



Curfew not lawfully imposed but we should obey it anyway?

"Lockdown is to keep us safe but how will I live?"

No work, no food!

Lock down is to see us safe but why are the police treating us brutally?

Quarantine? Judge said I was released on bail

you are quarantined for 14 days

You are released on bail

Let's talk about the Sri Lankan state and our personal liberties in times of Covid-19

Democratic dialogue, active listening and inclusive citizen participation: creating spaces for inclusive civic participation in times of pandemic and social crisis

The objective of the project is to create spaces for inclusive civic participation during the pandemic and the socio-economic crisis that Sri Lanka is facing and to strengthen democratic institutions, the rule of law, and public accountability. As engaged citizens, we aim to ensure that government responses to the crisis are aligned to principles of constitutionalism and that government by exception will be restricted; misinformation and hate mongering prevented and that social solidarity will be strengthened through the positive engagement of change makers and influencers.

To achieve these objectives, the project has established an informal “civic watch” that analyses the government's rapid responses to health and economic challenges; promotes a public discussion on policy issues, documents fundamental rights violations; provides timely, fact-based information to citizens on emerging issues that impact on democratic values, constitutional principles and fundamental rights. The project also aims to conduct advocacy campaigns to strengthen democracy and the rule of law, as well as to conduct a needs assessment that enable citizens to articulate their needs, anxieties, and aspirations in the post-pandemic context.

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Cover art by Sangeeth Madurawala

Let's talk about the Sri Lankan state and our personal liberties in times of COVID-19

Introduction

The Covid-19 pandemic that took hold of the world in 2020 is impacting societies everywhere. Under the pressures of the pandemic, pre-existing inequalities are heightened. Governments have confused the need for robust pandemic responses with the need to adopt strong-arm, even authoritarian measures. There are few consultations with, or explanations given to, the public or their legislative representatives.

We need to be alert to and challenge state violations of personal liberty during the pandemic. The Supreme Court of Sri Lanka generally views one's personal liberty as deprived when the freedom to 'go on their way' is denied. The Constitution requires all organs of state to follow procedures provided for by law strictly when individual citizens' personal liberty is taken away from them.

Despite the constitutional safeguards, there has been over time a rise in arbitrary arrests and detentions, ill-treatment and deaths in custody. This is sufficiently well- established to be regarded as a trend. Yet, as the pandemic progressed, Sri Lankans saw arbitrary arrests and detentions, ill-treatment and deaths in custody not only continue, but also become part of the state's response to the pandemic.

In times of crisis, institutions of law enforcement and national security harden with power, and the pandemic crisis is no different. 'Tough' measures by the state were called for and justified by the need for a 'strong', 'efficient', and 'disciplined' public health response. Yet, Sri Lankans share a turbulent relationship with toughening institutions, especially through two insurgencies and a decades-long armed conflict. More recently, in 2019, barely a year before the pandemic, Muslim youth were arrested and remanded in droves all over the island in the aftermath of the Easter Sunday attacks. The same year, former defence secretary Gotabaya Rajapaksa was elected as president, who ushered in a stream of measures that expanded the stature and role of the military in society and in government. Some of these changes were well underway and further consolidated by the time the pandemic struck just months after the presidential election.

While old trends continued, new and extraordinary measures were deemed necessary to frame a pandemic-specific response. No doubt, similar measures were adopted around the world, but in Sri Lanka they created an extraordinary constitutional problem. Parliament had been dissolved just weeks before the first detection of a local Covid-19 case. Under a caretaker, minority government and no Parliament, Sri Lanka faced the pandemic relying mostly on the Victorian era "quarantine ordinance". Within this context, security forces had ample responsibility to bear. The Army chief was appointed head of the national mechanism against Covid;¹ the military ran quarantine centres, patrolled curfew, distributed emergency rations and even sanitised public spaces. Within weeks, the entire island was on lockdown, the Covid-positive and their close contacts were quarantined in state facilities, national borders were tightened, and travel and transport closely monitored.

