normal police station. Beyond that, such institutions should be staffed by specialised officers who are more trained in criminal research. If the government does not remove the competent officials in such institutions and does not appoint political henchmen, these institutions are appropriate to investigate serious incidents.

The CID of Sri Lanka was previously ready to summon newspaper editors and question them alleging that the name of a minister had been damaged in an incident involving Chamuditha Samarawickrema. After the revelations made by Thushan Gunawardena regarding the garlic fraud were published in the media, an investigation was carried out into the damage done to the 'reputation' of Minister Bandula Gunawardena.

Saliya Kanugala, a youth from Kurunegala was brought in by the CID for questioning for allegedly making a funny 'meme' on Facebook. The CID questioned Sudaththa Thilaksiri about expressing his views on the YouTube space where Chamuditha operates, over a letter written by someone. The list of those who have been recently questioned by the CID for ' the offence of speaking' is endless.

The dangerous threat to journalist Chamuditha Samarawickrema was probably not as dangerous as Saliya Kanugala's Facebook post or the unspoken list of people whose expression

of ideas, or whether the incident that intimidated Chamuditha's family did not feel like 'a crime' compared to the charges levelled against Bandula Gunawardena, to hand the investigation over to the national special investigative unit.

That is the real problem. This government sees 'the use of the freedom of expression' as a 'crime' and the violation or threat to the right to use the freedom of expression is not seen as a crime. It has become a norm for senior officers of the top police investigative agencies to go behind those who express their ideas while resorting to lethargic investigation patterns by police stations when someone is threatened for exercising the freedom of expression.

Responding to a query made by the Leader of the Opposition Sajith Premadasa in Parliament, Minister of Public Security Sarath Weerasekera made it very clear that he considers this a minor incident. It is also clear how the son of this minister we mentioned earlier made fun of this incident.

There have been many threats to journalists, abductions, assaults, disappearances and killings in the recent history of Sri Lanka. But justice has not been done to any of the mainstream incidents. There have been no proper investigations conducted on many incidents, including the abduction and torture of journalist Poddala Jayantha. Although investigations were carried out into other incidents and the facts were reported to the Magistrate Courts, no case was filed in the High Court. Perpetrators have not been identified and sentenced in any case that went to the High Court.

In fact, when serving sentences for such incidents, there is no point in simply looking for the perpetrators of the crime. If it is a murder, there is no point in only searching for the hired murderers similarly, there is no point in looking only at those who came to attack Chamuditha.

What really needs to be identified are the people who called for such attacks. If you are not even interested in finding the perpetrator, how do you find the source of the perpetrators? In fact, the purpose of this post is not to confirm the somewhat 'extremist' opinion of the Minister of Mass Media. That is, we do not argue that if an investigation is not carried out into this attack, the government will have to be responsible. That assumption may or may not be true. But it is clear that they do not see it as an important duty to ensure justice to such incidents and to guarantee freedom of expression.

■ ***Tharindu Uduwaragedara***

# Citizens seeking information also need protection

## **A journalist's experience of political interference in obtaining information**

### **Perpetrators and public officials collaborate to intimidate people requesting information**

### **A serious obstruction to investigative journalism and to a citizens rights**

The primary objective of the Right to Information (RTI) Act is to empower citizens and promote transparency and accountability in the role of government, control corruption and promote democracy in the true sense of the word. The RTI Act provides access to citizens to be alert to the governance process and to ensure the fulfilment of responsibilities and accountability of the activities of the state eg. The Information Act is a big step towards the public being aware of the activities of the government.

This article is based on my experience of submitting nearly 3,300 Right to Information applications to public authorities since the establishment of the RTI Commission under the Right to Information Act No. 12 of 2016 giving legal access to the right to information to the people of Sri Lanka

In particular, it is important to note that the Information Act addresses three basic requirements for the protection of the public's right to information.

1. Access to information
2. Responsibility of public Institutions for disclosure of Information
3. Responsibility to provide information

However, when considering the experience while using the Information Act and research, various ways can be observed in which information is denied and access to information is being restricted to citizens. This includes information not being provided on time and the excessive time taken for the Commission's appeals process.

Accordingly, based on the analysis of over 3,300 applications submitted, it has been noted that most of the public authorities in the country are not complying with the provisions of the Right to Information Act. The lack of attention paid regarding the timelines for providing the information is a key factor noted.

Section 25 (1) of the Right to Information Act requires the applicant to be notified within 14 days of decisions made regarding the provision of information “Where a decision is made to provide the information requested for, access to such information shall be granted within fourteen days of arriving at such decision”. However, to date many public authorities have violated these conditions and disregarded the citizen's right to information.

## **Threats to media**

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Meanwhile, as a journalist, I had to face various threats and interrogations when requesting information as well as publishing articles based on information obtained through the RTI and this is a serious situation that surfaced in the use of the Information Act.

A good example of this situation was when inquiries were made from the IGP's Office and other relevant SPs' offices about the number of people arrested for holding election campaign rallies in violation of health guidelines without properly informing as per the gazette notification issued by the Ministry of Health during the last Parliamentary Election 2020. Vavuniya CID Inspector Asanga Indunil questioned me on 23 September 2020, stating that a police inquiry should be held to ascertain the reason for the request for information and that he had been instructed by a senior officer to do so. A report was also published on page 2 in the ‘Ravaya’ newspaper on 4 October 2020.

Similarly, when inquiring from local health service offices about political parties that held election campaign rallies during the COVID19 pandemic without obtaining permission according to the gazette notification issued by the Ministry of Health during the 2020 Parliamentary Elections, the Hambantota coordinator of a powerful political party called me several times to inquire the reason why the information was collected regarding their party. Subsequently, I was made aware that my information has been provided by an officer of the Regional Health Services Office.

Applicants have been exposed to severe risk when inquiring information regarding environmental degradation, with the officials in the public authorities sharing information about applicants to the perpetrators involved in these illegal activities. This reflects the close relationship between the perpetrators and public officials.

Similarly, on several occasions when information was requested from the Bureau of Mines and Geology on the issuance of permits for sand mining, an officer from the Ambalantota office had given my information to the relevant sand smugglers. The sand smugglers visited my house on several occasions and asked me not to divulge information or expose their activities. There could have been a serious consequence to my life during that period.

In January 2022, when I requested information from the Bureau of Mines regarding the illegal sand mining carried out in a temple in the Kasagala area in Weeraketiya, a high ranking official of the relevant public authority provided my information to a security officer of a powerful Sri Lankan politician who was assisting in the sand mining. Subsequently a person called me and inquired into the reason for requesting information, while a Buddhist monk visited me at home and requested me to refrain from publishing the news.

In the same way, I have published several articles based on information obtained under RTA on providing permits for illegal sand mining in paddy lands, and on several occasions an official of the Hambantota Agrarian Development Assistant Commissioner's Office stated that he has no objection to sand mining and that publishing these articles in the media is a huge issue. He has provided my details to those involved in sand mining. I see it as a serious threat and obstacle not only to my media career but also to my life as a citizen who uses the Information Act.

## **Threats to Democracy**

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It is a social responsibility of the media to point out to the public regarding the harm caused when the Agrarian Service officials refuse to enforce the law appropriately to book the culprits. It is the duty and responsibility of the citizens as well as the journalists to expose the misconduct of the public servants as well as the illegal activities of various persons. This is especially important in a context where the top officials of the Agrarian Services Department are also following a silent policy in this regard. The Right to Information provided by the RTI Act No. 12 of 2016 is a key source in fulfilling this responsibility. However, if citizens are subjected to such inconveniences and threats, it is also a serious challenge to the democracy that supposedly exists in Sri Lanka.

Therefore, it is the responsibility of a democratic government to set up a strong legal mechanism to protect the rights of those seeking information and to take legal action against public officials who oppose it.

■ ***Rahul Samantha Hettiarachchi***



# Attacking the messenger

**Unbiased and courageous news reporting suffers when political elements turn people against the media**

**Police inaction compounds the problem**

Three months have passed since the passenger ferry capsized under tragic circumstances in the Kurunjankeni lagoon in Kinniya, Trincomalee, last November. The accident took the lives of seven passengers on board. Journalists who were reporting the unrest immediately after the incident, were attacked resulting in the loss of equipment in addition to physical assault. According to A.L. Rafaideen, a journalist who was assaulted, the law has not yet been properly enforced and justice has not been served to the journalists who were attacked.

It has been three months since the attack on journalists in Kinniya, but the Kinniya Police have not been able to arrest any suspects so far, said A.M. Sally, Secretary of the Trincomalee District Journalists' Association. If the law functions in such a haphazard way regarding a journalist who is considered to be the fourth citizen of a country, it is worthwhile to examine the process of justice towards the general public of the country. Attacks on journalists are not new to us, but there has been a steady growth of incidents reported so far. The monthly reports released by the Free Media Movement reveal that there has been a series of incidents reported from the areas of Mullaitivu, Chilaw, Hambantota, Batticaloa, Kurunegala and Colombo since January this year.

According to Mohan Samarawickrema, a senior and experienced journalist, the lethargy of police investigations into such harassment of journalists has been a decisive factor in the development of this grave situation. The recent attack on the house of journalist Chamuditha Samarawickrema and the attacks on the Sirasa media institution in Depanama and Braybrooke place a while ago are good examples. The General Secretary of the Federation of Media Employees' Trade unions, Dharmasiri Lankapeli stated that it is unfortunate and a serious matter that the police did not take action to arrest the suspects in connection with these incidents, which took place in a very open environment. According to Dharmasiri Lankapeli, the Minister of Mass Media and Information as well as the Information Department should take immediate action to stop this situation. He added that the failure to apprehend the suspects who attacked the journalists covering the unrest after the ferry capsized in the Kurunjankeni area in Kinniya, is another dimension in this matter.

Abdul Salam Yashin, a resident of Rotawewa, Trincomalee, A.L.M. Rafaidin, a resident of Jamalia, Trincomalee and Hayatu Mohamdu Halaldeen were the regional journalists who were attacked while covering the tragic situation in Kinniya and several other related incidents. Among these victims, Abdul Salam Yashin was severely beaten, and the rioters snatched his valuable mobile phone.

According to Abdul Salam Yashin, he had lodged a complaint with the Kinniya Police on the same day under reference number CIB (1) 10/291 on 20 November 2021 regarding the attack. It has been about three months since the incident, but the Kinniya police have not yet taken any positive action, he said.

"When I went to Kinniya to report the incident, a group of people were coming towards Kinniya from Kurunjankeni, shouting slogans and protesting. I took a photo and they assaulted me severely and took my phone. There was a person known to me at that moment and he intervened and handed over one phone, but they took the other phone. Even though I lodged a complaint with the police, they have not been able to arrest anyone. The Kinniya police have not even responded to the complaint lodged"

According to Abdul Salam Yashin, the mobile phone forcefully grabbed by the rioters was valued at around Rs. 60,000. Although Kinniya Police have failed to arrest those who assaulted Yashin and took his mobile phone, the Kinniya Police have been able to arrest those who attacked the Kinniya Hospital, the Divisional Secretariat, and the house of MP M.S. Thawfeeq in a short period of time. A fundamental condition in media freedom is to have an environment in which journalists are free to engage in their profession in physical and mental cohesion. Abdul Salam Yashin, the victim, said that several intelligence officers in their official uniforms and in civilian clothing were also present, but did not prevent or control the situation.

"Actually, there were a lot of police intelligence in civilian clothing in that place, they were the ones who identified the attackers of the hospital and the MP's house. These assailants themselves were involved in our attack. "

Former member of the Trincomalee District Journalists' Association Secretary A.L.M. Rafaideen said it was a "serious problem" that Kinniya police were unable to arrest the suspects although footage of his vehicle being attacked was widely circulated on social media. However, Rafaideen did not lodge a complaint with the police regarding the harassment.

"I went to report this incident in a friend's car. While he was driving, I was taking video footage from the phone. A group of people who saw it stopped our car, grabbed me by the neck and snatched the phone. However, when I told them I was a journalist and showed my media identity they returned the phone. At that moment, another group attacked our vehicle. However, since the police arrived at that time, they left us alone.

According to Rafaideen, the owner of the vehicle, Moulavi, seems to have avoided filing a complaint with the police to avoid publicity and exposure to this matter. However, A.M. Sally, the Secretary of the Trincomalee District Journalists' Association says that if the police really

wanted to apprehend those who attacked the journalist they could have used the footage that he himself posted on social media to make the arrest.

Hayatu Mohamed Halaldeen, who was also attacked, is a well-known journalist in the Kinniya area. He had also refrained from making an entry to the police regarding his assailants. Jude Samantha, National Organiser of 'Journalists around the Nation', said that this appalling policy of the journalists themselves not reporting is creating a negative impact on the entire media community. According to Jude Samantha, it is not surprising for those who have limited knowledge or qualifications in the field of journalism to take a step back in such situations when they become journalists. Jude Samantha emphasised that while a professional journalist has the knowledge and understanding of how to act in such a situation, a journalist without any training would inevitably be ill prepared to handle such situations. He also said that in such a situation, the reluctance of a journalist to act against his ethnicity or political affiliation is due to their limited knowledge of the professionalism of the media personnel.

Former Director of Information of the Government Information Department, Senior Journalist Dr. Ranga Kalansuriya has a similar view. Dr. Ranga Kalansuriya says that in such a tragic and tumultuous situation, a journalist should be more careful about his reporting. Journalists need to be trained in reporting under different circumstances, and it is normal for journalists to face such dilemmas when they are not trained for these situations.

According to Dr. Ranga Kalansuriya, although this is an attack on the public's right to information, it is rare for a trained and experienced journalist to face such situations. He further states that the key characteristic of a professional journalist is to always keep in mind that no news story is worth more than a person's own life and they need to act wisely as appropriate for the given situation.

It is clear that the events in Kinniya after the ferry tragedy were not isolated or coincidental, as this sudden unlawful assembly was not supported by the majority in Kinniya. Assistant Secretary of the Kinniya 'Sura Sabha' M.S.M. Niyas said that he was "deeply saddened and ashamed of the harassment of journalists and the violation of the public's right to information". He further states that the motive behind the attack on journalists in Kinniya and the instigators behind this act should be identified immediately.

In an environment where the right to information of the people is guaranteed by the Constitution of Sri Lanka, and Article 19 of the Universal Declaration of Human Rights, adopted on December 10, 1948, also provides a comprehensive definition of freedom of speech and expression, Niyas is of the opinion that the denial of justice for journalists who were attacked should be reviewed.

Niyas is a representative of the Suria Council and by profession is a Registrar of the Trincomalee Magistrate's Court. He further states that Article 19 of the United Nations Universal Declaration of Human Rights 1.1.1. guarantees that " Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The Government of Sri Lanka signed the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in 1966, and took the responsibility for its implementation in 1980. In addition, it was decided to ratify and adopt Optional Draft 1 of this Convention in 1997, which clearly defines *"everyone has the full right to freedom of opinion and expression; the right to access or disseminate information without interruption."*

Jagath Liyana Arachchi, Attorney-at-Law, External Lecturer in Media Law, University of Kelaniya states that the harassment of journalists involved in reporting the ferry tragedy and its aftermath can be termed as a clear violation of the above guaranteed freedoms. Failure to prevent such incidents as well as delaying the implementation of the law against the perpetrators is a violation of the basic premise that all are equal before the law.

Attorney-at-Law Jagath Liyana Arachchi, a former director of the National Media Center, commenting on the failure to enforce the law on behalf of the journalists who were harassed in the Kinniya incident said "The public will receive accurate news only if journalists have the opportunity to access the correct information. The state or the political apparatus often obstruct the journalists, but in the Kinniya situation, it is the people themselves that have infringed on the access to information, which is a sad state of affairs. In this case, both the obstruction of journalists' access to information and the violation of the public's right to information can be interpreted as a violation of human rights. I also see the failure to arrest those who attacked journalists as a denial of equal protection to journalists before the law. "

Convener of the Free Media Movement (FMM), Lasantha de Silva, said that the government should be held accountable for not ensuring a conducive environment in the country for a journalist to pursue his career freely, and the legal discrimination by the Kinniya Police against journalists should be investigated.

"The law can be properly enforced even in the face of such harassment of journalists while working towards guaranteeing the right to information of the people. However, here we see the discrimination against journalists as a violation of their human rights. The Kinniya police have no moral right to ignore the assault on journalists and to deny justice to the parties in the Kinniya tragedy. The FMM issued a press release condemning the attack on several journalists in Kinniya and the hijacking of their mobile phones.

Based on the media release issued by the FMM, the Human Rights Commission of Sri Lanka (HRCSL) ordered the Kinniya Police on 26 November 2021 to provide a comprehensive report. The report was called on the action taken and the action to be taken with regard to the three journalists who were assaulted and the obstruction to the coverage of the accident that took place on 23 November 2021 in Kinniya. The police were ordered to submit the report to the commission before 10 December 2021.

Dharmasiri Lankapeli states that although the Media Identity Card issued by the Government Information Department for Journalists states that the journalist in possession of this Identity Card should be assisted to carry out their professional activities without any hindrance, it is regrettable that the Government has not paid much attention to the interference and

obstructions faced by these journalists. Dharmasiri Lankapeli further stated that if a culture for free expression was active in our country, such unfortunate situations would not have occurred.

"This identity card held by the journalist can be considered as a license issued by the government. However, no one seems to be concerned about this identity card at any time. We urge the government and the Minister of Mass Media and Information to take immediate action to address this situation."

We inquired from the Kinniya Police OIC, Chief Inspector Chaminda Fernando what action has been taken regarding the complaint against the journalists who were assaulted and harassed in various ways while covering the situation after the Kinniya bridge collapsed and the ensuing tragedy.

"We are conducting further investigations into this incident. Four persons were interrogated based on various information we had received, but they were released due to a lack of clear evidence to charge them with. The Telecommunications Regulatory Commission has been informed regarding the mobile phone that was taken and a report has been requested. We are conducting further investigations in this regard," he said.

Committing a crime and not being punished for it or "impunity" will only result in the perpetrator engaging in more criminal activity. It is no secret that the perpetrators are not the ones that orchestrate or instigate such assaults and harassment, but they do so at the behest of other forces. Therefore, these crimes are often committed by people with limited education who are involved with various nefarious activities. Journalists are of the firm conviction that impunity further propagates violence and criminal activity.

Trincomalee District MP Imran Maharroof has said that the attack on journalists covering the Kinniya tragedy and its aftermath was not an isolated incident and that an inquiry should be held into whether there was any invincible political force or influence behind it.

"Attacks on journalists and obstructing their work is unacceptable, while it is difficult to say for sure that the same people who attacked the hospital and the Divisional Secretariat that day were behind the attack on the journalists, I believe that both these attacks were led by one person or group. Therefore, what the police should do at this time is to investigate who was behind the attack rather than look for the perpetrators. That would help them uncover more details. However, the law should be enforced immediately against those who attacked the journalists.

Journalists are unique among other members of society because of their profession as well as their professional use. Seetha Ranjane, a media activist, says that in the face of this unique situation, journalists have additional responsibilities as well as privileges. Securing the right to information of the people is considered to be the primary function of journalists. It has to also be recognised that journalists have a responsibility to act in accordance with their conscience, without party affiliation, prejudice or fear, in order to ensure the well-being and qualitative

progress of society. Seetha Ranjaneer points out that the government has a responsibility to create such an environment. She further emphasised that the most serious challenge facing journalists today is the lack of justice for crimes committed against them.

It is no secret that impunity and the lack of implementation of the law against crimes committed against journalists are one of the most pressing challenges faced by journalists in Sri Lanka today. The lack of protection for journalists in the face of various forms of infringements and violations caused by these unscrupulous elements is a strong advantage for criminals as well as providing incentive for further violations. Therefore, perpetrators do not hesitate to attack journalists who report on these criminal elements. All journalists are of the view that these violations are the signs of the deteriorating situation of the freedom of the media as well as the universal right to information of the people in a democratic country. Therefore, this is the responsibility of all relevant stakeholders to lift journalists from this dangerous situation.

*(Reporting from Trincomalee)*

■ ***Mangalanath Liyanarachchi***

# Incidents and trends in media freedom in Sri Lanka

**Based on the Monthly Monitoring Report of the Free Media Movement 2021**

The landscape of media freedom and the freedoms of speech and expression in Sri Lanka is not a pleasant one. To present it more precisely, no international assessment or rating agency states that the media freedom environment in Sri Lanka is at a reasonable level. Reporters Without Borders (RSF) has never ranked Sri Lanka higher than 125 out of 180 countries in the World Press Freedom Index, in recent history. Freedom House has always named Sri Lanka as a nation that is among the countries categorised as ‘not free’.

Even when you take the position that these indicators are presented from a Western perspective and conduct independent and further in-depth study of media freedom and the intertwined freedoms of speech and expression it is clear that the indicators are not unreasonable or irrelevant. According to a report by Seetha Ranjane, the Free Media Movement in the Media Freedom 2020 report indicates that 116 journalists, media workers, artists and cultural activists were assassinated between 1981 and 2009. It further states that at least 40 journalists and media workers were killed between 2010 and 2014. The analysis of the relevant media freedom 2020 report identifies violations against media freedom in Sri Lanka between 2000 and 2019 under 13 categories. These include killings and disappearances, assaults and abductions, harassment and intimidation, attacks on media institutions, litigations, censorship of websites and social media networks, the shutdown of the Internet, arbitrary executive decisions, police abuse and transgression, infringement of media rights and censorship. This further confirms that the conclusion derived regarding Sri Lanka as a nation that is not favourable and conducive to media freedom, is not unreasonable or unfounded.

However, a further study of the environment of media freedom and freedom of speech and expression in Sri Lanka reveals a changing trend in the nature of the incidents surrounding the violations and infringements. For example, prior to 2014, incidents related to media freedom, such as the killing of journalists, abductions, threats, assaults, and attacks on media institutions, were widely reported. However, there has been some change in the nature of the reported incidents since 2015. Instead of violent physical aggression and manifestations,

what can be observed are the sinister Executive directives and litigation with more serious and drastic far-reaching adverse impacts and consequences on media freedoms. While some may consider this as a positive trend, it is a change in the nature of the violation, not an end to the threat to media freedom.

## **Incidents of 2021**

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When the situation regarding media freedom, and the freedoms of expression and publication is considered against this backdrop, the year 2021 in Sri Lanka, is does not reflect a positive development but a setback. According to the Free Media Movement's Media Freedom 2020 report, 58 threats to media freedom were identified during the year, and this number increased to more than 80 by 2021. According to the monthly media monitoring reports for 2021 compiled by the Free Media Movement a total of 109 incidents and trends related to the violation of media freedoms have been observed. These consist of 40 incidents related to the safety and security of journalists, 43 incidents related to litigation and 10 incidents related to the developments of past violations, 10 incidents related to media independence, 11 incidents related to operational and structural issues, two incidents related to the media profession and one adverse trend in media freedom. According to the report, more than 80 of these incidents are identified as threatening or detrimental to media freedom.

The key trend that can be observed among the events that adversely affect media freedom in 2021, are the various attempts to influence media freedom through litigation. At the same time, in many cases, amendments to existing laws or the introduction of new legal provisions indicated the possibility of creating an environment that would violate media freedom.

For example, in February 2021, the government issued an announcement to amend the Press Council Act No. 05 of 1973 to include electronic, new and social media. This provoked strong opposition from the media and civil society since the Press Council Act, an outdated law applicable only to the print media, was to be applied to cover the field of broadcasting, new and social media, and the introduction of irresponsible regulation in a manner that was not practical. As a result, it was observed that the call for the relevant amendment has slowed down.

On another occasion, a new bill was gazetted on pornography, and its contents were severely criticized on the grounds of freedom of speech and expression, as well as a number of other technical issues. As a result, it was eventually revoked.

## **Arrest and detention**

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The year 2021 also witnessed a number of arrests and detention of various individuals, including journalists, who used to enjoy the freedom of speech and expression. A particularly notable situation was the number of people arrested or detained for commenting on the social or new media spaces.



**Fazal Mohammed**, a web author and businessperson, was arrested by the CID's cybercrime unit in January, produced in court and remanded under the ICCPR Act for posting a video on the internet criticising a statement made by the president. This comes in the wake of national and international protests against the misuse of the ICCPR Act to restrict freedom of speech and expression, using its legal provisions to prevent hate speech. **Azad Sally**, a politician who was arrested and detained for several months under the ICCPR Act on charges of making racially divisive statements, was acquitted by the High Court in December, confirming allegations against the government that it was abusing the Act and the law.

**Murugapillai Kokiladasan**, a local journalist in Batticaloa, was arrested under the Prevention of Terrorism Act (PTA) under allegations that he has posted a photo promoting the LTTE on his social media account. He was eventually released on bail after more than 15 months in remand. No charges with clear evidence have been filed against him as yet. It is clear that the use of the PTA to hold a person in remand custody for up to 15 months based on a social media post, has far reaching implications on the perception of censorship created in society regarding the freedom of speech and expression, which is a very serious matter. **Ahnaf Jazeem**, a Tamil language teacher, was arrested under the Prevention of Terrorism Act based on his poems and detained in the Terrorism Investigation Unit for more than 18 months without filing any charges, which provides further evidence of the use of this law against the freedom of speech and expression. It was not only the Tamil and Muslim minorities involved in the media or the arts field who were detained under the Prevention of Terrorism Act. **Keerthi Ratnayake**, a Lanka e News journalist who warned of a possible attack on the Indian High Commission, was also arrested and detained under the PTA.

### **Summoning for questioning**

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In addition, a large number of journalists and individuals who have commented or expressed an opinion have been summoned to the police to record statements using the provisions of various laws. Among those summoned were editors of the Lankadeepa, Divaina and The Island newspapers. They were summoned before the CID to make a statement on a report on large scale corruption at the CWE. There have been a number of incidents of police recording statements on people who have commented or shared an opinion in the mainstream media or on social media. **Father Cyril Gamini** was summoned to the CID for questioning over a statement he made to the media about the Easter attack, a statement recorded from **Dr. Najith Indika** on a social media post, visiting the house of a student **Bhagya Abeyratne** who commented on the deforestation in Sinharaja on a TV program and obtaining a statement from journalist **Nandana Weeraratne** regarding a newspaper article are some of these instances. It is important to note the impact of such events not only on the freedom of speech and expression associated with the incident, but also the roll-on impact of pre-censorship on journalism and free expression on social media or any other medium. It is not unreasonable to identify such approaches using legal provisions as a form of harassment and intimidation of journalists and those who share an opinion.

## Confirmation of impunity

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Another notable aspect of related to media freedom is impunity. Impunity for crimes against journalists is a long-standing issue related to media freedom in Sri Lanka, and the fact that it has continued to develop in 2021 is a serious issue for media freedom, the law as well as the safety and security of journalists. A motion moved by Prime Minister Mahinda Rajapaksa was recorded in the Order Book of Parliament on 21 April 2021, proposing that the report of the Presidential Commission of Inquiry into Political Victimisation be implemented. Among the commission's recommendations was the withdrawal of about 70 cases filed against government and military officials. Among these are cases where military officials have been named as respondents in the assassination of **Lasantha Wickrematunge** during the presidency of President Mahinda Rajapaksa, the abduction and disappearance of **Prageeth Eknaligoda**, the abduction and assault of **Keith Noyer** and the assault on **Upali Tennakoon**. This is a serious and unfortunate trend in promoting impunity and has been the subject of serious attention and criticism both locally and internationally. Another unfortunate event promoting impunity in the past year was the release of the six accused on the instructions of the Attorney General concluding the trial in the Jaffna Magistrate's Court regarding the murder of journalist **Mylvaganam Nimalarajan** in 2020.

## Suppression of the views of public servants

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The impact and restrictions on the right of public servants to express their views using various laws and regulations is also a significant development in 2021. A disciplinary inquiry was held against **Dr. Chamal Sanjeewa**, a local health official who had commented on the health situation, while the CID arrested **Chamil Jayasinghe**, an assistant Land Commissioner who had posted a social media post about deforestation.

It is important to note that in some cases, the police infringe on the freedom of speech and expression by arbitrary interpretation of laws and regulations in various situations to suit their purposes. At one point, the police spokesperson stated that it was against the law to make or exchange statements that would insult the president. This statement, which has no legitimate legal basis, was strongly criticised by the media and civil society and even the Human Rights Commission of Sri Lanka had taken steps to question the Police Media Spokesperson regarding this statement.

## Physical and mental abuse

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During the past year, there have been a number of reports regarding threats to the safety and security of journalists and those who commented on various matters. There were no reports of killings or disappearances of journalists, but there were reports of assaults, torture, obstruction to reporting, intimidation and undue surveillance. Freelance journalist **Lakmal Ranabahu**, assaulted in Kalawana in January, Hiru regional correspondent journalist **Priyasad Muthukudaarachchi**, attacked by the police in June, journalist **Vishwalingam Vishwanathan** assaulted by the armed forces in Vellamullivaikkal, Mullaitivu in November and Journalist

**Zaheer Khan** attacked by a group of police officers in Akkaraipattu, are some of these reported incidents.

The monthly media monitoring reports prepared by the Free Media Movement for the year 2021 revealed that certain Tamil journalists have been regularly summoned to the police and have been subjected to intimidation and mental harassment. Accordingly, Batticaloa-based journalists **Punyamoorthy Shashikaran** and **Nilanthan** had been summoned by the police on several occasions with the intention of preventing them from covering certain incidents.

In addition to these major events, a significant number of incidents has been reported in the past year that have challenged the qualitative framework and structure of the media, affecting the independence of the media, as well as threatening the profession of journalists. The list includes the suspension of Ravaya editor **Wimalanath Weeraratne** and the suspension of Lake House journalist Manjula Samarasekara.

Overall, it can be stated that in 2021, the freedom of the media and the freedom of expression has been widely infringed and limited by the interventions made by the state using various legal approaches. It is possible to observe interventions using existing laws and regulations duly and unduly as well as the interventions that were made through the amendments introduced to existing provisions. There is a visible shift in the landscape of Sri Lanka's media freedom, where threats related to the safety and security of journalists, the greatest challenge to freedom of speech and expression are now taking the form of litigation and legally restrictive approaches to curb freedoms.

## **The role of the media and civil society**

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However, the media fraternity and civil society as well as various political representatives have made significant interventions to prevent and control this alarming situation. The results of these efforts are evident from the revoking of the Obscene Publications Act and the prevention of urgent amendments to the Press Council Act.

It can also be observed that in some cases the judiciary and law enforcement agencies have made positive contributions to preventing these repressive approaches. For example, when Ananda Palitha, a trade union leader, was arrested and produced in court for making a statement to the media, the Colombo Magistrate's Court upheld the freedom of expression and issued an order accordingly. On another occasion, the Gampaha Magistrate's Court rejected a request for an injunction restraining protests. In August, the president issued a gazette notification containing a set of regulations for the purpose of rehabilitating the surrendees and detainees (De-radicalisation from holding violent extremists) and the Supreme Court issued an interim injunction preventing it from implementing the provisions.

## **Some observations about 2022**

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However, in general, it can be noted that in 2021, compared to 2020, there has been an increase in issues, challenges and incidents related to media freedom and freedom of speech

and expression. Although this situation cannot be used to forecast the situation in 2022, the events that are already being reported in 2022 regarding media freedom indicate that the situation in the coming year will deteriorate further and be a volatile one. The perpetrators behind the attacks on the residence of journalist Chamuditha Samarawickrema have not been arrested, and even the Minister of Mass Media and Information has expressed his regret over the situation. Artist **Sudantha Thilakasiri** had been summoned by the CID in January 2020 to investigate a discussion program he was conducting on YouTube, while social activist **Asha Dilrukshi Perera** was interrogated over a video that was shared on social media with an opinion against the President. This seems to be an extension of the trend and strategy to use formal and legal to curtail and limit the freedom of expression and publication. The undue pressure exerted on journalist **Rahul Samantha** by Duminda Silva is a reflection of the challenges to the independence of the media as well as the editorial boards. The best approach to deal with these matters and prevent similar situations in the future would be to properly identify and deal with these strategies and approaches formed and used against media freedom and freedom of speech and expression.

■ ***Attorney-at-Law Viranjana Herath***

# Threats to HR activists

## The human rights dilemma faced by Ambika Satkunanathan

Defending human rights in the country, including freedom of expression, and freedom of association, assembly and movement, has become a difficult task. The government continually attempts to suppress and restrain the voice of human rights and social activists. This must end and justice must be served to those affected by such incidents and relief must be provided to them. The advocacy against the violation of human rights abuses both internationally and legally has to be carried out in a transparent manner. At the same time, human rights awareness should be promoted amongst the public and it should be made clear to the people that human rights will be duly protected.

The actions of the Sri Lankan government against Ambika Satkunanathan, a former commissioner of the Human Rights Commission of Sri Lanka, a lawyer as well as a human rights activist, can be highlighted as one such instance of exerting undue pressure.

The Sri Lankan foreign ministry published a statement on 4 February against Ambika Satkunanathan for her presentation made on 27 January before the EU Parliamentary Subcommittee. She had reported that the publication of the gazette notification to amend the Prevention of Terrorism (Temporary Provisions) Act, which was enacted as a temporary law for 6 months in 1979 and subsequently converted into a permanent law of the country, which should be repealed. The foreign ministry report made serious allegations against Ambika Satkunanathan, an attorney at law, accusing her of numerous misleading statements contained in the testimony. This has exerted undue intimidation over her freedom of expression and has also called into question the freedom of expression of every other Sri Lankan citizen.

Ambika Satkunanathan commented on this matter: I have in consultation with the UN Special Rapporteur submitted a report on the Prevention of Terrorism Act (PTA). I have spoken about it in the Senate. However, nothing has happened during those times. The government has issued reports against me after speaking at the EU Parliamentary Subcommittee. I believe that this is due to the GSP + concessions. I see this as a new strategy. It is not the role of a state

to publish a report and pressurise an individual. In spite of that, they have done so. People in the North and East are protesting amid threats, surveillance and intimidation.

She says that she believes the government has used threats against her as a means to tacitly communicate and inflict self-censorship and fear among others hoping to influence them to refrain from speaking publicly or expressing their opinion with a fear that this could happen to them as well.

The truth of the matter is that suppressing and intimidating the country's ongoing activities against human rights violations causes fear among the public. The PTA has been in force for 79 years. Its amendments should be enforced in a manner that the rights of the people are not violated. Publishing reports against me, accusing me of commenting on that bill is an act that violates the freedom of expression. The impact on the freedom of expression is seen as a threat to me personally and the public as a whole.

In this context, 161 social activists and 47 organisations issued a statement on 6 February condemning the report published by the Ministry of Foreign Affairs discarding the views expressed by Attorney-at-Law Ambika Satkunanathan on the human rights situation in Sri Lanka at the EU Parliamentary Subcommittee session. The human rights situation in Sri Lanka was also discussed during the session of the Joint Parliamentary Sub-Committee of the European Union held on 27 January via zoom. Speaking at the session, Ambika explained the current state of human rights in the country, noting that the human rights situation has been "at unsatisfactory levels" in recent times. It should be noted that many organisations and politicians have also expressed their displeasure.

Ambika Satkunanathan stressed that EU member states should extend their support, including financial assistance, to the evidence gathering mechanism launched by the Office of the United Nations High Commissioner for Human Rights. However, the Ministry of Foreign Affairs has stated that *"her testimony completely ignores the progress made by the government of Sri Lanka on many fronts and creates doubts about the government's intentions and sincerity. Particularly at a time when it is engaged in a long-standing cooperation with the UN human rights mechanisms and the UN Human Rights Council and is delivering on its commitment to address accountability and reconciliation through domestic processes and institutions."*

These types of intimidation against a person at a higher position in the legal fraternity can reduce the advocacy and involvement of other professionals, civil society activists and the public against human rights abuses. There are numerous instances when such information is shared in public forums and internationally, the individual as well as activists from organisations are ridiculed, their reputation tarnished, credibility questioned.

The Prevention of Terrorism Act has led to many arrests and detentions without investigation or charges being filed. There have been numerous calls to abolish these draconian provisions. Similarly, the European Union (EU) is also pressurised for the granting of GSP + in this given context. The ministry states that the EU uses its leverage on the GSP plus facility to exert pressure on the government on human rights.

With the undue pressures exerted on lawyers and civil society activists working on human rights, an environment is created where these activists withdraw from advocacy. These show serious signs of silencing the voices and dissent of all citizens. This type of intimidation should be eliminated from society. People should be able to live in freedom and in peace and serenity. Sri Lanka needs to change the way of thinking and action that looks to subjugate the people of the country by quashing dissent and those who raise their voices on human rights violations.

Comments received on this matter include A.K. Francis, a retired teacher from Vakarai:

"Anyone can express their opinion on human rights violations. Ambika Satkunanathan used to be in favour with the previous government but now she understands the current situation. In addition, people like Wigneswaran used to be a judge but now he is not in that position. Therefore, it is not wrong for them to share their opinion on these matters. That is not to say that they can voice baseless accusations. It is the responsibility of the government to prove that there is no basis for what they have said. We should not try to say that it is wrong."

The Foreign Minister has said not to stir up old matters. They admit that something happened by his very utterance of that phrase. Don't these old issues need to be resolved, and a solution provided? If there is a solution to something, it does not matter, it can be forgiven and forgotten. Can forgive but will not be able to forget. The entire history will be erased. The problem will end if they openly admit that they have killed the detainees and ask for forgiveness. Why do you say not to stir up things of the past?

Those involved in war crimes in foreign countries during World War II are still apologising, but in Sri Lanka there is no apology for these killings. If they can say we killed these people, which was an error, a mistake and provide compensation and death certificates and say that we will grant you what is yours and what you deserve this will be sorted.?

Not everything that is promised is provided. How many were compensated after the report by the commission appointed to look into the atrocities of the 1983 riots? How many commissions have been appointed since then? Finally, the April 21 report has also been thrown to the bin. If someone has done something wrong, it is wrong irrespective of who did it. If Ambika Satkunanathan's statement is incorrect, investigate it, and prove it with evidence. Without doing all of this, can you accept it just because some official says it is wrong? Relevant evidence is required for us to make up our minds.

Kadir Barathidasan, Human Rights Activist:

*"Criticism and intimidation of a former Commissioner of the Human Rights Commission of Sri Lanka has come as a shock to other human rights activists. In fact, the Sri Lankan government has created an environment for such actions. This has led to an act of deliberate revenge with the intention of tarnishing her reputation.*

*During her tenure as Commissioner, she acted honestly and impartially on human rights, but the activities that are being carried out now in a manner to demean her are not acceptable and unhealthy. The unfortunate thing here is that the public did not come forward to oppose*

*it seriously. NGOs should also pay more attention to these matters. This poses a serious threat to other social activists and human rights activists. All of them must come forward to express their views and protests. ”*

Kandaiya Kuganesan, Businessperson, Colombo:

The Sri Lankan Ministry of Foreign Affairs has rejected Ambika Satkunanathan's report. However, throughout Sri Lanka's history since 1979, the Anti-Terrorism Act has been used in all spheres as an act that sits outside the Constitution of Sri Lanka. The Government and the majority community of Sri Lanka have launched their activities in a manner that violates human rights in the areas of security and civil administration. The Sri Lankan government has the ability to condemn and criticise her for submitting such a report, but the reality is that the government has been violating human rights for over 40 years. The security forces through the Terrorism Act may have done it and they are clearly still doing it today. Cultural genocide can be pointed out as another step in that process. Earlier, the threat was at gunpoint. Now they have come to our areas and promoted Buddhism. They have and buried various historical objects that symbolise Buddhism in those areas. They are now claiming that it is the cultural heritage of Sri Lanka, and acquiring and occupying the lands of the Tamil people and the places of historical significance to the Tamil people. They are trying to portray the Tamil people as a very small minority who came and settled from outside of Sri Lanka. Aren't these human rights violations? Can the democracy loving public in Sri Lanka deny this? In that sense, there is nothing wrong with Ambika Satkunanathan saying that. That is the truth.”

Sivayoganathan, NGO/Civil Society Activist:

*“She has a right as a former human rights commissioner and a dynamic civil society activist. However, the Ministry of Foreign Affairs has violated those fundamental rights. That is their position. If they want she can be arrested under the PTA if they wish. From a democratic point of view, if the ruling party or the opposition or the foreign minister or anyone for that matter is leading the country in the wrong direction, there should be space in the country for the freedom of expression. She has revealed the truth. They are trying to show the outside world that this information is not true. They have attempted to take revenge. Her connections with many international organisations and human rights organisations, as well as their support, would have enabled her to escape these actions. In that sense, it is an undue influence from the Ministry of Foreign Affairs. The Ministry of Foreign Affairs is a constitutionally established body under the sovereignty of the state. It should express the opinion of that institution. They cannot say what someone says is wrong and no ministry has the power to say so. This is a wrong precedent. ”*

Based on such comments and information, the intimidation of Attorney Ambika Satkunanathan is seen as an act against humanity and a human rights violation and everyone should continue their advocacy to avoid giving room for such a precedent in the future.

#### ■ **Letchumanan Devadhiran**



# Quiet cover-ups

**A serious issue reported for safety of civilians and the public good**

**Authorities pass the buck around while trying to silence the media**

**Subtle threats to freedom of speech and expression**

In 2009 a mentally ill person started jumping on both sides of the railway tracks and started pelting the train with stones. The train plying from Fort to Panadura had stopped briefly at the Bambalapitiya station and was just about to start the journey. The train was damaged in the attack and the passengers were also injured. Then the passengers got out of the train and started attacking this person. The Bambalapitiya Police received several telephone calls regarding the incident and several police officers including a Sub Inspector arrived at the scene.

The Sub Inspector and another police officer began assaulting the man with rods as he fled to the beach to escape from the police. The man struggled, tried to escape and eventually breathed his last at the sea. This is how the fate of [Balavarnan Sivakumar](#) (29), a resident of Indrajothi Mawatha, Ratmalana unfolded. He was a minor employee who worked in a garage in Mount Lavinia. The tragic incident of a man losing his social protection or drowning at sea took place on 29 October 2009. When the case was heard in the Fort Magistrate's Court on 13 November 2009, the Deputy Inspector General of Police (DIG) for Crimes and Organised Crime, at the time Anura Senanayake, had said, "the suspect police officers should not have beaten the victim with rods knowing that the deceased was not in his right senses and that it is an act which is totally unacceptable." He also admitted in court that the death of this victim was due to negligence and brutal assault by the police officers.

DIG Anura Senanayake also requested the Fort Magistrate Gihan Pilapitiya to issue an injunction restraining from 're-broadcasting the unedited footage' of this incident', pointing out that the Police Department had been discredited nationally and internationally due to the television channels broadcasting the unedited footage of this incident.

The news reported on 16 September 2020 was quite different. A team of officers from the Hatton Police Criminal Investigation Division has rescued a 23-year-old man who attempted to jump from a waterfall and commit suicide. The youth, a resident of Hatton Rothas Estate, was taken into police custody while he was at the top of the Hatton Amosley Estate waterfall. The

young man's mother had told police that he had returned home on 16 September claiming that he would commit suicide due to a dispute with his parents. The then Hatton Chief Inspector G.S. Palihana said that the youth would be produced before the Hatton Magistrate's Court and referred for psychiatric treatment and then handed over to his parents.

Both of these incidents show that mentally ill people need social protection in order to survive. No matter how many laws, agencies, government officials and responsible stakeholders are in existence, you will still find lives that have fallen through the safety nets even at this moment, at a bus stop or on the sidewalks, on the streets.

### **Those responsible are silent**

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Journalist Sajeewa Wijeweera had published a news item on his website on 31 January reporting that two mentally ill people wandering in the city of Galle had caused great discomfort and disturbance to the people coming to the city and the businessmen of the city. The headline read, *"A madman in Galle exposes himself in front of women and then scolds them. Those responsible are silent."* The report further states that this mentally ill person who roams around the main bus stand in and around the city of Galle is engaged in public harassment acts such as chasing women, exposing himself, swearing and littering in business premises. Sajeewa had also obtained a statement from I. Himali Ratnaweera, Divisional Secretary, Kadavath Sathara, Galle for the news item. He had also included the statement in the news.

When we asked Himali Ratnaweera, Divisional Secretary, Kadawath Sathara, Galle, about the action that could be taken in this regard, she said, "A businessman told me about this. I explained to them that this matter was not relevant to me and that I could not do anything about it." Sajeewa Wijeweera had included this section in his news item pointing out the scope and ability of the Divisional Secretary to take responsibility or take action.