Arrests related to Covid enforcement

As news of local detections of Covid-positive cases began emerging mid-March, 2020, the initial response was to declare public and bank holidays for the public sector and urge the private sector to use its discretion in following suit. Thus, the first week passed in a period of “work from home”. By the weekend, however, curfew was declared over the entire country, purportedly under the Quarantine and Prevention of Diseases Ordinance, and the public was threatened with arrests in cases of non-compliance.² By the end of March 2020, the Police Media Unit reported arrests of 6,850 individuals since the declaration of curfew.³ At the same time, the enforcement of curfew involved the military, as the government “deployed members of the armed forces to assist the Police ... due to a surge in offenders [of curfew] and those who misused curfew permits.”⁴ By mid-April, the figure of arrests had risen to 34,500.⁵ Moreover, Sri Lanka Police had by then adopted a policy of seeking six-month prison sentences for those violating curfew and other health guidelines issued under the quarantine ordinance.⁶

Testimony from an Administrative Staff Member in a Government University (age 38, Male) Batticaloa

“Freedom of movement is the biggest challenge. For more than a year, we have not been able to move out. It is a problem for everyone in common. With the nature of this Covid 19 pandemic, things have to be managed under the quarantine law. That does not mean they cannot bend the law as they want, according to their will. The bigger picture of this pandemic has created a tough time for everyone more or less. Therefore, keeping all these rules considering that aspect is important, because the loss of livelihood, stable financial background, as well as the lack of essentials, have created multiple traps in general people’s lives. Therefore, concerning people’s rights and freedom is also very important under these circumstances”.

“Even in the interior areas, people are roaming around without concern about the lockdown most of the time because of this livelihood issue and to get essentials. There was one incident in Eravur where the army was involved in kneeling down a few Muslims because they roamed around without regard to the quarantine laws. Photographs were also widely circulated on social media showing the soldiers in Eravur allegedly forcing people who violated the travel ban to get down on their knees and raise their hands. These are some acts we can not accept under the quarantine law, because in the larger picture things are very complex and tough. Also, these types of acts can cause other negative outcomes. Especially in the east, where the population composition is very diverse. Even the people who face this belong to the Muslim community. The sensibility of the enforcement of the law is very crucial concerning minority rights, because we have seen multiple triggering points in the past”.

Around the time the policy of arresting curfew violators began, two inmates were killed in a riot which broke out in the Anuradhapura Prison amidst fears that Covid-19 had been detected within the prison population. Tensions rose within prisons that detention conditions within congested prisons were imperilling their lives. Civil society advocates wrote to the President with proposals for releasing inmates due to the pandemic⁷ and by early April, “a total of 2,961 inmates [were] released on bail by court, based on the recommendations made by [a] committee appointed by the President.”⁸

However, even as arrests continued, the legality of the curfew imposed and the arrests effected thereunder did not go wholly unquestioned. For example, opposition legislator M.A. Sumanthiran, PC, was reported in the media as saying, “There is no curfew in this country according to law. The reason we all abide by this curfew is because of the current situation in the country.”⁹ But, in the same breath, he also “urged the people to abide by the curfew despite its shaky legal basis, because staying at home was the best way to curb the spread of the corona virus”.¹⁰

Threats of arrest were levelled not only against violators of curfew but also at those avoiding hospitalisation for suspected Covid and anyone assisting them to avoid it.¹¹ Threats of arrest also spilled over to the domain of curbing misinformation, when the then-acting IGP “instructed the Police to closely monitor those who unduly criticise state officials and employees who are engaged in the important task of delivering essential services” and arrest them.¹²

The government also indicated willingness to arrest individuals engaged in public demonstrations. In June 2020, fifty-three individuals participating in a demonstration of solidarity with the global Black Lives Matter movement organised by the Frontline Socialist Party were arrested.¹³ In 2021, a number of arrests took place against those protesting government policies, especially in the context of the Principal-Teacher trade union action, the resistance to the Kotelawala National Defence University (KNDU) bill, and the overnight ban on chemical fertiliser.