"It is only under the Mental Health Act of 1873 that action can be taken against mentally disabled persons. An amendment was made in 1956 and a new bill was drafted in 2007 but it has not been passed yet. According to this Act, if there is a mentally disabled person in an area, the authorised representative in that area is the Grama Niladhari of the area. After informing the Divisional Secretary, the Grama Niladhari with the assistance of the police can arrest such a person and hand him over to the psychiatric unit of the nearest hospital and the relevant hospital will refer the patient to the Angoda Psychiatric Hospital. If not, the Grama Niladhari can inform the police about this and report the matter to the nearest court under the Mental Health Act and refer the person to a detention centre for treatment or imprisonment. Businesspersons in Galle say that no matter how many complaints are lodged, the authorities will not take any action."

### **Request to remove article**

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Sajeewa Wijeweera's news source was a businessperson from Galle. Following the publication of Sajeewa's article, a person by the name of 'Anjana' in the Kadawatha Sathara

Divisional Secretariat in Galle has requested the businessperson who provided the news sources to remove Sajeewa's article since it is not good for the Divisional Secretary's reputation. Freedom of speech and expression is threatened in two ways. One is through threat, force and intimidation. The other is innocent innocuous requests that come in a friendly manner. The Divisional Secretary had said, *"A businessperson told me about this and I explained to them that the matter was not relevant to me."* However, it is the same office that is now requesting the removal of the relevant news article. Is it fair for them to make this request? When we asked Sajeewa Wijeweera, the Editor-in-Chief of 'Rata' website, about the request to remove the news item on the website without giving a reasonable and acceptable explanation to the query about the possible action that could be taken regarding a mentally ill patient, he said the following;

### **According to Sajeewa**

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On the morning of 31 January, Randon Chandrasoma, a businessman from Galle, called me and told me that there were two mentally ill patients that were harassing people and behaving in an oppressive and abusive manner. He also said that he had informed the Divisional Secretary that there were two mentally ill persons roaming in Galle. I spoke to Dr. Rumi Ruban, a specialist in charge of the psychiatric unit at the Karapitiya Teaching Hospital in Galle, about how to deal with these mentally ill people. He clearly stated that according to the Mental Illness Act, the Divisional Secretary has the power to refer a mentally ill person directly to a psychiatrist without having to produce in court. The process for police or the municipal council to arrest the mentally ill person and produce in court and send to a detention centre for treatment is a time consuming process but the Divisional Secretary could act very quickly according to the Mental Illness Act. However, the Kadavat Sathara Divisional Secretary was not aware of the Mental Illness Act. When I explained the bill, she said she did not have time to listen to it. Accordingly, the advice of psychiatrist Rumi Ruban and also my idea was that the Grama Niladhari and the Divisional Secretary could easily and expeditiously deal with people with mental illness without resorting to a lengthy judicial process. I published this news on my website, including the statement of the Divisional Secretary. In the evening I came to know that an employee of the Divisional Secretariat had called the businessperson who had given me the information and asked him to remove this news. It is an unlawful act for the Divisional Secretary or any other person to attempt to intimidate information sources. This is not acceptable.

### **According to Randon**

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According to Randon Chandrasoma, the businessman from Galle city who provided the news sources: "I told the Divisional Secretary about these troublesome mental patients. She said to tell this to the Municipal Council. It was of no avail. I spoke Sajeewa and said this because I wanted to open the eyes of the authorities. It was then that the news item was posted. In the evening, an official from the Divisional Secretariat named 'Anjana' called me and said, "Oh, this news is not good for our madam, if possible speak to Sajeewa and remove the article. There was no threat. However, despite the article no one came to take him away.

**He was finally badly beaten up and evicted from here.** What else can we do if the authorities do not take any action ?

**Inquiry from I. Himali Ratnaweera (Divisional Secretary, Galle Kadawatha Sathara)**

Q: Did you ask anyone to remove the news that was published by journalist Sajeeva Wijeweera exposing the story of the mentally unsound people roaming around Galle?

A: No

Q: Aren't you responsible for taking action regarding these mentally ill people?

A: It is not included in my subject, but on the morning of the 31 a businessman called me and told me about it. After that I sent the Grama Niladhari in charge of the 96th Cheena Koratuwa area, Dilipa Chaminda there. He went and looked for the man, dressed him in a pair of trousers and applied the necessary medicine on the wound. I did not have any official responsibilities but I did the necessary work. The next day when we searched for him, we could not find him.

Q: What did you say to the businessperson who spoke to you?

I asked him why he called me and told this to Sajeeewa. I also told him to inform the municipal council and police about this person

Q: An employee named "Anjana" told the businessman to remove the news. Is there an office assistant by that name?

A: No. There are nine assistants. There is no one called 'Anjana' among those nine.

Q: A Divisional Secretary has the power to deal with mentally ill people under the Mental Illness Act, isn't it?

A: In my 16 years of administrative work, I have not come across and I am not aware of the powers or responsibilities vested in the Divisional Secretary under the said Ordinance.

**Inquiry from Police Media Spokesman SSP Nihal Thalduwa**

Q: Can the police take action against mentally ill people who behave in a way that oppresses the public?

A: There is a possibility of arresting a person of any kind. If we receive a complaint from someone or a citizen reporting such matters, we take that person into our custody, though not in the manner of arresting a criminal. We have to find the relatives of that person so we seek the assistance of the Grama Niladhari and the Divisional Secretary. We inform them and refer the person in our custody to a doctor as soon as possible. If necessary, it will be reported to the court, he will be referred to a suitable detention centre for treatment, and the person will be handed over to his relatives. Complaints are also received from relatives regarding such individuals who are difficult to control. However, if we receive complaints about such mentally

unsound persons, we will arrest them for the protection of society and the safety of civilians and for the public good. However, the procedure is different from the procedure for arresting a suspect who has committed a criminal offence.

No matter how many institutions and government officials are there for the care and protection of unsound people, society has a common social responsibility for their safety and protection. That is what many people forget. It is also the responsibility of the journalist to expose such persons and incidents and to point out to those responsible. Influencing the reporter or the sources therein is an affront to the freedom of speech and expression. It is a threat. All responsible parties must act in a manner that protects the foundations and rights of civil society and the protection of the individual.

■ ***Daya Netthasinghe***

# Arbitrary arrest and detention under ICCPR and PTA

### Testimony of a poet who was remanded for his writing

### Legal provisions available for those jailed without trial

'I was handcuffed for 14 days and placed on a chair. The officers all called me a terrorist. After those 14 days, I was put in a room with 11 people. We were all sitting in chairs, handcuffed. We slept in handcuffs. There was no way for anyone to urinate. We were taken away only if everyone in the room needed to urinate. That's why I did not drink much water during that time.' Ahnaf Jazeem, a young Muslim poet who was recently released on bail, after being in custody for 18 months without being charged<sup>1</sup>, shared with the Daily Mirror about his experience. He went on to say:

'On 16 May 2020, several officials came to my house and asked me if I had written a book called 'Navarasam'. I said 'yes'. At that moment, the officers asked me for my phone and laptop. They asked me for the 'Navarasam' poem books in my possession. They took about 50 books from my bookshelf. All of them were books related to literature, but they said, 'these are books with ideas promoting terrorism'. The officers told me that I had to be taken away for an investigation. Therefore, they asked me to get clothes ready for 3 days.

They kept questioning me about the book 'Navarasam'. The officials told me that I had written things that would instigate racial hatred and promote terrorism in the book 'Navarasam'. I tried to read the poems I wrote to them in the book 'Navarasam' and explain the meaning of the poems in Sinhala to the officials. But they did not listen to anything I was saying. I never even dreamt that something like this would happen to me. I had a great desire to complete my postgraduate degree and pursue my future as a teacher. I had hoped to get married in the future. None of the poems I wrote mentioned anything that promotes terrorism.

However, I was arrested under the Prevention of Terrorism Act and detained for 18 months without being charged. I was forced to admit to a crime that I had not committed.'

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1 <https://www.amnesty.org/en/documents/asa37/4119/2021/en/>

Ahnaf was detained under the Prevention of Terrorism Act. Ahnaf was also interrogated about a connection to Hijaz Hezbollah, a young lawyer who was recently released. Hezbollah was arrested and charged with several offences. But he was later indicted on charges other than those made public in the media. His baby was born while he was in prison under the Prevention of Terrorism Act (PTA). She missed the opportunity to spend time with her father for several months. Hijaz was recognised by international human rights organisations as well as all leading human rights activists in Sri Lanka as a 'prisoner of conscience' arrested under the (PTA).

Shakthika Sathkumara was arrested on 1 April 2019 for writing a short story called 'Ardha' and posting it on his Facebook account. He was remanded for more than four months without bail on the grounds that he had "degraded Buddhism". He was released on bail on 05 August 2019 following a bail application filed in the Kurunegala High Court.

'The ICCPR Act was introduced by the United Nations to protect the rights of minorities. Protect freedom of expression. But what is happening in Sri Lanka is the misuse of this bill,' said Shakthika. He further recalled that although the works of writers such as Tennyson Perera and Manjula Wediwardena had been subjected to unofficial censorship in the past, there had never been an arrest of a creative artist.

What we are trying to discuss is the use of the PTA to arrest and detain individuals in violation of their fundamental rights. We have mentioned above three prominent incidents that took place in recent times. But let's look at history. On 16 March 2014 civil activists Ruki Fernando and Fr. Praveen Ganeshan were arrested, detained, and questioned by the Terrorism Investigation Division in Kilinochchi on that day. While they were detained for two days under the PTA, many Southern media organisations as well as human rights activists were working tirelessly to protect the rights of the arrested activists. Their mobile phones and SIM cards, iPads and other equipment including passports were confiscated. They also received a magistrate's order silencing them with instruction not to speak to the media or to their families about their arrest even after their release on bail. It was an incident when the rights of expression of two peace activists were restricted by accusing them of 'terrorism'.

The incident is six years old but was recalled since Ruki Fernando was one of the activists who immediately raised his voice against the arbitrary arrest of journalists and activists in violation of Sri Lankan law. He, on the other hand, is aware of one thing. Those with media coverage and connections to civil society receive more coverage in such arrests. If such a person is arrested, they have a safety net. *'I immediately sent a message to several people. They acted immediately and made various interventions. We were arrested and released a few days later. This was due to the support we received from Sri Lanka and other countries. About five officials of the HRC came to see us at that time. Around five legal teams came to see us. But we were not given a chance to meet them, "said Ruki.*

So many are arrested using the above-mentioned acts, who do not have the same protection or personal connections like Ruki. Many people who have not received media coverage as well as the attention of relevant people, have suffered immensely in recent history due to the PTA. 'Sometimes a human rights officer will not visit those who are arrested for months. Some who are arrested do not get to meet their legal counsel for years. I think these factors may have

contributed to my immediate release, and detention of others for a long time.' said Ruki who has spoken to most of those who have been arrested.

The Prevention of Terrorism Act (PTA) and the ICCPR are two completely contradictory Acts. The PTA was passed in 1979 as a temporary law. There have been domestic and international demands to revoke this draconian law. However, the International Covenant on Civil and Political Rights, or the ICCPR, is quite different. Its purpose is to uphold current internationally recognised 'civil and political' rights.

We have not mentioned the background of these two Acts here because that discourse is taking place at length. One act is a duck, the other is a goose. Even though they are used for the same purposes, the two are different. One act must continue to exist and be correctly implemented. The other should be completely abolished. One of the most popular measures used against prominent people who are arrested using these laws is to spread serious allegations against them in newspapers and television. In the case of Hijaz Hezbollah, which we mentioned earlier, Minister of Public Security Sarath Weerasekera levelled harsh accusations in Parliament that Hijaz was a '*dangerous terrorist*'. How could he be released on bail months later if he had been so dangerous?

Many of the heinous allegations made by Minister Weerasekera in Parliament were not included in the indictment in the High Court case because many of those allegations were fabricated. But these allegations are not just spread by ministers or arresting officials. There are journalists in Sri Lanka who are dedicated to this purpose. In addition to the incidents we mentioned above, politicians Azad Sally and Rishad Bathiudeen were also detained under the above Acts during the period 2019-2022 amidst popular media reports.

Attorney-at-law Prabodha Ratnayake, a human rights activist and writer, currently represents a Muslim individual arrested under the ICCPR Act. On one hand, Prabodha is also the editor of a Magazine, and is careful about his own freedom of expression. On the other hand, he is a lawyer. He commented on his client: "Fazal Mohammad Niaz was arrested on 13 January 2021 under the ICCPR Act by a group of CID officers. He was arrested for allegedly insulting Buddhist monks by posting a video on his Facebook page. He is also an author and contributes articles for the Colombo telegraph website and other websites. They are still available on these sites. Along with that video, he had highlighted some notes he had posted on his Facebook page. Most of those posts were about the mass protest by Muslims against the cremation of Muslims who had contracted Covid19 and died. He had also shown his dissent on the above matter. The CID showed the posts where he had made various comments and stated them as the reasons for Fazal's detention. At present the officers of the CID show the court from time to time that he is a person who wrote articles to create ethnic disharmony. In fact, if you look at those articles and analyse them, you will see that they have nothing to do with ethnic hatred. There are two letters that CID officials regularly submit to the courts. The headline of one article is '*I Am A Sri Lankan Muslim Extremist*'<sup>2</sup>! When the headline was translated into Sinhala, it read '*I am a Muslim extremist*'. He started the article by saying that he was an extremist for the freedom of religion in this country, for the rights of all religions and for humanity. Any writer uses headlines in this way to attract readers to his article. Inside the article he talks about human rights issues just like what we are doing. But the CID always

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2 <https://www.colombotelegraph.com/index.php/i-am-a-sri-lankan-muslim-extremist/>



uses headlines in the articles he has written. There is another article titled '*ISIS - Islamic State in Sri Lanka*<sup>3</sup>' written in 2012. In that article he has said that Muslim extremism is developing in Sri Lanka. In that article, Fazal gives 10 points and suggests solutions as to what we should do against this extremism.

Although the arrest was made because of the video, the allegations changed at various times. At one time they charged that there was money in Fazal's bank accounts, and that money has been transferred. Later that allegation was dropped, and another allegation was brought that Fazal had used a secret telephone call exchange software. When we asked about it, we found out that Fazal had used a free downloadable app. The charge against him so far is that he had links with the people involved in the Easter attack. CID officials want to link Fazal to the Prevention of Terrorism Act. Fazal's wife has died. He has a 10-year-old son. The son is with Fazal's brother. The child has not been going to school for about a year now. The life of the child has become a tragedy.

It is true that Fazal's incident was initially covered by the media. But Fazal did not get the coverage that someone like Hijaz did. Except for one or two news items about the incident, the coverage of the incident is low. So, he also belongs to the category of obscure incidents and people that Ruki first described. Ruki Fernando commented further on such incidents. 'If the person is not famous, often the burden of freeing that person falls on the person's family. Not every family has that strength and knowledge. I have met many families like that. They do not know what the Magistrate Court, the High Court and the Supreme Court are. Those families have no idea what a fundamental rights petition and a writ of certiorari and a bail application are. Justice should be equal to all. Unfortunately, justice in Sri Lanka is not equal to all.

Obtaining legal counsel or contacting a lawyer is a big challenge for those families. Lawyers often charge hundreds of thousands of rupees to represent these individuals. One lawyer had taken millions from one family. Most families cannot afford to pay this way. They sell their property and jewellery to pay for legal costs. But sometimes lawyers do not even communicate what is really happening to the family. There are times when some lawyers stand up for rights, without money.

The court itself sometimes decides that the people who are arrested and detained in this manner have not committed any crime after many years. In this way people must spend years in prison because of a loophole in the law. If the person is arrested under the PTA and ICCPR Acts, the person will lose the opportunity to obtain bail.'

Attorney-at-Law Sanjaya Wilson Jayasekara appeared pro bono for the poet Ahnaf Jazeem. Sanjay started appearing for Ahnaf before the incident became widely discussed in society. The last comment of this note belongs to him; he said "Terrorism or extremism arises out of the injustice and inequality in this society. This system was created by these rulers themselves. When the people raise their voices against the ruling class, they use the judiciary, police and prisons to crush dissent. These institutions are being used against the public. Whatever the Constitution says about rights, even the fundamental rights of the people are being suppressed, based on state security. These laws should be repealed."

#### ■ **Rekha Nilukshi Herath**

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3 <https://www.colombotelegraph.com/index.php/isis-islamic-state-in-sri-lanka/>

# Another Akmeemana torture case

## Police brutality, torture, and intimidation

### Attempts to cover evidence

She is still waiting at the front door.

She says justice has not been meted out for her child, despite the piles of letters and petitions sent to all possible places and people about the injustice faced by her. She alleges that even the media, which claims to be there for the public, did not help her or her son at this time.

This is the story of Lelkada Gamage Premawathie a 63-year-old mother of five. She says her youngest son is unable to do any work after he was brutally assaulted and tortured by the police.

"The police came and abducted my son in the middle of the night on 20 December 2010. We were all asleep. Four uniformed men came, woke him, and tied him with the same sheet he was sleeping and took him all the while assaulting him. They also scolded me in filth. Five police officers arrived. It was obvious to me that they were drunk. On the way, my son was beaten with rods. He was seriously injured. The next day he was released on police bail and sent to a doctor. From there he was informed to go to Karapitiya Hospital and even underwent an operation at the hospital. The senior officials in the police have threatened him and told him to tell that he had fallen and injured himself without mentioning that he was assaulted by the police. They have said if not they would kill him. Therefore, my son had told the doctors at the hospital that he had fallen. However, the real story is that it was the police who tortured my son. Now we are helpless. The son, who earned some money by doing odd labour work, can no longer work."

The mother lodged complaints with the DIG in charge of the Galle District, the Senior DIG of the Southern Province and the Human Rights Commission.

H.G. Kasun Harshan, who was assaulted, said that he had been brutally beaten while being taken to the police station. The wrong he had done was he had not gone to the police station according to the notice issued to him to come to the police station to investigate a complaint.

The arrest was made by the Akmeemana Police. When inquiries were made from the OIC, he said that the story of Kasun Harshan's arrest was true, but he was not assaulted in any way. He was arrested for failing to appear on two occasions when he was summoned to inquire about a dispute with a neighbour, police said. The OIC further said that he was hiding in the ceiling when the police when to arrest him and he had fallen and injured himself. However, there is no ceiling in the house, even though the OIC mentions that he fell from the ceiling.

According to the OIC, the suspect had avoided the police twice. However, the law stipulates that if a suspect does not report to the police three times, the police will report the matter to the court, summon the suspect, bring him to court, impose a fine not exceeding Rs. 50.00 on him for disobeying the instructions of a government official and warn him to appear before the police. It is the responsibility of the judiciary to take stern action if those warnings are not heeded.

However, police say he was arrested for failing to report to the police twice. The police have no right to arrest a suspect without a warrant just because another person has lodged a complaint.

“The police parked their bicycles about 500 meters away and came on foot, knocking on our door and waking us up. I asked why I was being arrested. Then they said that I did not come to the police station and that I would be arrested and would be released on bail tomorrow morning. My mother also asked about this, and she was told to come the next day. They beat me with a ‘Gilisiliya’ pole while I was being taken away. One blow landed on my testicles. I immediately fell to the ground breathless and lay motionless. I was dragged away and taken while continually being assaulted. They stopped at a nearby shop, brought the jeep and hurled me inside the police jeep, and beat me up. I was taken to the police station and remanded. says Kasun Harshan who was assaulted.

Kasun said that Akmeemana police sergeants Priyadarshana and Chandrasoma and five others were in the group that had taken him. He further said that a blow by Priyadarshana with a pole hit his left testicle and Chandrasoma hit him on the head. He says that Sergeant Priyadarshana also hit him in the stomach while inside the jeep. The place where he got into the jeep that day was at a place where a shop by the name Wasantha Stores is situated. There are CCTV cameras installed. However, the shopkeepers did not provide the camera footage which would be the best evidence of this incident. When asked about it, they said, "We can't waste our time in courts." They also do not want to offend the police.

The next morning, Kasun's mother and several relatives went to the police station in anticipation of him receiving bail. However, the mother says that her son was in a critical condition when she went to the police.

“By then my son had vomited and he was struggling to even get up. The police said that the complaint against him would be settled and requested that he go to Dr. Mahinda of Thalagaha to get medicine. The son was released on police bail in the morning. We went in a three-wheeler to get medicine and the doctor examined my son and said that his condition was serious, and he should be taken to the Karapitiya Hospital as soon as possible. When we went to the hospital, he was admitted to ward 58.

When the doctors asked what happened he said that he had a fall. We did not know anything about this at the time. That evening my son underwent surgery. It was only after that he told us what had happened.”

This is how Kasun, who was attacked, told us his story.

“I was in critical pain and not doing well at the police station that night. Because I was beaten by the police, I started vomiting. Then the OIC of the police called me to the room and told me not to tell anyone that I had been beaten by the police and to say that I had a fall. The police threatened to kill me if I told the truth. He also said that if I said that I had a fall they would settle the complaint against me. Therefore, I told the same story to the doctors at the hospital. I am not sure if the doctors believed me.”

The next day, on the 22nd, three friends of the Akmeemana OIC came to see Kasun, who had undergone surgery on the evening of the 21. They have been identified by Kasun as Sunil Jayantha, Asitha and Geethanga. Kasun also said that they were his own contemporaries at Vidyaloka Vidyalaya, Galle where the OIC studied.

“They came and told me to sort this out amicably. You know, if you do as our OIC says, there will not be a problem, if not it will be difficult, and they threatened me. It was only after that the hospital police came, they wrote down the name and left. “The next day (23) at around 7.10 am a police officer from the hospital police came to obtain a statement and when he was recording the statement, the Akmeemana OIC repeatedly called the police officer's mobile phone,” said Kasun.

However, Kasun said that he realized that his life was in grave danger and told the truth to the hospital police. He had told the officer who had obtained a statement from the hospital police that he had told the doctor that he had fallen from a height due to the OIC's threat, but that it was the police who had assaulted him. However, he said that the hospital police officer left the scene saying that he would return to make a statement and did not return. He was sent home from the hospital around 3.00 pm that day. Kasun says that due to the influence of the police, the hospital authorities have taken steps to send him home immediately.

His mother, Premawathie lodged a complaint with the Human Rights Commission, the Senior DIG of the Southern Province and the DIG in charge of the Galle District regarding the brutal assault on her son by the police.

The Human Rights Commission of Sri Lanka (HRCSL) sent a letter to her on 24-01-2022. It states that the relevant affidavits to substantiate the facts of the complaint should be sent to the Matara office on 03-02-2022 for further investigation of this complaint.

They have already submitted all the relevant documents to the Human Rights Commission of Sri Lanka.

When inquiries were made about this from the Matara Regional Coordinating Office of the Human Rights Commission, its Coordinating Officer D.M.R. Dissanayake stated that an investigation has been initiated into the complaint under HRC / MT / 324/21 / N and since the said investigations were still ongoing, they could not comment further.

In addition, the complaint lodged by H.G. Kasun Harshan with the DIG in charge of the Galle District has been referred to the Galle SP (1) and a statement has been recorded from him in this regard.

When we inquired from the SP's office to find out the status of the investigation, they said that a statement from the Akmeemana Police had been called after recording the statement of the complainant. An official of the office said that after investigating the matter, they will refer it to the DIG in charge of the district.

Premawathie says that while her son, who was arrested on the night of 20 December, was released on bail, the police asked him to return on 05 January. The mother says that when she arrived on 05 January, she had been told that the complaint made by a neighbour against her son would be dropped and that they should not tell anyone that the son was assaulted by the police. However, Kasun did not go to the police that day.

"Another case was filed against our son for not going to the police that day. The two people who signed as surety for the bail application for their son on the 21 have been summoned to appear in court on March 30. They are trying to entangle my son in more cases." said the mother.

Akmeemana OIC Maduranga Arumapperuma had this to say about the allegations levelled against them by Kasun.

"He was not beaten by the police. He was asked to come for two days to investigate a complaint. When he did not come, the police went to arrest him. Then the man hid in the ceiling. It was when he came down from the ceiling that he fell and was injured. Even after being taken to the hospital, he lied that he was beaten by the police after initially telling the true story. He has a lot of moonshine cases. The police granted bail for him to come to court on 05 March. He did not come to court. Now the court has issued warrants. The date of his case is on the 30. Those who signed for bail were also summoned to come on that day. Now he has left the area. The man is hiding. He is avoiding the police and lying. He has been spreading these lies everywhere. The SSP's office is also investigating a complaint. So, we can't say much."

When investigating public complaints of torture by the police and if it proves to be torture the IGP is responsible to pursue further action if a public complaint of torture proves to be true.

However, the National Police Commission states that it is not necessary for the victim to lodge a complaint in this regard. The CIU's special unit set up to deal with public complaints also considers media reports and social media posts on such incidents.

The National Police Commission says disciplinary action will be taken including deferring promotions if a police officer is responsible for torture. If the police have tortured this young man, the law should be enforced.

#### ■ *Sajeewa Wijeweera*

# HR defenders want repeal not amendments to PTA

## **Adverse impact of PTA on FOE and other human rights**

### **Up to 15 years in detention some without formal charges**

### **Most PTA detainees Tamil or Muslim**

In February 2022 Ruki Fernando invited several rights defenders to join with him to sign a public petition to repeal anti-terror law outside Fort Railway station in Colombo. Fernando, a prominent human rights defender, and a journalist went to sign a petition with a religious leader as he has been fighting to repeal the Prevention of Terrorism Act (PTA) even before the year 2014. Hundreds of people signed up to the petition with Ruki in the bustling city of Colombo to pressure the government to repeal the PTA on Feb.15, 2022. Several people who were travelling in public buses also got down and signed the petition. The reason was that the PTA has been used for over 40 years to enable prolonged arbitrary detention, extract false confessions through torture and target minority immunities and member of opposition political parties.

Fernando did not just sign the petition, he also initiated with twenty-one petitioners filed a case in the supreme court to repeal the draconian law on Feb 17. He had also been detained under the PTA, faced restrictions on freedom of expression, restrictions of travel and his case dragged on for nearly five years even after his release. His electronic equipment is yet to be returned.

Fernando and Father Praveen OMI, director of the Centre for Peace and Reconciliation based in Jaffna visited the area after the arrest of human rights defender Balendran Jaykumari and her 13-year daughter in 2014. She was detained for 362 days.

The reasons given for Fernando's arrest included causing discomfort to the government and sending information foreign countries to earn money.

The PTA, which was introduced as a temporary measure in 1979, allows for arrests without a warrant for unspecified, unlawful activities and permits detention for up to 18 months without

a court appearance. Human rights defenders, journalists and opposition politicians have been among those detained under the law. According to the Human Rights Commission there were 109 arrests under the PTA in 2021. 392 people were remanded as of January 2022.

Fernando, one of twenty-one petitioners said that the PTA has terrorized many Sri Lankans for over four decades and instead of repealing the PTA, the government is trying to amend it with cosmetic changes.

"The changes don't address many of most serious problems meaningfully, problems such as forced confessions leading to torture, prolonged detention without judicial supervision at whim and fancy or executive arm of the government, severely restricting judicial restrictions on giving bail," said Fernando.

He said that many PTA detainees have been released after being held for up to 9- 15 years, some without even having formal charges filed against them.

"The amendments don't appear to ensure the rights, dignity and well-being of Sri Lankans, but rather they are an attempt to eyewash and appease the European Union, the UN and international community, as the draconian law, which blatantly violates international human rights standards, may lead to losing GSP-Plus trade privileges, which will lead to a massive blow to the economy that is already in crisis," said Fernando.

The GSP-Plus scheme offers better access to the EU market for exporters. The EU is Sri Lanka's second-largest trading partner after China.

Like Fernando, Tamil Journalist Punniyamoorthy Sasikaran, was harassed with a court order banning a non-existent protest march on Feb. 04.

"Police had taken a court order that an anti-government protest march would be organised on the national Independence Day. I did not get a chance to leave the house on that day until the night and it was a tactic to intimidate journalists," said Sasikaran, a member of the Batticaloa District Tamil Journalists Association.

"The police have misused the PTA and brought me into the police station for questioning more than six times," said Sasikaran on March 10.

Sasikaran said that Murugupillai Kokulathasan, a Tamil journalist, remained in custody for 427 days after posting commemorative photographs related to the civil war on social media.

"They try to intimidate the media that they have the power to arrest at any time. The security officials want to silence the voice of the media and the PTA is used to suppress journalists," said Sasikaran.

Kokulathasan was arrested on 28 Nov 2020, in Batticaloa.

Keerthi Ratnayake, another journalist was arrested under the PTA on Aug. 14, 2021.

Hejaz Hizbullah, a prominent Muslim lawyer was arrested under the PTA in 2020. He was initially accused of supporting one of the Easter Sunday suicide bombers but later the police dropped the allegations and filed new cases accusing communal harmony.

A resident of Karawetti, Jaffna, was arrested in Colombo in 2010 on charges of raising money for the LTTE during the last days of the civil war. He was released after 12 years of failing to prove the charges against him. The court ordered his release on Feb. 15.

Several media workers have been killed in Sri Lanka since 2004. Many others have been assaulted, abducted, threatened or forced into exile. The PTA reduces space for free expression, assembly and association. The law has served as license for enforced disappearances, sexual violence and torture.

Journalist Jayaprakash Tissainayagam was sentenced to twenty years rigorous imprisonment in 2009 under PTA. The reasons were given for his arrest included that his articles caused racial hatred and promoted terrorism.

There were 138 cases of attacks on journalists and media institutes during the past decade, and according to the International Committee to Protect Journalists, 16 journalists and media workers have been killed since 2005 in Sri Lanka. All these cases remain unsolved. Sri Lankan journalists' outcry that none of the perpetrators have been arrested yet.

During and after Sri Lanka's civil war, most PTA detainees were Tamil but since the 2019 Easter attacks, most detainees have been Muslims, making this law one that has disproportionately affected minorities.

Ermisa Tigel, a human rights lawyer said that the rulers of the country have from time to time created fear in the society regarding various communities in order to maintain their power. "I continue to see the damage done by this law, this law frightens the minorities in society and that fear spreads not only to the people arrested but to the whole of society," said Tigel.

President Gotabaya Rajapaksa issued a directive that the police should not use the PTA as a shortcut to dispense with investigations and use it only if there are clear links to terrorism.

Several former governments promised to replace the PTA, respecting international legal standards, but they did not change the law after coming to power.

Many PTA detainees have been released as not guilty after being detained for up to 15 years, some without even having formal charges filed against them.

UN human rights experts have called for an immediate review and revision of the legislation to comply with international human rights law.

The amendment bill does not change the status of confession given to the police as evidence. The bill facilitates keeping a suspect in any place for the purpose of interrogation and it facilitates a risk to continue torture and increase the risk of enforced disappearance.



Human Rights Watch has said that the EU should insist that Sri Lanka meet its human rights commitments, in exchange for which it receives tariff-free access to European markets.

Michelle Bachelet, the UN High Commissioner for human rights, has repeatedly expressed alarm over deteriorating rights in Sri Lanka.

All human rights defenders, including Fernando, have said that there is no point in amending the PTA unless it is repealed.

Ruki Fernandosaid that it had taken seven, thirteen, fifteen years for some Tamil PTA detainees to be acquitted by courts as not guilty and there has not even been an acknowledgement of the destruction of theirs and their families lives nor compensation.

"Instead of repealing the PTA, the government is trying to amend it with cosmetic changes which don't address many of most serious problems meaningfully such as forced confessions leading to torture, prolonged detention without judicial supervision at whim and fancy or executive arm of the government, severely restricting judicial restrictions on giving bail," said Fernando.

"PTA reduces space for rights defenders and journalists for their free expression and association," said Fernando.

■ ***Quintus Colombage***

# White-vanned on Valentine's Day

## The arrest of Shehan Malakala by the CID

### A law-abiding citizen treated like a street criminal

### Right to freedom of expression violated

On 15 March 2022, a group of lawyers including social activist Shehan Malaka Gamage lodged a complaint with the Human Rights Commission regarding their arbitrary arrest by the CID. Shehan is a young social activist who is raising his voice against the government for not providing justice to the victims of Sunday's Easter attacks and for not punishing the perpetrators. Shehan Malaka Gamage was arrested by the CID on 14 February 2022 while travelling on the highway with his girlfriend and her father in the Walana area in Panadura. Officers from the CID in plainclothes had arrived in a white van to make the arrest.

## Background

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268 people were killed and more than 500 seriously injured on 21 April 2019 in the Easter Sunday attacks on St. Anthony's church in Kochchikade, St. Sebastian's church in Katuwapitiya, Zion Church in Batticaloa, and hotels Shangri-La, Kingsbury and Cinnamon Grand. It has been nearly three years since the attack. The Catholic community, including Archbishop Malcolm Cardinal Ranjith, is of the opinion that justice has not yet been served to the victims of the Easter Sunday attacks. The Catholic community, including the Cardinal, has strongly advocated that the law be enforced against those directly involved in the bombings, their supporters, the mastermind and their accomplices, as well as politicians, government officials and intelligence officials who neglected their responsibility to prevent the bombing when it was possible.

The Catholic community has also been pressuring the government to investigate if there was a political conspiracy behind the attack and reveal who they are. Shehan Malaka represents the Catholic community that speaks out for victims.

## The daring arrest

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"At around 2.30 pm on February 14, my girlfriend, her father, and I walked about 200 metres from home. Then a white van came from the opposite direction to where we were coming

from. Inside the van, I saw several people wearing orange and green T-shirts. When we passed the van and went a few metres ahead, two bearded men got out of the van and came towards us and called me saying my name. I asked my girlfriend to turn on the video on her phone and ran to the volleyball court on the nearby field. I wanted to get the attention of the people who were playing volleyball for my safety. The volleyball court was locked in a way that I could not get in. Then three men chased and caught me, and they showed CID identity cards and arrested me.

‘Why are you arresting me? What did I do wrong?’, I asked. They said that they were arresting me under section 120 on the instructions of the Attorney General regarding the media conference.” This is how Shehan Malaka described to us the process of his arrest. It was later revealed that he had been arrested in connection with a media conference held on 21 August 2021 at CSR Maradana regarding the Easter attacks.

### **Confirmation by the Senior Police Media Spokesperson**

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Senior DIG Senior Media Spokesman Ajith Rohana appearing on Derana TV's 360 program on 21 February 2022 confirmed that the CID had investigated a statement made by Shehan Malaka on social media on 17 August 2021, filed an excerpt and referred it to the Attorney General in accordance with the provisions of the Code of Criminal Procedure. He further stated that Shehan Malaka was arrested under Section 120 of the penal Code and ordered to be produced before the Magistrate's Court, according to a letter issued by the Attorney General on 24 January 2022.

The Senior Police Media Spokesperson further stated that it took nearly six months for Shehan Malaka to be arrested as the CID was investigating his statement.

At the press conference, the police spokesman tried to justify the arrest of Shehan Malaka while tacitly indicating that the process implemented similar to arresting of a street criminal, with the CID coming in an unofficial vehicle in plain clothes was the right of the police.

Shehan's arrest was made on 14 February, which was 21 days or nearly 3 weeks after the Attorney General issued the letter on 24 January. However, a question that surfaces from the Senior Police Media Spokesperson's response is the reason why the CID formally did not issue summons or a police message to Shehan to appear before the CID?

### **The way he was apprehended was incorrect**

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‘Due to the nature of the arrest, Shehan Malaka's rights have been violated. Shehan Malaka is a civil activist. He was a very law-abiding person who had appeared before the CID and given all his details to the CID over a period of eight days when he had been summoned to the CID earlier. He never left the police or the CID. This begs the question of how just and legitimate it was to arrest a person who has provided such assistance. It is not at all justifiable to arrest a civil activist like a fugitive criminal. There is a serious problem with the way the CID officers

arrived. If the person who was arrested at this time had tried to resist without identifying them as CID officers, his life could have been endangered.

Previously, when Shehan Malaka was asked to appear before the CID, several lawyers had appeared for him. Fathers of the Catholic Church had represented him. Therefore, the CID had ample opportunity to contact Shehan through them.

If all citizens were treated equally before the law, Shehan Malaka Gamage would have received equal opportunity. He was arrested on the road in a very dramatic manner. As such, Shehan Malaka has not been treated equally as a person who clearly respects the law. Even his charge is only stated fully when he repeatedly asked them for the charge after forcing him into the vehicle.

Above was stated by Attorney-at-Law Amila Egodamahawatte who appeared on behalf of Shehan Malaka.

### **Blurred accusation**

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Shehan Malaka, who was arrested by the CID on 14 February, was detained that night and released on bail after being produced before the Colombo Magistrate's Court on 15 February.

The CID has stated in court that it had sought the advice of the Attorney General as the officers of the CID were confused as to the implication of the statements made by Shehan Malaka Gamage. This is indicated in the case records.

'Shehan talks for more than 20 minutes in a press conference. However, there is no clear mention in this case regarding the particular comment that created an idea about the state in the mind of people. If not, there should be a mention regarding the presentation of false information. However, there is no mention of any of these matters.

If a person is arrested for an offence, it must be specified as to what part of the statement was offensive.

A citizen has the right to freedom of expression unless it is a threat to national security.

Deciding that an offence has been committed under Article 120 and acting in this manner is an affront to the right of the citizen named Shehan Malaka Gamage to express his views. According to Article 120 of the Penal Code, it is an offence to excite or attempt to excite feelings of disaffection to the Government. However, Article 120 itself later states that it is not an offence under this Act for a citizen to intend to show that the Government has been misled or mistaken in measures, or to point out errors or defects in the Government or any part of it, or in the administration of justice. This means that a citizen has the right to point them out, says Attorney-at-Law Amila Egodamahawatte.

Rev. Dr. Cyril Gamini was summoned before the CID on 15 November 2021 in connection with a statement made regarding the Easter attack, following a complaint lodged by the Director of the National Intelligence Service, Major General Suresh Salley.

Kumara Joseph, a resident of Pannipitiya, who had responded to a statement made by Fr. Cyril Gamini in Facebook, had been summoned to the CID alleging that he had made a malicious statement. After questioning for five hours on 5 February 2022, Kumara Joseph, who came out after questioning, told the media that investigators had admitted that he had not made a malicious statement.

Rev. Fr. Jude Krishantha, the Media Director of the Archdiocese of Colombo was summoned to the CID on 17 February 2022. Rev. Fr. Jude Krishantha had lodged a complaint on 10 December 2021 with the CID calling an inquiry over the statement made by Tourism Minister Prasanna Ranatunga that former President Maithripala Sirisena is also responsible for the Easter attacks. Rev. Fr. Jude Krishantha was summoned to make a statement in this regard.

What the government is doing instead of ensuring justice to the victims of the Easter Sunday attacks, is indirectly suppressing the voices of activists like Shehan Malaka who are advocating for justice.

(Sources: Report of the case heard in the Colombo Magistrate's Court on 15 February 2022)

■ ***Priyanjith Alokabandara***

# “Prisoners are human beings too”

**Close to 90,000 prisoners in Sri Lanka in 2022, pending conviction**

**Kandy Human Rights Day event blocked**

**Violation of the right to peaceful assembly**

“*Prisoners are human beings,*” is the message of a mural spread across the walls of the Welikada Prison. A prisoner painted this. It contains a plea for humane treatment after being arrested and imprisoned for any unlawful activity. However, the countless stories we hear are about how prisoners are treated in a degrading manner demeaning to their core humanity, both inside and outside prisons. It is questionable whether we have a society that at least treats the families of prisoners humanely. As a society, we rarely talk about the discrimination, humiliation, and the challenges that a prisoner's family experiences in this society. Thousands of families of prisoners are desperately trying to drown their painful experiences with their tears, without ever sharing their tragic experiences with the outside world.

The difficulties faced by family members if the main breadwinner is imprisoned for some offence is immense. They must shoulder all the burdens from the hunger fight to children's education, which is extremely difficult. The mother, father or child who is outside of the prison walls is also responsible for representing the imprisoned person while also having to support the family. It is an unimaginable struggle for survival. When the husband is imprisoned, the struggles faced by the wife and children can be incredibly challenging. The Human Rights Office in Kandy had organised a function to recognise the efforts of the families of prisoners on 11 December to mark World Human Rights Day. This is the ninth consecutive year that the Human Rights Office has organised this awards ceremony in recognition of those who have worked tirelessly and fought for the well-being of inmates. Priests, police officers and prison officials, lawyers and human rights activists were among the 38 dignitaries honoured previously. The Kandy Human Rights Office had planned to hold a function at the Kandyan Arts Hotel in Kandy on International Human Rights Day 2021 under the theme '*Ensuring the dignity of the families of prisoners and their right to be treated in a humane manner*'. Shockingly, the Kandy Police took steps to stop the event after obtaining a restraining order from the court, according to a statement made by them stating that there was a risk of disturbing the peace.

Commenting on this, the Director of the Kandy Human Rights Office, Fr. Nandana Manatunga states...The Human Rights Office in Kandy assists the families of prisoners to form a collective

forum to work towards justice. This is because the families of prisoners are subjected to greater humiliation and suffering by society more than the painful experiences of prisoners who are inside their cells. Discrimination causes the families immense mental agony. On the other hand, if the family income earner is imprisoned, the rest of the family is pushed into a desperate situation. They must face life in a hugely challenging environment enduring a plethora of complex problems. In appreciation of the resilience, we have been conducting this event for the past nine years. This time the police obtained a restraining order. However, the problem is that the police did not inform us about this order until the last moment. I went to the police several times to find out about this, but they hid the truth for various reasons. The police deliberately delayed our opportunity to go to courts to present information.

December 10 has been declared as International Human Rights Day with the aim of upholding the fundamental rights and equality of all people of the world. Human Rights Day is observed every year on December 10, the day the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR). The formal establishment of Human Rights Day occurred at the 317th Plenary Meeting of the General Assembly on 4 December 1950, when the General Assembly declared resolution 423(V), inviting all member states and any other interested organisations to celebrate the day as they saw fit.

The purpose of declaring Human Rights Day was to promote equality, peace, justice, freedom, and the protection of human dignity. Every individual is entitled to rights irrespective of race, colour, religion, sex, language, or social status. The celebration of International Human Rights Day seeks to promote awareness on human rights issues and improve the human rights situation. Sri Lanka ratified the Convention on Human Rights in 1955 as a member of the United Nations.

Given the number of imprisonments per year, it is possible to gain a broader understanding of the number of families who are rendered destitute. Dinushika Dissanayake, Attorney-at-Law, Deputy Director of Research, South Asia, Amnesty International expresses his view.

There were 93 persons convicted before the courts and sentenced to death in 2020. Two of them are women. According to Prisons Department statistics, in the year 2020, around 90,000 people who were arrested by the police on suspicion and produced in court have been placed in prisons. *These are prisoners who have not been pronounced guilty of an offence.* There are 04 closed prisons, 18 remand prisons, 10 work camps, 02 open prisons, 01 training school, 02 correctional centres for youth, and 23 lockups in Sri Lanka. The number of convicts in various prisons island wide is 19,000. According to statistics 604 men and 54 women had been in prison for more than two years pending trial as of 31 December 2020 while 93 people were sentenced to death that year, two of them women.

The organising of an event on Human Rights Day is a practical implementation of the freedom of expression and assembly established by our Constitution and international human rights law. If a person or group is planning to obstruct a socially important and justifiable legitimate event by illegal means, it is the responsibility of the police to prevent such interference and to take legal action against those who do so. Also, the police cannot be absolved of their responsibility to create a safe and conducive environment to conduct such an event.

The Kandy Additional Magistrate issued a restraining order under Section 106 (1) of the Criminal Procedure Code prohibiting the event, following a request made on 09 December by the Kandy Police. If the Magistrate feels that there is a danger to health or safety, or possibility of riot or disturbance, the magistrate could issue an order under this section, to stop such an event. The court's 9 December order imposing a temporary ban on the Human Rights Day celebrations states that the event could lead to disunity among various ethnic groups. Although the Kandy Human Rights Office made a statement to the court on the 10th regarding the order, the relevant order was not revoked.