Despite such arrests, many public gatherings were not only allowed, but also enjoyed patronage from key figures in government. A prominent example from 2020 was former Minister Arumugam Thondaman’s funeral, where thousands gathered to pay their respects, including Prime Minister Mahinda Rajapaksa, days before the 53 demonstrators at the Black Lives Matter rally were arrested.¹⁴ Similarly, in 2021, on the same day protestors against the KNDU bill were arrested, many public gatherings celebrating Basil Rajapaksa’s appointment as the new Minister of Finance were tolerated without incident.

Testimony from a government school teacher, (age 56, Male) in Peradeniya

“I was also involved with some protests in Kandy and Colombo which were conducted following social distancing guidelines. Also, I was involved with the principals’ and teachers’ protest march from Kandy to Colombo. Many were arrested. I know we are faced with a dilemma – do we protect people’s civil-political rights or maintain quarantine rules? We should not release the grip because the government is opportunistically using these circumstances. In this new situation, maintaining the balance between the two issues is crucial. Arresting those who have fought in the struggle for the right to education is a serious slap in the face to individual freedoms and rights.”

An emerging trend in the context of public protests amidst the pandemic was the forcible quarantining of protestors when courts refused to remand them upon production by police.¹⁵ The trend began with the quarantining of some celebrities who violated lockdown to attend a birthday party organised in an elite hotel in Colombo.¹⁶ Soon, other protestors were also subjected to forcible quarantining even after courts had granted bail.¹⁷ Relatedly, reports emerged that the Sri Lanka Judges Institute had conducted a webinar, attendance in which by all Magistrates had been declared mandatory, where judges were threatened with professional disadvantages if they continued to refuse to remand individuals produced before them after being arrested for participating in public demonstrations.¹⁸

The Bar Association of Sri Lanka condemned news of the webinar and called for an investigation.¹⁹

Deaths in custody

During the period between 2020 and 2021 to date, a number of deaths in police custody were reported in the media.

Former prison inmate Melon Mabula alias Urujuwa, released from prison days earlier, was arrested by Nawagamuwa Police and later killed in Wanduramulla. According to police, he was shot fatally by officers when he tried to attack them with a hand grenade in the course of recovering a locally produced revolver in an official police operation.²⁰ Days later, Tharaka Wijesekera alias Kosgoda Tharaka also died in police custody, when he was escorted to Meerigama, where an “incident” took place which compelled the police to “use force to control the situation”.²¹ The Bar Association of Sri Lanka condemned the death in custody, having been warned by the deceased party’s attorney of a danger to his life while in the custody of police.²²

D. Sunil Indrajith, a father of three children, died when he had gone out to get food for the family (who had been under home quarantine). Reportedly, two policemen had asked another man to beat Indrajith, and after Indrajith had fallen on the road, a bus had run over him, killing him. After video footage of the assault with the policemen looking on went viral on social media, the two policemen were reported to have been arrested for dereliction of duty.²³

Researcher & Dramatist (age 28, Male) in
Batticaloa

“I have seen many custodial deaths related to different cases in different areas. This is also a very crude way of treating alleged suspects. And also it’s completely against the law. There were many judicial procedures to be followed in most of these cases. Without completing these procedures and killing them is completely against the rule of law. It is the same with the prison deaths that have happened in the last year. Law and order should be the same for everyone. Even if they become offenders under the law, anyone can not go to punish them.”

Chandran Vithushan died in the custody of the Eravur police in the Eastern Province. Initially, a Special Judicial Medical Officer had ruled the cause of his death to have been due to an overdose of crystal methamphetamine, popularly known as ice, while also mentioning trivial injuries found on the body deemed non-fatal.²⁴ Vithushan was arrested by police from his home, and family members say he was brutally assaulted by police before being taken to the Station. However, Batticaloa Magistrate ordered Vithushan’s remains to be exhumed for a second autopsy.²⁵

Mohamed Ali, a father of two children, died in the custody of Panadura North police. Police spokesman Deputy Inspector General Ajith Rohana said on June 7 that the 42-year-old man was arrested the previous day by the Panadura North police while patrolling for curfew violators. On their way to the station, the suspect had opened the rear door of the vehicle and jumped off. Two police officers at Sri Lanka’s Panadura North station have been interdicted in relation to the incident.²⁶