According to Article 10 of the Constitution of this country, every person is entitled to the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. This includes the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching. According to Article 14 of the Constitution, the freedom to engage individually or in association with others in any lawful occupation, profession, trade, business or enterprise is guaranteed. Article 14 (a) the freedom of speech and expression, including publication; Article 14 (b) asserts the right to peaceful assembly.

The restrictions on the above fundamental rights are set out in Article 15 of the Constitution. Accordingly, the exercise and operation of the fundamental rights declared and recognized shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others.

The police have obtained the relevant restraining order under this provision.

Attorney-at-Law Suren DE Perera, a human rights activist, made the following comment.

"Some of the fundamental rights enshrined in the Constitution have been violated by not allowing this event to take place. Foremost among these is the right to freedom of speech and expression. Freedom of employment has also been violated. This is part of the profession of the person who is organising it. Anyone can be appreciated. The police and the courts should facilitate this process. If the police find that someone or a group is intending to disrupt this event, the police should stop them. What should have been done is to permit the legitimate event and take measures to stop the illegal disruption. However, the police have stopped the legitimate event. The police should inform Father Manatunga about the court order to stop this event immediately. However, it was at the entrance to the court on the 10 of December that the police handed over the order to Fr. Manatunga. We informed the court that this has also violated our right to information. According to our submissions, the order could not be revoked since the party (police) who obtained the order from the court did not appear in court. The police systematically took steps to stop the planned event."

Ruki Fernando is a human rights activist who was previously recognised at a similar event conducted by the Human Rights Office in Kandy; commenting on the ban said, "This is a



program organised for the Human Rights Day. The celebration of International Human Rights Day has been obstructed. The police had not spoken about an offence or anything wrong in this program. All they had to do is take action against anyone who was going to interfere with a legitimate peaceful program. All the police had to do was issue an injunction against those whom they suspected would cause a disturbance or they could have acted legally according to the information they received about such a disruption. The theme was based on the rights of prisoners and recognising the efforts of the families. Interfering with such an event is also a serious matter. This is an instance where the words of a mural on a prison wall stating that 'prisoners are also human' was proved horribly wrong. On the other hand, now we must reaffirm that the families of the prisoners are also human. They have done nothing wrong. It is a serious matter and a tragedy to obstruct the recognition of a group of victims who have done nothing wrong to society.

Some of the media reports on the incident were highly biased. The reports, which did not even allow the other party the right to respond, were likely to create racial and religious tensions. We treat prisoners as human beings. Prisoners do not have the opportunity to experience reactions and discrimination by society because they are excluded from society and live in isolation. It is their families that are facing the brunt of the public reaction and inhumanely subject to discrimination. Those who are constantly subject to discrimination are denied not only the right to speech and expression but also the right to receive recognition- and this must be part of a wider discourse.

■ ***Asela Kuruluwansa***

# Decades of discrimination

**A continuous fight to survive after her father was arrested when she was just nine**

**Constitutional right to live without discrimination violated repeatedly**

**Event to recognise her courage, banned**

It has been 24 years since the LTTE bombed the Temple of the Sacred Tooth Relic (Sri Dalada Maligawa) in Kandy. A lorry laden with bombs was detonated near the main entrance of the Temple of the Sacred Tooth Relic on 25 January 1998. Sixteen people lost their lives in the tragic incident, while the Temple of the Sacred Tooth was severely damaged. After the incident, Police were able to obtain information regarding four people who allegedly assisted in the suicide attack. Only three of them were arrested. The police failed to arrest the alleged mastermind of the operation and the case was heard without him. After a lengthy trial in the Kandy High Court, one suspect was eventually acquitted, and the other three suspects were sentenced to death along with 1850 years of hard labour. The suspect whom the police failed to arrest was also sentenced to be executed from the day of his arrest. One person died of a heart attack while serving his term in prison, and only one person is currently serving his sentence for this incident.

Today, 24 years after the bombing of the Temple of the Sacred Tooth Relic, we must talk about it yet again. This is not about the damage, or the people involved, but the plight and the bitter experience of Ramachandra Mekhala who was a nine-year-old girl during the time of the attack. She is the daughter of Krishnasamy Ramachandran, who is serving his sentence in prison for the bomb attack of the Temple of the Sacred Tooth Relic. When people like Karuna and Pillayan who were members of the LTTE, now represent parliament, this innocent girl Ramachandra Mekhala has to live in hiding from society today. This is because she is shunned from society and discriminated against by many in the community with her father being branded as a Tiger. In the backdrop of Sri Lanka's being admitted as a member state of the United Nations in 1955 and being signatory to the Human Rights Conventions:

*"I was nine years old when my father was arrested for allegedly carrying out the bomb attack on the Temple of the Sacred Tooth Relic. My sister was 7 years old. My father was a driver. It is alleged that he had driven the lorry laden with the bombs to the Hindu Cultural Hall in Kandy and parked it. He went on a hire to the North that day. He was arrested since*

*his name was written at a checkpoint in Kandy when he was returning in the lorry. He had provided his driver's license at every checkpoint. We lived on the money my father earned from his job. My father was arrested by the police on 3 February 1998. My mother died suddenly on 30 September 2006. I was 17 years old at that time and my sister and I have been living alone ever since. We do not have our mother or our father. It was my uncle who looked after us. We had issues all over and we were always referred to as the daughters of the person who bombed the Temple of the Sacred Tooth Relic. This incident was always highlighted in various places including at school, at the Grama Niladhari office and in the police station. I experience a lot of the stress that discrimination brings to life. We do not know about the bombing. I was nine years old then. My sister was only six. But some people still look at us as if we had bombed the Temple of the Tooth. This affects us even when we try to get work. My sister died due to an illness in 2017... Mekala says with a sigh.*

Ramachandra Mekhala with her sister at her side faced numerous obstacles without her parents. Her sister too has now left the world while Mekhala was working hard to see justice for her father. The Human Rights Office in Kandy has given her strength and impetus. The Human Rights Office in Kandy planned to honour her courage in facing life despite all these obstacles, at an annual event to coincide with World Human Rights Day. The Office of Human Rights had planned to recognise 22 members of the families of prisoners, for their resolve to fight for survival amidst the challenges while seeking justice for the imprisoned.

The police obtained a restraining order from the court and banned the event, based mainly on Mekhala. A news item was published on the front page of a popular newspaper based on the court order. The news article was published under the headline 'A festival in Kandy to honour the daughter of the Tiger who was sentenced to death for bombing the Temple of the Tooth' is banned by a court order. This news was read on all TV programmes in TV channels under their newspaper headlines. Imagine the issues faced by Mekhala with such publicity.

*My father has been in prison for 24 years now. We still have no escape from this incident. After this news was published, I was not able to even walk down the road. I am married. I know that these things will also affect my children. My father did not do anything wrong. I know it. However, he has been sentenced by the court. What did we do wrong to treat us in this manner...Mekhala poses the question to us.*

Lucille Abeykoon, Coordinator of the Kandy Human Rights Office, was a regular advocate for these issues faced by Mekhala. Her views on Mekhala's situation are as follows.

*Mekhala lost a lot of things in life because of this incident. After the newspaper report, her father's friends had called and asked about the new developments. They have asked how many generations this issue will be dragged onto by society. Mekhala has come to the point in saying this issue has to stop with her.*

Because of this she has realised that she cannot escape this stigma and harassment until her death. It was a woman from Uda Peradeniya who came to the Human Rights Office in Kandy and directed Mekhala to us. She said that there were two children who could not even afford

to pay the lawyers who represented their father in the case. After the death of the mother and the imprisonment of the father, the education of these two children had been disrupted.

Father Nandana Manatunga, Director, Human Rights Office, Kandy commented, *“This child has worked hard with us to free her father since the death of her mother. Mekhala is a child who really faced challenges with great resolve and did not give up. That is why we decided to recognise her. She was not the only one who was to be recognised. We were planning to recognize 22 people who were engaged in this battle for justice while facing the challenges of life. Is it not possible to recognize her achievements because her father is in prison? If she wins an athletic competition, will we refrain from giving her the victory? Why do we as a society discriminate against this child? If the father did something wrong, should his children be punished? These are not things that can be taken lightly.*

Human rights activist Ruki Fernando said ...

*This is discrimination on the one hand and very inhumane on the other. There is a principle that family members should not be held accountable or punished for a crime that a person may or may not have committed. Mekhala has severely experienced discrimination several times by society based on the punishment meted out to her father. If a person who is chosen to be worthy of recognition loses that opportunity because a family member has committed or been accused of committing a crime, it is clear that this is a violation of that principle.*

Attorney-at-Law Lal Wijenayake stated that a clear human rights violation has taken place here. This young woman has been discriminated against without any basis. If she is unable to gain social recognition because of her father's crime, there is a problem. Article 14 (2) of the Constitution states that no citizen shall be subjected to discrimination based on race, religion, language, caste, gender, political opinion, or place of birth or for any other reason. It can be clearly seen that this girl is being discriminated against based on this incident....

#### ■ ***Asela Kuruluwansa***

# One woman's right to housing

## Stranded homeless in a tussle between the Wildlife Dept and GalOya Project

### Parts of the Municipal Area belong to the Sanctuary

Ampara was a village in the Batticaloa district before the commencement of the Gal Oya project. In parallel to the construction of the Senanayake Samudraya, the Gal oya Development Plan was drawn up and designed by the Survey Department during the period 1950-1958, mapping villages, towns, roads, irrigation fields, reservoirs and wetlands reservoirs separately. Accordingly, the land belonging to the Ampara municipal area is clearly visible in the Gal oya plans. The Gal Oya project, in line with its development plan, established institutions in the city of Ampara and carried out resettlement activities. Regardless of the background to the implementation of these plans, the Department of Wildlife gazetted the Gal oya Northeast Sanctuary in 1954, including a portion of the land earmarked for the city of Ampara in the Gal oya Development Plan. In 1965 Ampara became a separate district. The Ampara district then expanded to include the city of Ampara.

The Divisional Secretariats were formed around 1992 and the Ampara District was divided into 16 divisional secretariats.

Ampara Municipal Council area is in the Ampara Divisional Secretariat Division and includes ten Grama Niladhari Divisions and a part of the Grama Niladhari Division of Karangawa.

However, according to a gazette notification issued on 12 February 1954, part of the Samapura Grama Niladhari Division and a portion of the Grama Niladhari Division near Karangawa within the Ampara Municipal Council Area is part of the Galoya North East Sanctuary. The land area is 1191 acres, and the number of resident families is 971.

Most of these families belong to the Karangawa Grama Niladhari Division and 799 families live there out of which 662 families have been issued land ownership related permits while 137 families are considered as illegal occupants. Several state institutions such as the Kalangawa Janaraja Vidyalaya, Mental Rehabilitation Unit, Special Task Force Camp, Sri Lanka Human Rights Office of Human Rights, and several large-scale business establishments and religious institutions are located in the Grama Niladhari Division. All infrastructure including roads,

electricity and water required for the area have been provided. Steps were taken to launch an urban development plan to carry out urban development activities in a systematic manner. However, this has been hampered by the fact that parts of the municipal area belong to the sanctuary.

As a solution to this issue, the Minister of Urban Development and Sacred Area Development submitted a paper to the Cabinet on 22nd April 2009 to formulate a plan to identify the areas required for the municipal area and to release the lands according to that plan.

The cabinet paper was approved with amendments by the Minister of Environment and Natural Resources, in May 2009. Accordingly, the Department of Wildlife Conservation should have amended and published the gazette notification pertaining to the Gal oya North East Sanctuary. This has still not taken place.

However, in line with the Cabinet recommendation, the Minister of Urban Development and Sacred Area Development Dinesh Gunawardena published a gazette on 4 March 2010 for the development plan for Ampara urban development area which consists of Ampara municipal area.

However, since there were problems in carrying out development activities even though it was published in the Gazette, with the intervention of the Secretary to the President an agreement was reached between Govijana Seva and the Wildlife Ministry Secretaries and the Commissioner General of Lands to refrain from carrying out development activities beyond the land allotted for the Urban Development Area. This agreement was expected to resolve some of the issues for the land problems of the people. The Presidential Secretariat had informed the relevant government agencies in a letter dated 7 September 2011, regarding the agreement.

Against this backdrop, the Wildlife Department filed a case in the Ampara Magistrate's Court against the wife of a war hero who was living in a temporary house built on land possessed by a person with a valid permit. The wildlife department was seeking the transfer of the possession of the land located in Kalangawa which was part of the Ampara Urban Development Plan area proposed to be removed by the Department of Wildlife Conservation through a Cabinet recommendation.

D. M. Dinusha Avanthi said "I lived with my child and husband in the Army quarters near Kalangawa. In 2007 we did not have a place to go after we left the quarters. Weerasinghe, who lives near the Army quarters, gave a portion of his land for us to build a temporary house. However, in May 2014, the Wildlife Department filed a lawsuit against me seeking the vacant possession of the land. The court ordered to evict me in October 2014. I filed a case in the Ampara Provincial High Court against that decision. In May 2016, the Provincial High Court ruled that it had no jurisdiction to hear the case. I did not have the financial strength to go to another court. So, in June 2016 we were thrown to the street. After that we informed MP Wimalaweera Dissanayake about the injustice we faced. He informed the Ampara District Development Coordinating Committee about this and promised to provide some relief. But because it was not done, my husband protested in front of the Ampara Clock Tower in

December 2016. The Government Agent of that time informed me that he had **planned** to call my husband and resolve the issue and therefore we should go home and prepare the place for us to stay. While we were preparing the house, wildlife officials had lodged a complaint against us with the Ampara Police. Accordingly, the police had filed a case against me in the Ampara court in February 2017 for violating court orders. As a result, I was remanded for six days. The case is still being heard in court. A complaint was lodged with the Sri Lanka Human Rights Commission in July 2016 regarding the injustice.

As a result, I have been subjected to great injustice not only by the wildlife department but also by the Human Rights Commission. In a village of 799 families, I am not sure how I have become the only illegal occupant. I am the only one who is illegal. Has the law been applied only to me as a unique individual, I look forward to seeing when I would be provided justice?

It is quite strange that a case has been filed for the land occupied by the aforesaid person, which was issued by the Divisional Secretary, Ampara on 11 January 1995 under permit number M V B 2861 in the name of S. A. D. Sunanda. The permit is still valid. The Development Coordinating Committee has discussed the matter at length in September, October and December 2016 and has taken a decision to provide a relief. The Secretary of the Ampara District Secretary has informed the decision to the Director General of Wildlife in a letter dated 16th January 2017. It is not only a serious problem but also a violation of human rights for wildlife officials to lodge a complaint with the police alleging that they have violated court orders in a context where the family had been informed to return home based on the decision of the development committee.

■ ***Achala Upendra***

# Thought, conscience and religion

**One young woman's fight to dress according to her culture**

**Social backlash for the reporter who covered the incident**

Fatima Fakmita Rameez is a class 2 grade (II) Teacher of the Sri Lanka Teachers' Service who teaches the second language Sinhala to children. After 10 years of service, she came to Muthur Central College as her first appointment. After working at this school for five years, she was transferred to Sri Shanmuga Hindu Balika Vidyalaya, Trincomalee in 2013. On the first day of her duties, she went to school dressed in an Abaya. The principal of the school objected and told her not to wear the dress again to school. She heeded the instructions and did not wear the abaya.

Seven of her fellow teachers who were currently working at the school were also banned from wearing the Abaya. Fatima said that a newly appointed teacher arrived at the school dressed in an Abaya and there were no objections to her, therefore, they informed the principal that the seven of them would be wearing the Abaya, which reflects their culture. They came to school dressed in the Abaya.

"We did not expect such a big protest. There were posts against us on Facebook by night. The very next day, people from various organisations, including parents and those who were not parents protested against us in front of the school." Fatima spoke about the situation she and other teachers faced.

In the face of opposition, education authorities immediately rushed to the school to control the situation, instructing Fatima and her colleagues to refrain from wearing the Abaya. The education authorities also granted a temporary placement to Zahira College, a school adjacent to Fatima's residence, thinking that the situation could be brought under control.

Initially, she was given the assignment for only three months, during which time she regretted that her fellow teachers had to be transferred to other schools due to harassment at school. On 21 May 2018, she lodged a complaint with the Human Rights Commission of Sri Lanka under HRC / TCO / 27/18, after her three-month temporary placement was extended to one year. This was seeking justice to their plight. The Human Rights Commission, which



received the complaint, instructed the Ministry of Education in a nine-page report to remove the barriers that prevent her from wearing the Abaya and entering the school, since it has appeared that her rights had been violated. The commission also noted that she had been harassed on social media, an offence under the ICCPR Act.

After her temporary assignment ended on 1 January 2019, she went back to Shanmugha College and told us that the principal had not allocated her a class or a teaching timetable. Fatima also said that the Zonal Education Office had sent a letter stating that she had been transferred to Kuchchaveli Al Nuria College during that time and that she was in mental anguish because her fellow teachers were ostracising her. Fatima says that after she informed the Human Rights Commission about this again, the Zonal Education Office took action to revoke the transfer.

In this situation, she filed a case in the Court of Appeal under CA / WRI / 125/2021 for her rights in the face of continuous discrimination from the school and the education authorities. The Ministry of Education came to an agreement in court that she will be allowed to teach in the school wearing the Abaya.

The Ministry of Education sent a letter on 28 January 2022 informing her to return to work at Shanmugha College as her temporary assignment had expired. Accordingly, she went to school on 2 February dressed in an Abaya. There was another protest against Fatima, by those who were not directly involved with the school, including students and teachers. The main allegation against Fatima was that she had pressured the principal and that she had come to school wearing an Abaya covering her face.

She had informed the police that a large number of people had come to the school and harassed her, and people even attempted to snatch her mobile phone. "I called 119 and a lot of people came to the office. Some of them were not parents. They fought with me to snatch my phone, but the principal did not try to protect me. I wore the dress according to the Teacher's Code of Conduct 5.1 (b) which says to wear clean clothes in accordance with the culture. In addition, the principal did not protect me when the parents objected to me, even though the Teacher's Code of Conduct says to protect fellow teachers in the face of undue intimidation and discrimination. Outsiders obstructed my work as I came to take over my duties," said Fatima.

According to the circular 2012/37 issued by the Ministry of Education, a teacher can go to school wearing a dress that suits the culture. Other than that, no one has specified a dress for teachers. Fatima is dressed to suit her culture. The Shanmuga Hindu Girl School has 2357 students including 122 Muslim children. It has 226 children from religions other than Buddhism.

When we contacted Principal of Shanmuga College Lingeswaran Ravirajan, she declined to comment regarding the continued harassment and intimidation of Fatima. "Higher authorities have informed us not to speak or give information to the media, so I cannot comment on anything. However, this is a Hindu girls' school and Hindu culture must be preserved in it," she said. However, she had arranged to hold a press conference the day after the incident.

During the protest, the principal was admitted to the hospital claiming that Fatima had assaulted her. As a result, the Ministry of Education had to re-assign Fatima to Zahira College as a temporary placement. They have broken the agreements reached in court. It appears that even the recommendations of the Human Rights Commission have not been heeded.

When contacted, Zonal Director of Education Sri Dharan said he could not comment on the situation and said, "She has filed a case so I cannot say anything."

Chapter 3 of the Constitution of Sri Lanka clearly states the fundamental rights that every citizen of this country can enjoy. It states: "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice; Freedom, by oneself or in association with others, to promote one's own culture and use one's own language, Freedom to engage in any lawful occupation, profession, trade, business or enterprise; However, Fatima was to assume her duties at Sri Shanmuga Vidyalaya, Trincomalee. The protest by students, teachers and parents against Fatima coming to the school wearing an Abaya and the isolation, resulted in severe mental and physical stress for her as a woman.

Human rights groups or activists in the area seem to be adopting a silent approach in this matter. They often adopt a policy of silence due to the lack of security, protection and the prevailing environment in such a fragile situation involving challenging and sensitive issues based on religion, culture or ethnicity.

Upon inquiry about this from the National Executive Director of the Human Rights Organisation of Sri Lanka, Shiroman Rangana, he stated that he was not aware of this incident. He later said that he came to know about the incident and did not intervene as it was resolved at that time.

In all of this, an unlawful assembly had illegally entered the school, which is public property. The police response to the intruders and the justification is another issue. Fatima says the incident is currently being referred to the Mediation Board. We consider it ridiculous that she should be referred to the Mediation Board to resolve a conflict that has arisen over the harassment she faced and the illegal obstruction to performing her duties and the serious issues that surface based on culture and sensitivity.

Muslim adherents base their attire on the writing of the Holy Quran. The dress code for women states that clothing should be worn covering everything except the face and hands up to the wrists and below the ankles. Accordingly, Fatima, a devout Muslim, came to the school dressed in her due attire. She seems to have lost the ability to retain her culture due to the obstructions and protests.

In an inquiry made by the Trincomalee District Secretary of the Jamiathul Ulama Council, Inshat Moulavi, he said, "According to Islam, it is not compulsory for a woman to cover her face. A woman has the choice to cover her face or to show their face," he said.

Mohamed Rizmi Alia, secretary of the District Interfaith Committee, said the Moulavis cannot give a definite definition of a woman's dress. There are several sects in Islam and there are different opinions about women's dress.

In Kinniya, Kalmunai, people took to the streets to protest against the Shanmuga College protest against Fatima. The Kinniya Principals' Association organised the Kinniya protest, which was held in front of the Zonal Education Office with the participation of more than 100 people.

However, Aliyar Mohamed Geeth, a local correspondent for the Verakesari newspaper that covered the protest, received a backlash from the Muslim community on social media, he said. "Some people scolded me very badly and said I was supporting the Tamils. All I did was report the situation," he said.

Another problem was the one-sided, unethical reporting of some regional correspondents. Other members of society are reluctant to stand up for justice in this situation because of the social media behavior and since some regional reporters are behind orchestrating the protests at local levels.

Every citizen is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice; Freedom, by oneself or in association with others, to promote one's own culture and use one's own language; It is a fundamental right enshrined in the Constitution itself. But it is important that human rights organisations are more vigilant to allow that right to be enjoyed as well as to protect human rights. These situations can be controlled if they are constantly monitored.