A mother of two children, aged 43, residing in Gemunu Mawatha, Peliyagoda died in police custody after Peliyagoda Police arrested five persons including the woman after summoning them to the Station in connection with a clash between two groups. Her relatives allege that she died because no action was taken to admit her to a hospital or provide necessary treatments even after police had been informed of her health condition.²⁷

Meanwhile, the Supreme Court ordered an award of one million rupees in compensation by Sri Lanka Police for the death of Chadik Shaman (aged 42), a resident of Ihala Bomriya, Kaduwela, who died of a police assault after being arrested by the Peliyagoda Police on February 25, 2017.²⁸ The Supreme Court also awarded compensation for the mother of Sandun Malinga, a 17-year old killed as a consequence of an assault by officers of Kandaketiya Police.²⁹

Small business-holder and worker in civil society sector (age 30, Female) in Kalutara

"I was very concerned about the few incidents that occurred related to custodial deaths and violence that happened against suspects under police custody. I think these types of incidents should be avoided. Because the right to live is common for everyone, Even if the police and the security forces arrested someone as a suspect for some incident. If they have proven to be offenders, the legal procedures are in place to punish them. The police and the other security forces should be responsible for the security of the alleged suspects and prisoners too. Even though the general public used to accept such incidents, saying, "OK, these people are drug dealers, criminals, underworld gang members, etc., but that's not the case until things happen according to the law and they are punished if they are proven wrongdoers."

Complaints of assaults by police

In May 2020, a 14-year-old boy with autism was assaulted by police in Dharga Town, Aluthgama, after finding him on a street during curfew. CCTV footage, which went viral on social media, depicts a group of Policemen questioning the boy and dragging him across the road to a checkpoint where they assault him repeatedly as even some bystanders join in. The officers then tie the boy to a post under a tree behind the checkpoint. However, the father of the boy, having heard of the incident, arrived at the checkpoint, and after convincing them the boy was autistic, has been permitted to take his child home.³⁰ A fundamental rights petition has been filed in Supreme Court against the assailants.³¹

Researcher & Dramatist (age 28, Male) in Batticaloa

"Also, in village areas, there are many hidden informants like CID, who are intelligence service agents. There were some cases of beating people when they were outside. It is a cruel way of imposing laws. Also, it's kind of a common approach in the north and east in the post-war era. Not only because the majority of the security forces are Sinhalese. There are many Tamils and Muslims who have been involved in the security forces. Their approach was also the same. This was especially evident in the incident in Eravur, where security forces forced a few Muslim men to kneel due to a quarantine law violation. Under the current pandemic situation, it is important to maintain quarantine law. Although there is a proper way of doing it. For the sake of the general public, the law is not the proper way for that."

A youth residing in Hakmana was assaulted by officers of Hakmana Police on 7 January 2021. The incident involved a dispute between neighbours after a neighbour had joined the victim and his cousins for drinks. The argument had been between the youths and the wife of the neighbour, who had accused them of giving alcohol to her husband. Around 1.00 a.m. that night, Sub-Inspector of Police Shantha Karunaratne had arrived on the scene and proceeded to arrest the victim and assault him with a wooden implement both on the scene as well as back at the Station, along with other officers. Later, he had been taken to a hospital and threatened not to mention the assault to the doctor. Upon returning to the Station, he was subjected to further assaults with a broom stick. He complains of a large number of injuries as a result of the assault, including the passing of blood with urine. When produced before the Magistrate, the victim had informed the court of the assaults and injuries he had suffered at the hands of the police.

The Magistrate had ordered a fresh medical examination through the Fiscal of the court, and granted him bail.³²

A final year law student and son of a former provincial governor was assaulted in Peliyagoda Police Station by officers on 25 February 2021. According to the victim's legal representatives, he was assaulted when he visited the Station to deliver a meal packet for his brother's client of who is an attorney-at-law. The accused police officers claim that the victim presented himself as an attorney-at-law. The Bar Association of Sri Lanka responded immediately to the incident, calling for investigations and prosecutions. Four police officers were interdicted within days.³³