■ **Lakmal Baduge**

# The Sagaragama Saga

## Harassment, Intimidation, land grabbing

### A whole village allegedly intimidated by Armed Forces

"How can you say that we came by force? My parents were born in this village and have been living in this village for thirty-three years now. I went to school in this village. If we have elections in this village, can anyone say we are not in this village? That is the voice of Rasika Manoj who lives in Sagaragama village in Kalpitiya. Although his name is given as Rasika Manoj in his birth certificate, everyone in the village calls him Sagara. That was due to a statement made on the day he was born by Benedict Joseph, who lived in this village. "It doesn't matter if the child's name is Rasika Manoj at birth. I will name this child Sagara from today. As of today, the name of this village will be Sagara Gama" according to Sagara's story, they came to Sagaragama in the year 1988.

"We are illiterate. I cannot read or write. We have no one to tell our story. If possible, tell the country about this injustice we are facing, that is all we ask. If the law enforcement officers, with a responsibility to protect the law, are violating the rules of the institution....."Sagara swallowed what he was about to blurt out. Although most people in Sagaragama are not highly educated, they have a reasonable understanding of the law of the land. The problem is that the officials who are educated and appointed to take care of the people and to control the people of the country are acting without any knowledge regarding the legal provisions. It will be clear to anyone who reads this article carefully.

## Sagaragama

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Sagara's (Sagara means sea) story is as big as the ocean. Sagara's grandfather and grandmother came to Kalpitiya from Beruwala. This was after Sagara's grandfather got a job at the Kalpitiya fishing harbour. Sagara's grandmother and mother came to Kalpitiya when Sagara's mother was one year old.

Today Sagara's mother Yakdehi Kanda Samaraweera Arachchilage Sriyani is 49 years old. When Sriyani was seven years old her father (Sagara's grandfather) died of kidney disease, and Sagara's grandmother, W.M.Podu Nona (74 years) looked after Sriyani by doing odd labour jobs.

Podi Nona who was travelling all over with Sriyani, came to Sagaragama when Sriyani was 16 years old. Sriyani was married at that time and built a house in Sagaragama. In those days Sagaragama was a large jungle and they had to live among the wildlife. Gradually, Sagara's elders, who over time were skilled in farming and fishing, managed to make the area flourish. According to Sagara's elders, there were about seventy families living in the early days and each family had cleared more than two acres of land. In those days, there was no opposition to clearing and on several occasions governments and government officials had approved the families inhabiting the lands and thereby providing legitimacy by way of permits and deeds. A good example of this is the deed given by President Chandrika Bandaranaike Kumaratunga to several families living in this village. In addition, the voting rights and infrastructure provided to these people by government officials can be considered as part of the legitimacy. The roads in this village have been developed by the government on several occasions and electricity has been provided to the village.

The ocean was the main factor that contributed to the richness of the Sagaragama village. Shortly after the inception of this village, Sagaragama became a prominent village in the Kalpitiya Peninsula. The people of this village were able to harvest fish equivalent to the weight of an elephant from the ocean during the season and were able to cultivate during the off-season.

Therefore, it did not take too long for this village to be fully inhabited. The temple located in Kandakuliya village, which is close to the Sagaragama in terms of village development, was also a contributory factor. According to Sriyani Samaraweera, the village was in turmoil in 2005.

"We had lived happily in this village since 1988. We had no problems. The Air Force came to Kandakuliya in 2005 on the pretext of the war. Kandakuliya is the village adjacent to our village. They came and camped there. It was easy for them to do whatever they wanted because of the war. They did whatever they wanted, evicted some of our families, claimed these lands belonged to them, sexually abused females, some families left their homes, but we did not go. We endured all this harassment. First, they occupied an uninhabited area and then they gradually occupied our land after the end of the war. At first, they settled in this place stating that they had come over to practice aerial bombing. They practised as stated. We endured all that harassment because of the war. Meanwhile, the officers of this camp had planted coconuts on our lands one day in June this year. This frightened everyone and the former settlers returned to those places

## **The right to vote**

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With the end of the war, the main hope of these people was to regain the lands that they had lost during the war. They communicated their requests in writing and verbally from the Grama Niladhari of the village to the Secretary to the President as well as from the Member of the local Pradeshiya Sabha of the village to the President of the country. As a result, President Chandrika Bandaranaike Kumaratunga has issued several land deeds to these people. In addition, the 'Yahapalanaya' regime stated in its election promise that if they have been living

on government land for more than ten years, they will be entitled to it. In addition to these two, every adult living in this village has been given the right to vote

"We know that we will not be given much, but we feel that we have the right to the land and ownership if we are given the voting rights. I'm here where our mother and father lived," said Chamara Sandaruwan. According to Chamara, they built new houses because the Air Force planted coconut saplings on their land. "The Air Force came here to practice bombing. They have a separate location. Despite that these forces came and occupied our land. Look, my name is on the ballot." Chamara showed his name on the voting register. "We accept that the Air Force has a certain amount of land, but we also have land. Our lands are occupied by the Air Force. The Air Force says that they have been given this land through a gazette notification in 1984 and that is the reason they are securing the land. Journalists recorded the senior officer saying these exact words.

### **Lies and sexual harassment**

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The community in Sagaragama was exposed to various forms of harassment and violence suffered after 2005. They have now publicly stated them. Meanwhile, sexual harassment is a leading concern. " They assaulted the husband to take over the wife, assaulted the brother while trying to take away the sister, sexually abused small children. All this was swept under the carpet because of the war," said H.P. Sirisena, a senior citizen living in Sagaragama village. Sirisena said. "That's why so many people in our village had to move out of this village. We moved out and lived on other people's estates. We were the happiest when the war was over because we would get our land, but something completely different took place. Even the families that survived during various persecutions during the war had to now leave this land. Officials and Institutions mandated to guarantee and protect the law are deceiving people. Officials and institutions that are bound to uphold the law of the land are lying. We have faith in only one institution and that is the judiciary. However, the Air Force and the police have given false reports to the court. "Giving false reports to the judiciary and trying to mislead the judiciary is a very dangerous situation. If the Air Force had lodged a false complaint with the Kalpitiya Police regarding this land, the Kalpitiya Divisional Secretary should be the first to inquire into the matter. The ownership of this land could have been determined by submitting a report of the Kalpitiya Divisional Secretary to the court. However, the Kalpitiya Police arrested eight residents of the area on 01.07.2021 on a complaint lodged by Sergeant Gunapala 013774 of the Kandakuliya Sub Unit of the Sri Lanka Air Force and a statement made by Mohamed Rahim Fathima Sabrina the 628 / A Musalpitiya Grama Niladhari. The Air Force soldier had complained to the police that the lands had been transferred to an Air Force base and a shooting range as per the Government Gazette Extraordinary Notifications issued on 18.12.1984 and 15.02.2005 and that even though they are concrete boundary poles, they have not fixed the wires. It is said that the villagers had entered the land without permission and built 10 temporary houses out of coconut branches and sheets. The Grama Niladhari in her statement said that the land on which the Air Force Base is located is in her jurisdiction in addition to the 1492 acres of government owned lands in the area. She has stated that a

group of people are occupying the government land and in addition 10 more houses were constructed on 01.07.2001 without any permission.

## **Justice**

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Sinhalese, Muslim, Tamil, Catholic, Buddhist, and Hindu communities, inhabit Sagaragama. Although the Buddhist community is small, the people of this village are provided leadership by the Kandakuliya Sri Samudrasanna Viharaya. The Chief Incumbent of this temple Ven. Bediwewa Diyasena Thero said when asked about this. "Currently, the area where the people live is not owned by anyone. It means that this belongs to the government. The government is the people. These are not two institutions. This land therefore belongs to the people. There is an area that has been gazetted to the Air Force. The role of the Air Force should be to protect the land, not to plant coconuts in people's lands nor is it about setting fire to people's homes at night. The other major point is that the war is now over. Even lands seized during the war in the North are now being handed over. New-borns in the North and East do not hear gunshots anymore. However, the Air Force is now dropping large-scale bombs to drive people out of these areas.

Fatima Najima, a mother of three, who lives in Sagaragama says, I say responsibly, and you could ask anyone who lives here. I kindly request the opposition politicians in Puttalam to speak about this in Parliament. Puttalam has been destroyed enough, take these to other parts of Sri Lanka too" The house where she is staying has also been provided with electricity. She explains why the Air Force has not defended their land for 36 years. "Now it is being said that these lands were given to the Air Force in the year 1984. So why did they not build a fence? During the war, the Air Force wanted the people in these areas to be here. The people lived with bombs. There were more bombs in these areas than in the North. Is it fair to drag us into the streets, after living in the midst of adversity, think about it?"

## **The law of the land**

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The people of the country as well as the government officials are bound by the law of the land to declare the truth. If the judiciary has been misled it is a serious offence as well as a violation that undermines the law. Attorney-at-Law Nihal Sumanadhira says there are issues regarding the way the Kalpitiya Police has acted in this incident. The police cannot hand over an order given by the court to another party, especially to the government armed forces, it is illegal.

"No one can give an order to the government forces to demolish the houses of people. Usually, the court orders the police to do this through fiscal. If necessary, the police can be involved. Who will take the responsibility if the Air Force fires in such a situation?"

The Puttalam Magistrate's Court has ordered the Kalpitiya Police under case number 17 428/21 to remove these houses. But what the police did was to bring in Air Force officers and break these houses. The Air Force came with guns, and we must think not twice but several times about how legal it was to demolish these houses in this manner, the Attorney added.

According to the information provided by Kalpitiya Police OIC, M.I.B.S. Nishantha Kumara to the Puttalam Magistrate's Court, it is clear that the land in question is owned by the government. It also states that the people are residing permanently in these lands. Accordingly, the Kalpitiya Police should have informed the Kalpitiya Divisional Secretary about this. However, when the Kalpitiya Divisional Secretary, Prageeth Dhanansuriya was contacted, he said that he had not been informed and that he was not a respondent in this case. "The person who claims ownership to this land cannot be located, but for some time about 32 families have permanently settled in this place. I will be filing a case to get them evicted legally. "

### **Where did it all go wrong?**

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I have been reporting on the problems and issues faced by the people living in the Sagaragama village and the surrounding villages, from time to time for about fifteen years. It is important to note that several children were killed in a bomb blast in this area about ten years ago. Since then, I have reported on their land ownership, infrastructure, and flooding. Since the beginning of this year, these people have updated me on their land issue on several occasions. I received a telephone call on 5 July this year at around 4.45 pm from Lasantha, who lives in Sagaragama. "Please...our children's houses are being demolished. The Air Force has brought guns and the police are watching. They say it is a court order, can you please come?" After Lasantha's phone call I received several calls from the people from Sagaragama and the request from all of them was for me to come quickly. Kalpitiya, Sagaragama is approximately 110 km from where I was at that time, and it takes approximately two hours to travel that distance. Accordingly, my advice to them was to ask for the court order. "We asked the police for a court order, asked the Air Force but they did not show it. We asked if the fiscal came from the court, there was nothing like that. This was intimidation. If there is a court order, it should be shown." So, there was only one thing left to do. We all took our phones and recorded what was happening. Everyone in Sagaragama, big or small, who were in possession of a smartphone recorded the work of the Air Force and finally the Air Force and Kalpitiya Police officers also videotaped the public. Within hours of the incident, I asked the OIC of the Kalpitiya Police what the court order was, but the OIC refused to respond.

At the same time, when inquiries were made by telephone from the Kalpitiya Divisional Secretary, the Divisional Secretary said that he was not aware of such a court case and that this land belongs to the government.

### **Misleading the judiciary**

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I was able to go to Sagaragama on 6 July. Shortly after I arrived, an officer claiming to be the Commander of the Palaviya Air Force Base arrived at Sagaragama with a group of armed men. Like the previous day, the mobile phones in the hands of the people were directed to the Air Force officers and my mobile phone was also recording the Air Force officers from the crowd. The Air Force officer who claimed to be superior said that he was doing this because he would receive the ownership of these lands. The Air Force officer further stated that the people are



staying here by force. People told the Air Force that it was not the people but the Air Force that was using force. Here too the people demanded a court order from the Air Force and the Air Force officers who rejected it fled in the face of public questions.

According to the Commander of the Palaviya Air Force Base and the Divisional Secretary of Kalpitiya, the land has not been handed over to the Air Force so far. Accordingly, Sergeant Gunapala Dharma Kumara 013774 of the Kandakuliya Air Force Base had lied to the Puttalam Magistrate's Court. He has also submitted to the police the gazette notification of the 1009 acres of land legally given to them by the government. According to the statement of the Musalpitiya Grama Niladhari regarding this matter, it is stated that there is 1492 acres of government owned land in this area. She has made it clear that the Air Force as well as the people are permanent residents in these lands. Accordingly, it is questionable whether the police conducted a due preliminary investigation and reported the matter to the court. The police should have obtained a statement from the Kalpitiya Divisional Secretary. The community stated that they were not informed by the Kalpitiya Police to appear in court on 5 July. If they were present, they could have stated these facts to the courts. When I telephoned Kalpitiya Divisional Secretary Prageeth Dhanansuriya last week, he said that action would be taken against some of the occupants of the state-owned land. Therefore, it is very clear that this land of 483 acres covering Sagaragama village has not been handed over to the Air Force by a gazette notification this year, in other words till 6 July 2021 this year.

## **Attention**

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When the Sri Lanka Air Force Media Spokesperson Group Captain Dushan Wijesinghe was contacted regarding this incident, he said that an investigation will be carried out and a statement will be made. "There is a court case about this incident. Usually, we are given land by the government. That is with the approval of the cabinet. Normally, if we take over land, the people in the area will be compensated. It will be decided by the Divisional Secretary," the Air Force spokesman added.

According to the law of the land, an army has no right to go armed and demolish the houses of the people of the country. By whose order did the police hand over the court order to the police in accordance with the law of the land? Also, who gave the orders to the airmen of the Kandakuliya sub unit attached to the Palaviya unit of the Sri Lanka Air Force to demolish these houses? Why did the police and the Air Force not show these people the court order? According to these people, these people are being harassed again by the Air Force officers. Is this not a violation of the fundamental right of the ordinary people of the country to live freely?

Also, the Kalpitiya Divisional Secretary said that the ownership of this land could not be identified. Accordingly, he says this belongs to the government. But according to the law of the land the ownership of such land goes to the Public Trustee. But how can a land inhabited by the people belong to the Public Trustee? It has been reported that this land belongs to the

Land Reforms Commission. Land owned by the Land Reforms Commission is owned by the government

Considering all this, it appears that the Kalpitiya Police OIC and the Air Force have reported false information to the Puttalam Magistrate's Court. They have told the court that there were no residents in these houses. When the houses were demolished, people living in these houses can be clearly witnessed. Relevant footage has already been published in the media. Accordingly, it is the duty of the responsible officials to conduct a special inquiry into this matter and find out exactly what happened.

■ ***Prasad Purnamal Jayamanne***

# The Ordinary man and the Policeman

**Backlash from employer for refusing to transport sand without sand permit**

**Culmination in police brutality and unlawful removal**

Vithanarachchilage Anurasiri, a resident of Kandawala maditte, Gurudeniya, Kandy, is a driver by profession. He is a father of two and his spouse is a housewife. Anurasiri has been working since September 2017 as a lorry driver for a private business owned by Sub Inspector Ranaweera, a government official. He cares for the lorry he had worked with for nearly two years. As usual, he brings the lorry home after work and parks it near the house. Anurasiri takes care of it safely while it is near his home.

The lorry belonging to Sub Inspector Hettiarachchige Ranaweera was seized on 26 February 2019 for transporting sand without a licence. Subsequently, a case was filed in the Mahiyanganaya Magistrate's Court under the Mines and Minerals Act No. 33 of 1992. Charges were not filed against the sub-inspector, the owner of the lorry. Subsequently, the fourth respondent was extremely angry since Anurasiri refused to drive the sand lorry without a valid licence and only transported the sand when a valid licence was available. Anurasiri says that on several occasions when he refused to transport sand without a licence, the police officer had hired another driver to transport the sand.

Against such a backdrop, while Anurasiri was working as a driver, the petitioner had taken the lorry belonging to the Sub Inspector on 1 April 2019 to a garage for repairs on the instructions of the police officer. The story of Anura Siri is as follows.

*"I came home around 5.45 that evening. The lorry was parked on the opposite side of my house on the Kandy-Haragama main road. Around 7.00 pm that night I drove a friend's car to a nearby funeral home and came back walking. I had dinner with my wife and went to the lorry which was parked in front of the house to sleep. Ranaweera had told me to come and sleep in the lorry for its safety. When I woke up at around 11.50pm I saw two police officers coming towards the lorry. One of the officers, Police Constable Jayakody, got into the lorry and assaulted me with a helmet. 'I am being assaulted, save me,' I shouted" Anurasiri said.*

*The wife and the two children were also watching this brutal assault. They grabbed me by the head and legs and forced me into the jeep. I was assaulted and taken to the Thalathuoya*

*police station without providing any reason. The next day, on the morning of 2 April 2019, the Thalathuoya OIC came and hit me on the right side of the face saying 'You are the one I wanted. Anurasiri further said.*

The fundamental rights petition filed by Attorney-at-Law Suren D. Perera on behalf of Anurasiri, a resident of Gurudeniya, who was assaulted, was recently taken up before a panel of Supreme Court judges headed by Preethi Pathman Surasena.

Attorney-at-Law Suren D. Perera, who appeared for Anurasiri at the time, stated that the petitioner was the driver of the lorry. The lawyer said that although the police had filed a case against him for transporting sand, they had not filed a case against the owner of the lorry that was responsible for the direction to the driver. Accordingly, the court ordered the IGP to submit a report regarding the police officer.

Thalathuoya Police Constable Jayakody, OIC Anura Krishantha, Traffic OIC Saman Kumara, Sub Inspector Hettiarachchige Ranaweera, IGP C.D. Wickramaratne and the Attorney General are named as the respondents in the petition.

Anurasiri had been working as a driver in a lorry belonging to Sub Inspector Hettiarachchige Ranaweera attached to the Thalathuoya Police Station until 1 April 2019 and the lorry was used to transport sand on the instructions of the Sub Inspector.

Submitting a Fundamental Rights Petition on behalf of Anurasiri, Attorney-at-Law Suren has stated that Anurasiri was arrested while transporting sand on the instructions of the police officer, on the charge of transporting sand without a licence and a case had been filed under the Mines and Minerals Act No. 33 of 1992 in the Mahiyanganaya Magistrate's Court on 26 February 2019. The owner of the lorry was not charged in that case. Anurasiri had subsequently refused to drive the lorry without a valid licence and said that the sand was transported only when it had a valid licence, and that the lorry owner was outraged by his refusal to transport the sand without a permit. On several occasions when he refused to transport sand without a licence, the police officer employed another driver to transport sand.

The petitioner has been remanded after being produced before the court. The petition is due to be called back on June 1.

Commenting on the case, Attorney-at-Law Suren said: "The main reason for filing a fundamental rights petition against this person was that under Articles 12-1 and 13-1 of the Constitution, criminal intimidation and torture had taken place. Arrests have also been made which are not legally valid. The suspension of his driver's licence is also hampering his main source of income, his driving profession. Against this backdrop, the threat to his life is a human rights violation."

The message that Anurasiri, a father of two, is taking to society through this threatening environment is powerful. The harassment of an ordinary citizen by security officials who are committed to guaranteeing peace and security of the country, raises an issue of the overall security of the people. Therefore, there should be a wider discourse in society to create an environment where such situations are not witnessed again.

■ **Samanthi Weerasekera**

# Multiple rights violations due to delimitation

## **Administrative demarcations wreak havoc in Bogaswewa**

### **Resource allocations chaotic**

### **Residents unable to participate in the election process**

In any country in the world, new laws and regulations are introduced for the welfare and well-being of the people of that country. But in Sri Lanka the move to redesign the borders of Vavuniya in line with several decisions taken by the Delimitation Commission of Sri Lanka in 2015 is a blatant violation of the basic human rights and the fundamental human rights of the people of Vavuniya Bogaswewa Colony.

The documents at the Vavuniya Government Agent's Office provide ample proof that at the time of independence in 1948, the surrounding farming colony including Bogaswewa belonged to the Vavuniya District. However, this changed slightly when a part of Vavuniya was broken and Mullaitivu was created as a new district about 25 years ago. However, until the Bogaswewa colony was re-surveyed and demarcated by placing boundary stones by the Mahaweli Authority on the recommendation of the Delimitation Commission in 2017, the colony belonged to the Vavuniya District.

Bogaswewa Colony consists of seven main villages. It includes Bogaswewa one and two Nandimithragama, Namalgama, Salalihini Gama and Veheratenna old village. Since the new boundaries have been added to the Bogaswewa colony on the recommendations of the Delimitation Commission, the agricultural colony has been divided into four parts. As a result of this separation, a section has been brought under the Anuradhapura District, another part into the Vavuniya District, another part into the Mullaitivu District and the other part into the Vavuniya District.

As we travel from Vavuniya to Bogaswewa Colony, this demarcation begins in the Namalgama area. The Chief Incumbent of the Namalgama Raja Maha Viharaya, Ven. Maradammaduwe Gnanajothi Thero said that part of his temple belongs to the Anuradhapura District and another part to the Vavuniya District.

"The Buddha Shrineroom and the Dhamma Schools in our temple belong to the Tamil Divisional Secretariat Division in Vavuniya. The other side belongs to the Vavuniya South Sinhala Divisional Secretariat. The monastery belongs to the Kebithigollewa Divisional Secretariat in the Anuradhapura District. You have to go to all these three places to attend to administrative matters of the temple. Travel expenses alone cost over nine hundred rupees."

When the temple was previously under only the Vavuniya district authority, there was no difficulty in going on a motorbike and attending to the required work. But you cannot do that now.

Those who come to my temple are poor and their Samurdhi amount is one thousand rupees. But some have to go to Kebithigollewa to obtain it. Others have to go to Nedunkerni and that trip will cost 900 rupees. For those who have to go to Nedunkerni, the administration is in Tamil. But these people cannot speak Tamil. The officials there cannot speak Sinhala. People left the village due to these problems and went to different areas. They do not even have the opportunity to live in freedom. They can't attend to their work in a known language. Due to this delimitation issue, the people of Bogaswewa Colony have almost completely lost their right to operate in their mother tongue."

W.B.R. Jayakody is the Principal of Bogaswewa College. His school is a Sinhala medium school. It belongs to the Vavuniya South Education Zone. But due to the demarcation, the administrative zone and the education zone have come under the Nedunkerni area.

"Bogaswewa school has the highest number of students in the southern Sinhala section of Vavuniya. But it now belongs to the Tamil section of Nedunkerni. We do not receive the human and physical resources given to government schools in similar quantities. The reason is that according to the population ratio of Nedunkerni, only these children and their parents belong to a Sinhala section. Considering the composition of the Tamil students in Nedunkerni, the numbers of Sinhala students are very small. As a result, we have very little material resources. The various officers recruited based on government policy are sent to the school. The best example of this is the deployment of development officers for teaching in schools. But all the development officers in Nedunkerni are Tamils. They have nothing to do when they come to these Sinhala schools. They can't even teach. Because of this, the school never gets teachers for the essential subjects.

The reason is that our Vavuniya Sinhala Director of Education and Nedunkeni Director of Education never meet at the same meeting. We need to ask questions from Vavuniya and get answers from Nedunkerni. Because of this there are always only questions and issues in our school. There are no co-facilities, there is no co-education, no equal or fair distribution of resources. The teachers who are in the school have been here since their placement. Since there are no replacements or transfers provided those who are teaching do not have the opportunity even to go to their own villages. Therefore, the basic human rights of the teachers trapped in this manner have been violated. According to the circulars of the Department of Education, those who have worked for five years have the opportunity to go to easily accessible areas where they are comfortable. But these teachers are not afforded that opportunity.

These teachers are being forcibly detained. This is the situation in this school every day since the teachers who come to Vavuniya are not available for the school due to the division of provinces caused by this new delimitation process.”

The Bogaswewa colony is a combination of generational residents of Vavuniya and the people who were settled from other areas. The outsiders are from the southern province of Sri Lanka. After the end of the war about 7000 families were brought from Hambantota, Galle, Matara, Polonnaruwa, Walapane and other areas and settled in order to achieve a political objective of sending at least one Sinhalese person from the Vanni District to Parliament with the vote of these people. However, the number of voters has changed. However, with the demarcation of the Bogaswewa electorate, the electoral map has changed and the total number of voters in the Vavuniya, Mullaitivu and Anuradhapura electorates has changed. Therefore, it has become impossible to send a Sinhalese representative to Parliament as the voters who were considered as one cluster are divided into several constituencies.

As a result, voters in the Bogaswewa colony have been forced to cast their ballots for a candidate of a party they are not familiar with. In areas such as Nedunkerni and Mullaitivu, Tamil candidates from Tamil political parties are contesting elections. The people of Bogaswewa colony are not ready to vote for these parties or candidates. As a result, many are reluctant to exercise their voting rights. They abstain from voting. They are not doing so voluntarily but because they have no other choice. Voters in the Bogaswewa colony are divided and therefore they have not had the opportunity to vote for a candidate of their choice in a general election still. As a result, its people have tried to select a candidate of their choice for the Pradeshiya Sabhas according to their preferred political party in the local government elections, which has been successful on several occasions. However, they have become members of the Pradeshiya Sabha for Kebithigollewa and Nedunkerni areas. But these Pradeshiya Sabha members reside in Vavuniya. In a sense, the people of Bogaswewa do not have the freedom to participate in the electoral process. There is no way to democratically choose a politician who fits their thoughts, aspirations and attitudes. They came here for several purposes, giving up their right to vote in the southern part of the island and transferring that right to the Vanni, but that purpose has been ruined by a demarcation with the delimitation. They were born Sinhalese and settled in a Sinhala area in the Vanni. At present, they live in a Tamil area subject to the Tamil culture and language dictated by the Tamil politicians and officials. In short, the direct and indirect threats to the suffrage of these people are a violation of their human rights and fundamental freedoms.

While the Sinhalese in the Bogaswewa colony were being harassed due to the demarcation, the people and politicians in the neighbouring district of Mullaitivu were facing different problems. The TNA has become the dominant political authority in Mullaitivu. T. Raviharan, a former member of the Northern Provincial Council who is their regional leader, points out that with the delimitation of the Sinhalese population in the Bogaswewa colony, the composition of the Tamil population in the North has changed drastically. This is since the population in the Bogaswewa colony is voters and members in the Tamil areas.

He also says that this situation is a threat to the Tamil political movement. He states that the rights of both communities are not being fulfilled as the government is blatantly violating the rights of Sinhalese and Tamils.

With the commencement of the demarcation in 2017, several voluntary organisations in the Bogaswewa colony launched a series of protests urging the government to withdraw the bill immediately.

The file is full of letters they have written to officials, including the president. A large number of letters and petitions are sent in small numbers randomly from time to time from the Vanni to Colombo, but so far no one seems to have heard any of their pleas.

The administrative powers of the local government areas are mostly vested in the Government Agent. The Bogaswewa residents have submitted several letters to the Vavuniya Government Agent in addition to the letters sent to Colombo to resolve their grievances. During the discussion with Government Agent P.A. Sarathchandra, he informed us that all the letters containing those requests have been brought to the attention of the authorities. "It is up to the Delimitation Commission to understand this situation. It is up to the Commission to decide whether these boundaries should be redrawn or restored. Since that commission has the power, we have referred all the requests of the people to the commission. "

■ ***Dinasena Rathugamage***



# Decisions made about our money, behind their closed doors...

## **Journalists barred from attending district coordinating committee meetings**

### **A recent development from 2021**

#### **Public right to information regarding the activities of these institutions, obstructed**

“Even if the soil that has been placed in a manner that is damaging the mangrove system is removed, the recommendation will be given immediately. The problem is that I cannot give permission to a criminal who is destroying the forest.” Gampaha District Forest Officer Devani Jayathilaka said this at the Gampaha District Coordinating Committee meeting held on Tuesday, 30 March 2021.

‘Do not speak to the media,’ the voice of a public representative was heard.

Devani Jayatilleke had to clash with Nimal Lansa the chairperson and other prominent politicians that day. Everything was recorded on media and videos of the incident were shared via social media. There were many people who stood in solidarity with her and came forward to support her on social media. She had claimed that the mangrove system was being damaged by a government project. ‘That project is a criminal offence against the environment. So, I can't give permission,’ she said. “Some so-called 'development projects' carried out by politicians based on motives to seek popularity and political mileage may actually be destroying the environment or other resources, or some projects may be really useless.

The support received by Devani Jayatilleke on social media, may create the path for other officials to speak freely in front of the media. District Coordinating Committee meetings in the future need not be limited to the rhetoric of politicians and the meek surrender of officials.

A few days after Devani's voice was raised, it was reported that journalists would not be allowed to cover district coordinating committee meetings. Since then, there have been many reports of journalists complaining that they are not permitted to attend and report on the work of district coordinating committees even in 2022.

According to our research in March 2022, journalists have been allowed to cover coordinating committee meetings in certain districts of Sri Lanka. However, in some districts there are still meetings that are held behind closed doors and journalists are kept out. We called journalists from several districts and officials from district secretariats to find out the current situation.

Nuwara Eliya District Secretary G.K.G.A.R.P.K. Nandana said: “Denying journalists access to district coordinating committees is not an issue in Nuwara Eliya. Journalists were not allowed to visit district coordinating committees in Sri Lanka from the beginning. We have been instructed to conclude the Coordinating Committee and summon the media for a briefing with the Chairman of the Coordinating Committee and the team. That is the process,” he said.

However, until recently the doors of many district coordinating committees were open to the media. It was also the responsibility of the District Secretaries and the Divisional Secretaries to initiate the invitation.

Articles 25 and 26 of the circular issued by the Ministry of Home Affairs under Home Affairs Circular 06/2017 dated 22 May 2017, entitled '*Conducting District Coordinating Committees and Regional Coordinating Committees*' signed by the then Secretary Neil de Alwis, read as follows:

*Journalists from that division/district can attend regional or district coordinating committee meetings. Local/District Media Officers should know their list. It is the responsibility of the Divisional Secretariat / District Secretariat to provide the facilities required by the media.*

'If space is not enough, the participation of several people from the same media institution can be limited. Journalists will be able to cover the proceedings of the House, and at the end of the meeting, the Co-Chair of the District Coordinating Committee, the people's representatives will have a separate discussion.' Accordingly, this strange process of keeping the media out has commenced recently.

Media coverage of Coordinating Committee meetings was brought to a standstill in the year 2021, according to circular 2021/02 signed by Major General Kamal Gunaratna. This was as a result of a suggestion to restrict the right of journalists to attend District Development Committee meetings and to create a culture of providing a 'summarised report' from the committee heads at the conclusion of the relevant meeting.

The Matale Pradeshiya Sabha Chairman Kapila Bandara Hendeniya, who was elected by the Sri Lanka Podujana Peramuna had condemned the circular, during the Matale Pradeshiya Sabha meeting on May 14, 2021, which restricts the participation of journalists at the Pradeshiya Sabha meeting.

The subject of Home Affairs was under the Ministry of Defence and Home Affairs and Disaster Management during this time. This was the same ministry in charge of the various military institutions. The Secretary of the Ministry was Kamal Gunaratne, a military officer. He is someone who has shown by his statements that he is not interested in civil rights. You cannot expect him to be interested in defending the right to information. In fact, several professionals, and former retired administrative officials such as Ashoka Peiris have opposed

even the subjecting of a civil administrative component such as Home Affairs to the Ministry of Defence. However, before we discuss further about this restrictive process, there has to be a mention of the coordinating committee meetings.

Meetings of District Coordinating Committees and Regional Coordinating Committees are attended by public representatives and government officials from the respective areas. These are organised under the purview of Government Agents also known as District Secretaries by the Government Agent's Office.

It is understood that the provincial, district and local administration of Sri Lanka is extremely muddled. Provincial Councils are separate entities. They are not formally affiliated with the District Secretariats. The boundaries of the Local Government Institutions and the boundaries of the Divisional Secretariats are not the same and not aligned in any systematic process. According to the accepted procedure, the primary responsibility of the Members of Parliament is to formulate national policies and legislate. They have a lot of responsibility in parliamentary committees and in related areas of the legislative process.

There are Provincial Councils and Local Government Institutions to carry out development activities at the local level in a systematic manner. In addition, administrative activities can be attended through District Secretariats and Divisional Secretariats. However, in Sri Lanka, a separate meeting method called Coordinating Committee is used. Members of Parliament are often appointed as chairpersons of these committees. Some governments have in practice appointed prominent politicians who have not been elected to parliament, to these positions. They have also been given the same level of privileges as ministers.

For example, in December 2019, the present government decided to give vehicle and fuel allowances to the chairpersons of the district development committees. Cabinet approval had been obtained for this purpose. These were seen as privileges provided as a consolation to some political strongmen who were not assigned ministerial portfolios since the cabinet numbers were restricted.

However, leaving aside the question of whether this Coordinating Committee model is effective or not, what we need to discuss here is the protection of the public's right to information regarding the activities of these institutions which are operated for whatever purpose.

This is because discussions in these meetings revolve around the strategies to develop the roads in the area, the challenges, the failures and the successes of projects. It is the right of the people to know information on all these matters. There are no secrets to hide behind locked doors. The ruling party has no right to shut the doors citing the pandemic in a context where they fill stadiums with people transported from different localities for their public rallies and meetings.

These meetings are currently being held in different districts in diverse methods since the directions issued through circulars during the pandemic period have not changed and proper advice and guidance has not been provided at the national level.

For example, Kandy District Secretary Chandana Tennakoon said, 'We had two District Coordinating Committees this year (2022). There have been no issues. We inform all media institutions.'

Matara District Secretary Y. Wickramasiri commenting on this matter said that he was not aware that journalists were not allowed at the District Coordinating Committees. He said that he would look into the matter and take action.

The situation in Kurunegala is different. Kurunegala Additional District Secretary (Development) G.A. Kithsiri said, 'It is not that we do not permit journalists, the Government Agent has informed the journalists about this matter. We brief the media on the decisions we made at those committee meetings. So far, there have been no issues raised by the journalists after adopting this process.'

Accordingly, it is clear that different policies and practices are being followed in different areas. There is no proper set of guidelines at the national level.

Sunil S. Pallandeniya, Secretary of the All-Island Journalists' Association said, 'Initially, journalists participated in the District Coordinating Committee meetings, and we were permitted to carry out our duties. We think that a decision to restrict was taken because the conflicts between officials and politicians within those committees go to the people through the media. The local journalists met the District Secretary and other officials and discussed the matter with them. However, as a solution to our problem they said that they would conduct the district coordinating committee meetings without journalists and hold a press conference to communicate the decisions taken at the meeting.'

We rejected this proposal. We are not here to only write down the decisions they have made. When the media is not permitted to attend these meetings only the decisions taken by the authorities are communicated and the real issues are swept under the carpet. We requested permission for journalists to attend the District Coordinating Committee meetings and to facilitate the flow of information to be taken to the public through the media. If there is a problem with the news we report, there are plenty of legitimate ways to deal with it.'

"District Development Committees do not allow local journalists to attend the meetings but obtain media coverage of those committee meetings through the regional journalists affiliated with those working in the media units of those institutions. When the regional journalists working at the official levels in these institutions send the reports, media institutions in Sri Lanka publish the relevant news articles. The government can get these regional journalists to write only the news that the government wants to publish. In this instance, journalists who do their job professionally are subjected to severe injustice." Duminda Sampath, Chairperson of the Sri Lanka Professional Journalists Association said. "The government has chosen this option to cover up the failures of the government authorities. We strongly oppose this process. It is a serious matter to refuse permission for journalists to enter the coordinating committees. However, the media institutions do not care about these incidents. The owners of media institutions are not interested in protecting the rights of journalists working in their own media institutions."

■ ***Rekha Nilukshi Herath***

# No accountability for villagers blatantly defrauded

**Country roads rebuilt below standard**

**Reportage of issue blocked**

**Another example of the destruction/misuse of national wealth**

It is essential for everyone to have information, whether ordinary or important, in order to live. We should have the ability to obtain numerous pieces of information for our various needs. Formal or informal educational information is something we cannot do without. The only way to know if something is worthwhile is by using it. It is difficult to face the day without knowing the weather. Information on governance that affects all of this is always essential for everyone.

With the Covid pandemic, the daily lives of the citizens of our country were disrupted. People were afraid of being exposed to normal society because of the fear of the virus. A state control mechanism outside of the state administrative governance mechanism could be witnessed in the face of the prevailing pandemic situation. Against this backdrop, stories were being told regarding the corruption in the development process during this time and the highly restrictive human rights situation of remote villagers.

Marangala is a remote and difficult village in the Padiyathalawa Divisional Secretariat Division in Bimtennapattu where the majority of the people make a living from chena cultivation. The main difficulty faced by the villagers was the need to develop the road leading to the village to the proper standards. They were impatiently waiting for this to become a reality. The present government has revolutionised the development by constructing highways as well converting cart roads in remote villages by paving them with concrete. Therefore, concrete laying commenced on the road in Marangala village. The fraudulent concrete paving of the road development contractor was identified since some of the villagers were aware of its quality. The villagers informed the relevant authorities about the construction of the road which was done without adhering to proper standards. The relevant political authority was also informed since there was no solution. All of this only resulted in a long silence. The last resort was to

publish a newspaper report. They sought the assistance of a regional journalist to publish an article in a national newspaper. The news was written but not published in the newspaper.

The national media had already suspended several pages of provincial news. This was because of COVID19. Now this media space was blocked. A Marangala villager thought that their human right had been violated. I too met a regional journalist who was affected by restrictions on the space to publish news. Both the state and private media outlets shut down provincial news pages that provided information, citing COVID19. This was not because of reduced demand. According to a regional editor of a national newspaper, this was based on the reduction in the number of editorial board members, transport issues and several other factors.

This Marangala rural road development is a by-product of how national wealth is being destroyed under the guise of development while dashing the innocent hopes of the rural people. Above all, it is a violation of the human rights of these people. It is clear that while road maintenance in developed urban areas are being carried out to the proper standards, communities in remote and remote villages have been discriminated against due to irregularities in road development.

■ ***Saman Manikka Arachchi***

# Stolen heritage: the lament of the Coastal Veddhas

**Illiterate and made to sign on empty papers**

**Returning IDPs find their lands taken, deeds forged**

**Surveyors, lawyers, officials, residents all united in land frauds**

"This lake, this paddy field, is the ancestral heritage of the Coastal Veddha (aborigini) groups. but today, our heritage is being snatched away from us by another group taking advantage of our helplessness and ignorance. We are requesting the government to restore our ancestral heritage and give it to our people ..." said Ullukulam Nadaraja Kanagaratnam, the Muttur coastal aboriginal leader, while looking at the breaking waves of the lake, releasing a great sigh of relief into the air.

The Coastal Veddha community, spread across the coastal belt from Vakarai in Batticaloa to Sampur in Trincomalee in the Eastern Province of Sri Lanka are a unique ethnic group with a distinct identity in Sri Lanka. It is unfortunate that they have lost their ancestral heritage in their own lands due to the invasions of other communities.

Discrimination against Coastal Veddhas who are marginalised will only relegate the community to greater marginalisation. According to Chapter III Article 12 (2) of the Constitution, no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

Paddy lands and the lake in the Nallur, which was the heritage of the Coastal Veddhas, and their Bhadrakali Amman Kovil have now been invaded by the villagers of Thopur adjacent to Nallur village, said Muttur aboriginal leader Nadaraja Kanagaratnam. He opened a file containing documents, permits and certificates dating back to the era of the British and the D.S Senanayake regime. Thopur, a village adjacent to the Coastal Veddhas community is a predominantly Muslim area.

According to Muttur aboriginal leader Kanagaratnam, the origin of the Coastal Veddha villages in Muthur dates back to the British rule and the aboriginal families spread with settlements from Vakarai to Sampur on the east coast during the British rule.

The Ullukulam Lake which had been set aside for the agricultural activities of the aborigines in the villages of Nallur, Patalipuram, Neelankeni and Uppural, are now taken over by the Thopur people and most of the paddy fields belonging to the aboriginal families were forcibly and subtly manipulated and acquired by the Thopur community. The aborigines allege that their people, who had proudly lived throughout history are now in poverty as a result of the land take over. Kuheni Palankudi Makkalin Nalankudi Sangam Secretary and Santhoshapuram indigenous leader Nagarathnam Vardhan said that the forming of a new division under Thopur, under the plans for dividing into new divisions by annexing Nallur a Coastal Veddha village, and Ullukulam Lake, which is located on the border of a predominantly Muslim area Thopur, was planned with the intention of denigrating the Coastal Veddha community. Although Nallur an aboriginal village in the Ullukulam area was administered under their Grama Niladhari Division before and during the war, the people of Thopur who illegally occupied and established the Iqbal Nagar Grama Niladhari Division using administrative and political means, since 2010 also integrated the Ullukulam area. Therefore, the Coastal Veddha are of the view that the Ullukulam lake was taken over through sinister means from them by the Thopur community.

"During the last local government election, they created a division by amalgamating two Grama Niladhari Divisions. Accordingly, they have created this division by merging the two Grama Niladhari Divisions of Nallur and Iqbal Nagar. Then the people of Iqbal Nagar take advantage of our ignorance, illiteracy, and poverty to deny our privileges. The population of those villages are high, and they are of different ethnic groups. Our population does not increase like their community. They are given funds from Arab countries to increase their population. Some of our people are living in poverty and resort to begging for survival. This is humiliating our tribe. They have destroyed our ancestral temples and destroyed the evidence of our heritage. Now the paddy fields also belong to them and also the water in this lake. We have informed of this injustice to everyone that we can think of but there has been no response." Vardhan added.

During the war, people from all the aboriginal villages including Nallur fled to Batticaloa on LTTE orders. They returned to Trincomalee several years after the end of the war. They were not allowed to go back to their original dwellings. They had to spend many years in an IDP welfare centre established at Muthur in Kiliveddy. However, the people of Thopur did not leave their lands during the war. During this period the community in Thopur had cleared the lands of the aborigines on a large scale using heavy machinery and cultivated it for several seasons. As a result, the people of Nallur as well as many adjoining tribal villages had lost their paddy fields which provided them with rice at one time or another, and the end result was that the aborigines were forced to beg for survival and ended in dire straits, said Nallur aborigine Kanapathi Kadirgaman Thambi.

"When we had been in the camps for many years, the Thopur people had bulldozed our paddy fields and had prepared forged deeds in their names. Some were given groceries



on credit and the signatures of the Veddhas were obtained to transfer deeds without their knowledge. Since we are illiterate and innocent, we do not have the strength to fight back. When we go to ask regarding this injustice, they beat us and chase us away. This has continued for some time, and we have been rendered landless and now since we do not have paddy lands we have to start begging in our own lands.

According to Kuheni Palankudi Makkalin Nalankudi Sangam Secretary and Santhoshapuram tribal Leader Nagaratnam Vardhan, the vocation of the majority of women in Santoshapuram is to go on the streets begging. It is a common sight to see them in villages like Muthur, Thopur, Serunuwara and Kinniya on different days of the week.

According to Muthur Sea Tribal Leader Kanagaratnam, the Queen of England has issued them with permits for their lands. Paddy lands have also been given to the Coastal Veddhas under D.S. Senanayake's Irrigated Colonisation programme and they have the relevant documents. However, the people of Thopur are now forcibly occupying their lands by forging documents by using various manipulative procedures and with the help of government officials as well as politicians, he said.

Often the signature or thumbprint of Coastal Veddhas are obtained on a blank sheet of paper as a promissory to repay the loans obtained from the shops at Thopur and Muthur during the harvest or during the season for wild honey. He points out that these have been converted into ownership transfer documents and that they have the support of government officials. Vardhan, a tribal leader from Santoshapuram, exposing the plight and the tragedy of the community says that there have been instances where paddy fields have been taken over by the rice farmers for just a bag of rice.

"Our people are illiterate and poor. Therefore, when you sign a piece of paper and give them a bundle of rice, it is like a treasure to them. However, these people provide money to the officials and later make it a land ownership transfer letter on the signed paper. "

Markandu Velayuthan said that the Thopur community, who have not stopped at just acquiring the lands of the aborigines, were into invading and destroying the cultural and religious heritage of the Coastal Veddhas. Meanwhile, these groups have taken steps to destroy even the well belonging to the nearby aborigines.

The Nallur aborigines point out that for some time in the Thopur area, forged deeds have been prepared with the help of government officials over a long time for lands occupied by the Coastal Veddhas. The first step is to fabricate a fake history of the land after re-surveying lands of economic value to them by a surveyor known to them. Then they prepare forged documents by lawyers known for such illegal activities, use their own people involved in these activities as witnesses, sign them and hand them over to their own officials in the relevant government agencies. Since none of this is known to the real owner of the land, there is no objection to this document process and even the approval of the higher authorities is obtained. Later, when problems arose with regard to these lands, all the new owners of

the area unanimously proclaimed a false historical account in front of high officials claiming that these lands were lands given to their ancestors during the English rule and misleading the officials. The aboriginal original landowners being insulted and humiliated in front of the officials as a result is a common occurrence.

"How can hunters who are illiterate and who do not even know a word of the alphabet, get deeds? They humiliate the aborigines saying that these lands were given to the forefathers of the Thopur community by the white rulers of the time." said Wijekanth of Nallur. According to A.S.M. Jameen, Chairman of the Ullukulam Farmers' Association, 550 acres of paddy lands are being cultivated under the Ullukulam Lake, all of which belong to the Thopur people. However, after the LTTE expelled the Muslims from the area during the last war, the Nallur aborigines also started cultivating these paddy fields with the help of the LTTE.

"After we were evicted from Ullukulam, Nallur, Uppural and Lanka Patuna in 1985, we were able to come back only in 2009. They have been cultivating these paddy fields for almost 25 years. However, these are our grandfather's lands. Two or three aborigines do all these. We have already proved that all these are blatant lies. "

According to Jameen, after the end of the war, these lands were handed over to the people of Thopur under the resettlement programme by Selvanayagam, the Divisional Secretary of Muttur at that time. He said that there were some people who had come recently with some education to the aboriginal village, and they are behind the sudden assertion of rights that had not been expressed before and that the majority of the aborigines were innocent.

When we inquired about the allegations made by the Nallur tribesmen against the people of Thopur, the Secretary of the Thopur Tahib Nagar Rural Development Society, Muthur coroner Ahmadu Jalaluddin Mohammad Noorullah, said that the complaint made by the Nallur tribesmen was baseless and that even the lands where the aborigines are currently occupying are their ancestral properties.

"At that time our grandparents lived in Nallur. However, after the LTTE drove us out of those villages, we came to settle in Thopur. However, when our resettlement permits were checked in 2009 after the end of the war, Selvanayagam, the former Divisional Secretary of Muttur, released our lands. Also, our lands were given to the aborigines, ten perches each to build tsunami houses, on the promise that we will be given lands later. They lived by the sea at that time. Now they are fabricating lies and sending letters to the President to embarrass us. We urge the government to conduct a fair investigation in this regard. "

Although the Kuweni Tribal Welfare Association has lodged a written complaint to the Governor of the Eastern Province, the Trincomalee District Secretary and the Muttur Divisional Secretary regarding the injustice at the hands of the people of Thopur as well as government officials, no positive action has been taken so far.

However, the Chief Secretary of the Eastern Province Thusitha P. Wanigasinghe said that the Governor of the Eastern Province had appointed a commission on behalf of the victims of

this injustice representing all parties. However, the Chief Secretary said that it was unfortunate that the problems of these aborigines were not addressed.

"We have appointed this commission and even activated a mobile service. However, this issue has not been addressed to this forum. In fact, this is a very sensitive issue. Although the term of this Commission has expired, we are ready to work out a solution through some other means. "

When we inquired from the Additional Government Agent of Trincomalee Arul Raj regarding this problem faced by the Nallur aborigines, he said that a special program has already been launched to look into the issue of the Coastal Veddhas. He further stated that this work is being carried out through a committee appointed under the chair of the Additional Government Agent (Land) P.R. Jayaratne.

Viranjana Herath, Attorney-at-Law, stressed that the discrimination against Coastal Veddhas and the deprivation of their right to life is a serious matter in a situation where every citizen of Sri Lanka has universally recognized human rights also guaranteed as fundamental rights chapter in the Constitution.

He further stressed that the government should be responsible for protecting the heritage of their descendants and treating them as citizens of Sri Lanka without discrimination.

Responding to a query on what can be done, to address the current plight of the Coastal Veddhas considered a unique community in our country, the Trincomalee Regional Coordinating Officer of the Human Rights Commission of Sri Lanka, AL Ishadeen, said.

"I was briefed by an NGO last week on the matter. The Marine Indigenous people are a special community of our country. There is no doubt that every possible step must be taken to protect their existence and their fundamental rights. If any group discriminates against them or violates their human rights, we are bound to intervene, even if they do not file a complaint"

■ ***Mangalanath Liyanarachchi.***

# Losing ground in Sooriyawewa

## Inequalities of the law

### Several illegal projects implemented in Elephant Management reserve

### Attempts by politicians to infringe on the freedom of speech and expression

State Minister of Mahaweli Affairs Siripala Gamlath said that despite court rulings, it would take some time to implement based on the requirements of the cabinet ministers.

Q: That means the decision cannot be implemented due to political pressure?

Minister: There is a delay.

Q: One could argue that it is an insult to the judiciary – contempt of court?

Minister: There is no such thing. There is a special situation here. This is the constituency of the Minister in charge of the Mahaweli subject. His voters. Therefore, even the officials of the Mahaweli Authority cannot go and evict the people.

Q: That means there is a problem with the law being enforced equally/ there is a problem constitutionally...?

Minister: There is a delay here. I said the real reason for that delay to the media. That does not mean the work is not done.

## 10 years of struggle

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The Hambantota Wild Elephant Management Reserve covers 23,746.55 hectares in the Hambantota, Sooriyawewa, Lunugamwehera and Thanamalwila Divisional Secretariats bordering the Hambantota and Monaragala Administrative Districts. This reserve was established by the Extraordinary Gazette Notification No. 2222/62 dated 09 April 2021. It was a triumphant milestone in a long struggle of more than 10 years.

So far, no action has been taken to eradicate illegal activities and illegal cultivation within the reserve. The Hambantota Magistrate's Court has ordered the Sri Lanka Mahaweli Authority

to immediately evict 19 such large-scale illegal cultivators. The Mahaweli Authority has not yet been able to implement that decision. Although we tried to contact the Authority's Resident Manager in the Walawa Zone and other officials to inquire about it, none of them came forward to comment. So, we inquired about this from the State Minister in charge of the subject Siripala Gamlath. He expressed the above views and when we asked him:

Q. Chamal Rajapaksa, the cabinet minister in charge of the subject, does not answer the phone. Therefore, we need a definite answer to this question...?

Minister Gamlath's answer was: That is all I have to say. I understand there is a problem here. But we all need to understand that we cannot solve the problem all at once.

### **The threat of unity**

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On 18 January 2021, approximately 84 farmers' organisations in and around Sooriyawewa launched a massive '*Satyagraha*', for ignoring all written demands regarding the continuous destruction of their crops and the increasing threat to their lives. This '*Satyagraha*' was initiated on the Walsapugala Reservoir in Sooriyawewa, and their only demand was to gazette the Hambantota Elephant Management Reserve immediately.

The *Satyagraha* initiated in the homeland of the three key figures, two heads of the government, President Gotabaya Rajapaksa & Prime Minister Mahinda Rajapaksa, and Chamal Rajapaksa, the Cabinet Minister of the Mahaweli Authority, which owns the largest piece of land in the reserve, seemed to be a serious threat.

Initially, a cabinet paper was tabled promising to submit the relevant gazette notification within a month. But the Chairman of the Walawa South Bank Farmers' Association, H. Sarath, and others were aware of what was going to happen.

First Minister Chamal said don't worry because the cabinet paper was presented. However, the minister's followers did not stop spending money and continuing the deforestation. If it was going to be gazetted, why should they spend money? When we asked them why they were clearing the jungle spending all their time and money, there was no answer. They must have received a message, '*Do not be afraid, I will see to it that the gazette is not presented, you can continue your work.*'

The gazette notification has been issued. However, a large portion of the proposed Elephant Management Reserve is still under commercial cultivation of bananas and mangoes, which are not maintained by farmers in the locality. People from outlying areas use electric fences and demarcate 50, 100 and 150 acres for these plantations and also maintain 13 stone quarries in the area. The Walawa Joint Farmers' Organisation confirms that approval has been granted by the Mahaweli Authority for 36 quarries in the proposed reserve alone.

## Strategies and Achievements

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Relationships and friendliness were employed as a strategy to initially stop the '*Satyagraha*' started by the farmers on the Walsapugala reservoir. Mahinda Samarawickrema, Chairman of the Sooriyawewa Joint Farmers' Association said,

'I worked for many years to ensure victory for Minister Chamal Rajapaksa in elections. They tried to stop the protest with those connections. I said, this is not my individual doing, it is a decision of 84 farmers' organisations. Then came the threats. We faced them successfully because the farmers were united. '

Q: Why did *Satyagraha* continue this fast unto death campaign inside Suriyawewa without coming to the Colombo-Kataragama main road and why are they continuing based on Walsapugala?

A: That was something we did as a ploy. People would talk about this more if we came to the main road. But we will have security issues. This is our village. We know who is coming and who is going. That is why they could not frighten the farmers.' says Mahinda Samarawickrema.

Meanwhile, a massive protest was planned at Suriyawewa during the farmers' fast unto death campaign. Following the report of the protest, the Suriyawewa Police obtained a restraining order from the Suriyawewa Magistrate's Court citing public harassment as the cause.

'We had a hunch about this. The villagers are everywhere. That is why we planned to have it elsewhere in Ambalantota while continuing the protest in Suriyawewa. '

Mahinda Samarawickrema said this about how he faced the court restraining orders. Attempts by politicians to infringe on the freedom of speech and expression, a fundamental right enshrined in the Constitution, using the police, the law enforcement agency, were thus strategically defeated by the peasantry.

## Everything possible!

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Attempts were also made to exert pressure using their media power and government officials to undermine the cohesiveness of farmers' organisations. The Hambantota District Secretary once provided a letter to the farmers sent by the Director (Operations) of the Department of Wildlife Conservation, Marasinghe, stating that immediate steps have been taken to issue the relevant reserve gazette notification. But no action had been taken at that time to issue the gazette.

There were SMS news alerts circulated stating that a letter was issued by the Director General of the Department of Wildlife Conservation with a promise to issue the relevant gazette notification. However, it was later confirmed to the author by the Director General of the Department of Wildlife Conservation, Chandana Sooriyabandara, that it was not true.

'I have no authority to make such promises or talk about policy decisions.' The Director General said while commenting on the matter. When inquiries were made about misleading the public in such a manner, Somaratne Vidanapathirana, who was then the Secretary to the Ministry of Wildlife and Forest Conservation, said that he was not aware of such a thing and that it is not acceptable that the media publish such news.

### **The attention of the Human Rights Commission**

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The Sri Lanka Young Journalists' Association (SLYJA) lodged a complaint with the Human Rights Commission (HRC) against the government for continuously violating human rights, depriving the people of Sooriyawewa of their right to equal treatment before the law, delaying the issuing of the gazette notification of the reserve and implementing several illegal projects in the reserve. According to the complaint, the commission ordered eight government agencies to submit their statements immediately. Accordingly, several submissions were made by the relevant institutions last February. The plaintiffs emphasised that it would be more important if the Commission officials could monitor the relevant land area.

The unshakeable solidarity of the people of Sooriyawewa made this elephant management reserve problem an issue felt by the people throughout the country. The media, civil society organisations, lawyers and human rights activists were involved. They are attentive. Representatives of farmers' organisations, officials of the Department of Wildlife Conservation and the Air Force are currently containing the elephants in the reserve.

### **The problem is not over!**

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However, when we inquired whether tracking the elephant to the reserve would solve the problem, Dr. Ravindra Kariyawasam, an environmentalist, said that although this was important to the people who were left without anything, this would not solve the problem. The reason for this is that the elephants will start roaming to the villages due to lack of food, and obstruction to their free travel to unauthorised cultivation and projects. Therefore, the opening of the Elephant Path to the elephants, which is currently blocked by various projects, should be done as a first step, he said.

The farmers of Sooriyawewa have repeatedly proved that collectively they can defeat all forms of arbitrary use of force. The attempt of politicians to divide them further has not been abandoned. They have not stopped using their force without even enforcing court decisions.

But the victory is on the side of the farmers.

#### **■ *Shalika Wimalasena***

# Mannar's majority Tamil speakers denied their rights

**Tamil Language not implemented as the Official Language**

**Infringement of language rights**

**Numerous negative ripple effects on other human rights.**

We all expect that the administrative structure of a district should function efficiently and that the administrative problems faced by the people should be easily resolved. In accordance with the existing language policy and language rights in Sri Lanka, the people have every right to fulfill their needs and services in their mother tongue. However, when you try to find out if this takes place practically, it is a well-known fact that the implementation does not happen in practice.

In many departments in the Mannar District, the public as well as journalists face various problems daily due to language issues. Many of the top officials and responsible officials in land and land rights organisations are Sinhala speaking. While their language is not the issue, the difficulty surfaces since their working knowledge of the local language spoken by the people living in the area is very weak. This makes it difficult for them to communicate on even simple matters. People complain that in some important departments there is a situation where the public is unable to present their unresolved issues to higher officials or discuss their needs and demands with the higher officials.

Senior officials in institutions such as the Department of Archaeology, the Department of Forest Resources, the Department of Wildlife, the Department of Fisheries, and the Department of Police, especially in the Mannar District, are Sinhala-speaking and even the junior officials of some departments are also only Sinhala-speaking. Against this backdrop, when the Forest Department or the Wildlife Department seizes people's lands or marks the land boundaries, there is very little opportunity for the public to discuss their issues and concerns in their mother tongue, with these high-ranking officials. Furthermore, when archaeological units carry out excavations or other explorations, it has become very difficult for journalists to find out the actual information or the real situation at the ground level. There is such a wide chasm and



a distance in language usage in the Mannar District that the Tamil people have come to think that the field of archaeology is a field that serves only the Sinhala speaking majority.

Fishing is the main livelihood of most of the people living in the Mannar District and the service rendered by the Department of Fisheries is indispensable to their profession. However, since the higher official of the Department of Fisheries in the Mannar District is a Sinhala-speaking person, the fishermen have not been able to discuss their issues, or their harassment faced at the hands of the Navy.

One of the most important departments is the police. However, most of the police officers and the officers in charge (OIC) of the police stations in the Mannar District are staffed by Sinhala speaking officers. The majority of them do not have the ability to deal with the language spoken by the people in the area, making it difficult for the public to come to the police stations to attend to their work or lodge complaints. They are faced with severe difficulties in dealing with the police as a result. Even when they manage to make a complaint or attend to their needs, they leave without a proper understanding since the documents are provided to them in Sinhala language and while some people are able to speak Sinhala, they do not read Sinhala.

In such an environment, district level meetings and district and regional coordinating committee meetings in the Mannar district are largely conducted in Tamil. There is a doubt on how officials can understand the intricacies of the issues being discussed or the decisions made in another language and how they respond to these.

In such an environment, are the language rights and language policy being properly adhered to in all the districts, including the war-torn Mannar district where most of those affected by the war reside? Are the public services carried out in those areas in the mother tongue of the people? It is a timely need to investigate the matter with the relevant government authorities. Many have called for consideration to be given to the language of the area when making appointments to a higher position, and if not bilingual proficiency. Also, it should be ascertained whether the relevant translators are employed in government offices, especially in the departments and institutions where Sinhala speaking officers are employed in the senior positions. The first step to sustainable freedom will be when the opportunity to fulfil the needs through your mother tongue becomes a reality for the people living all over Sri Lanka.

■ ***Joseph Naya***

# Language barriers to accessing information

**74% Sri Lankans do not know their language rights**

**Ripple effects on other human rights**

Academics and experts around the world have expressed differing views on the right to information. Meanwhile, Harold Joseph Laski, a political theorist and university professor at the London School of Economics and Economic adviser, has stated that *"a nation that does not pursue factual information will one day be enslaved by others."*

The right to accurate information is an important right of any Sri Lankan citizen. At the same time, it is an extremely useful right for journalists. Five years ago, journalists had a very bitter experience in obtaining accurate information. As a journalist, I have experienced the same difficulties.

*"Giving information to the media is prohibited."*

*"We have been informed in a circular not to provide information. If there is any doubt, can show the circular."*

*"Are you trying to make us lose our jobs?"*

We have heard similar answers many times repeatedly by the security forces, especially the police and government agencies. Therefore, we as journalists had to use various strategies to get the information we needed. There were also moments when it was felt that the personality of the journalist was being tarnished in this process. However, with the enactment of the Right to Information Act No. 12 of 2016, the journalist has the power and opportunity to request information from government officials. This Act came into force on 03 February 2017, and it has been 05 years now. During the past five years, citizens and journalists alike have had to deal with the shortcomings and weaknesses of the Act in its practical implementation. This is a recent experience I faced.

Vavuniya South Sinhala and Vavuniya South Tamil Divisional Secretariats are both located in Vavuniya District. Most of the residents in the Vavuniya South Sinhala Divisional Secretariat are

Sinhala speaking and the majority of the Tamil Divisional Secretariat area are Tamil speaking citizens. Although my language medium is Sinhala, I reside in the Tamil Divisional Secretariat area. Recently, I forwarded the RTI 01 application to the Tamil Divisional Secretariat for the information required. A few days later I received the RTI 2 reply form. It was written in Tamil. I had to find someone who knew the Tamil language to read the article. But more than a month later, my questions posed in the RTI 01 application was not answered. Due to the proximity of the Divisional Secretariat to my house and considering possible postal delays, I went to the Vavuniya Tamil Divisional Secretariat the next day and met the Information Officer to inquire about it.

"Since the application form was in Sinhala, it was referred to the translator at the Government Agent's Office and information obtained and that was the reason for the delay" he said and responded to my request for information. The answers were also received in Tamil. As in the previous instance, I had to show the reply to someone who knew Tamil and figure out the details. It was stated that my questions could not be answered. I then prepared an appeal in Sinhala and forwarded the appeal to the Divisional Secretary by registered post. A few days later the appeal was answered, and it was also written in Tamil.

"The language medium I requested was Sinhala. But all the answers were in Tamil. I cannot read and understand the reply when that happens. Why is it difficult to give in Sinhala?" I inquired from the Vavuniya South Tamil Divisional Secretary N. Kamaladasan.

"Actually, as far as I can remember, the first RTI that was submitted in Sinhala to my office was your application. But there is no one in my office that works in Sinhala. That may have been the reason the answer was provided in Tamil," he said.

"Didn't you try to find a solution to this problem then?"

"Why not, on several occasions I asked them to provide a translator as well as someone who could type in Sinhala, but nothing has happened. I have not received it. As a solution, I tried to get computer trainees from various institutes to come to my institute for practical training. But they are all familiar with English typesetting, the Divisional Secretary said.

Vavuniya District Secretary P.A. Sarathchandra said, "There is a shortage of Sinhala officers not only in the Divisional Secretariats but also in several Vavuniya administrative institutions."

"As a solution, a group of Sinhala medium graduates have been recruited as Development Officers recently. However, most of them had to be placed to fill the shortage of teachers in Sinhala medium schools in the area. However, government officials cannot penalise the public by saying that there are no Sinhala medium staff. Now the government has made Sinhala and Tamil bilingual knowledge compulsory. The Ministry of Home Affairs has been informed. We hope that this issue will be resolved when new appointments are made."

However, a social activist, M.A. Pradeepan had faced a similar experience. Pradeepan resides in Matale. He had submitted an RTI 01 application to the Matale Municipal Council and the Panwila Divisional Secretariat to obtain some information he needed, and he had submitted

the application in Tamil. But he had received answers in Sinhala. Praddepan told the author that he had to pursue alternative methods to solve the language problem as the information was necessary. There are approximately 66,031 Tamil speaking people residing in the Matale District (24,320 Sri Lankan Tamils, 23,493 Indian Tamils and 38,462 Muslims). The question is what happens when Pradeepan as well as the 66,031 people go to a government office for information. Overall, a significant number of Sri Lankans are facing this language challenge. Most of the people who face this situation are those who use Tamil as their language medium.

The Nuwara Eliya district is a good example of this situation. According to the district census, the number of Sinhala speakers is 282,621 (40.2%) and the number of Tamil speakers is 418,451 (59.5%) constituting 355,830 (50.6%) Indian Tamils, 46,066 (6.5%) Sri Lankan Tamils and 16,555 (2.4%) Muslims.

However, applicants find it difficult to obtain information in Tamil from most government offices in the Nuwara Eliya District. In addition, there are 151,628 Tamil speaking people in the Gampaha District (Sri Lankan Tamil 65,302, Indian Tamil 7,621, and Muslim 78,705). In addition, it has been reported that Tamil language applicants in many districts such as Kurunegala, Anuradhapura and Polonnaruwa are facing difficulties.

The situation is worse in the Northern, Eastern and Southern areas. In the Hambantota district, which has the highest use of the Sinhala language, there are 7,939 Tamil language users. Also, the number of Tamil language users in the Galle district is 55,042. The Tamil language facilities in government offices in those two districts are reported to be the least among others. Apart from Vavuniya there are Sinhala speakers in small numbers in Mannar, Kilinochchi, Mullaitivu, Jaffna and the eastern Batticaloa districts. But they are hardly able to get any information request replied in Sinhala. In the Ampara and Trincomalee districts, the situation is the same for both language groups. In addition to all this, people in different parts of the country in general face this language obstacle.

According to Article 12 (2) of the Constitution of Sri Lanka, a citizen is given the freedom to perform their official duties in Sinhala or Tamil. This is confirmed by Article 2 of the United Nations Universal Declaration of Human Rights. Also, Sinhala and Tamil are the recognized official languages. But a recent survey found that 74% of the country's population is unaware of this. In fact, this is a very unfortunate situation. This is because the government has set up a separate ministry called the Ministry of National Languages and Social Integration and appointed a Minister to protect the language rights of the people of the country. There are three institutions under the Ministry, namely the Department of Official Languages, Official Languages Commission and the National Institute of Languages Education and Training. However, in view of the above, we have the question of whether the establishment of the Ministry will achieve the desired objectives.

This is not an issue limited to the right to information. The Government should pay more attention to regulation and legislation to promote the Official Languages Policy.

■ ***Sanath Priyantha***