A man arrested by police and produced before the Mount Lavinia Magistrate died after being released. He was a resident of Kalubowila. A motorcycle repairman by profession, on a day in March 2021, he had been travelling on his motorcycle to his son's place of work to deliver his lunch when police had arrested him in the Ratmalana area. When the officers had asked him where his contraband was hidden, the victim, knowing that no one at home was aware of his arrest, had lied that the contraband was near his home in order to cause the officers to bring him close to his home. Even there, the officers continued to assault him demanding him to show the contraband, and this has been witnessed by his family members. According to his wife, the police had assaulted him even more back at the police station after realising his ruse. On March 19, when produced before the Magistrate, the victim had pleaded guilty to the charge of possessing 50g of cannabis. Having paid a fine, he was released and free to go home, but he was still sick after the attacks. According to what he shared with his family, he had been tied to a bench, a tube was inserted into his nostril, through which they had poured water into his body. Later, they had also poured petrol. He also bore many injuries on his body. As his condition became critical, the victim's wife had admitted him to hospital on March 21, where he was treated for five days and discharged. But he was never the same again. On March 31, he was readmitted; the next day, he passed away. The post-mortem said he had died of pneumonia. However, at the instance of his family, an autopsy has been ordered to be conducted. According to Police Spokesperson DIG Ajith Rohana, a Senior Superintendent of Police is carrying out an investigation into his death.³⁴

An incident took place in Pannipitiya on 29 March 2021, wherein a motor traffic policeman was caught on camera assaulting a lorry driver. Footage depicted the officer slamming the man on the ground and jumping on him. The video went viral on social media. According to reports, the driver's lorry had accidentally collided with the officer, which caused the officer to fly into a rage.³⁵

A man visiting a pharmacy for medical supplies was assaulted and arrested by Yakkalamulla Police on 9 May 2021. The incident had taken place when unknown parties had lit fireworks near the Yakkalamulla junction, in the vicinity of the Yakkalamulla Police Station. The victim of the assault, who had been in the pharmacy, had come out to see about the noise, curious to know who would be lighting fireworks in times of a pandemic. As he watched, several officers, only one of whom was in uniform, had emerged from the Station to inspect the commotion, and then proceeded to assault a cyclist who had been passing through the scene. Soon, one of the officers reached the victim watching from the pharmacy, proceeding to assault him while demanding if he had lit the fireworks. The owner of the pharmacy had attempted to rescue the victim, saying he had only come to purchase medicines, but the officer, paying no heed, had arrested the victim and taken him to the Station, where he was beaten further. When the owner of the pharmacy had gone to the Station with another acquaintance to visit the victim, the police had refused

access. About half an hour later, the pharmacist had transferred the CCTV footage from his premises to his phone and returned to the Station, where he showed the footage to the acting Officer-in-Charge and demanded the release of the victim. The officer had viewed the footage and released the victim the next morning (nearly 12 hours after the footage had been shown), stating that the arrest had been a small mistake. The victim has since complained of the assault to the Human Rights Commission. He has had to receive treatment in Karapitiya Hospital for two days as a result of the assault.³⁶

A father of two residing in Ballagaswewa, Hambantota, was assaulted by the police in June 2021. The assault had taken place when he had presented himself at the police station to face inquiries regarding a complaint lodged against him. Upon arrival, the complainant woman had pointed him out to a Sub-Inspector of Police who had then proceeded to slap him on the face. Later, the victim had been made to sit on a chair and hit on the head, face and body by the officer and placed inside a cell, where he had been assaulted by police officers that night as well as the day following.³⁷

A young mother who had gone to file a complaint with her husband to the Padukka Police Station alleges she was sexually assaulted by officers after her husband was locked up in the Station for no reason. She has since complained of the incident to the Inspector General of Police.³⁸

Two teenagers in Hambantota were assaulted on 5 July 2021 by a drunken police constable while on their way home from a Shramadhana at the Mirijawila Technical Training College. The officer had intercepted them on a motorbike as they walked home and demanded them to take off their anti-Covid face masks. Having refused to do so, the victims were assaulted by the officer, who had been in civilian clothes at the time but later identified as attached to the Hambantota Port Police.³⁹

A man from Kotawila area has been assaulted by Kotawila police officers in August 2021. The victim has been accused by his neighbour of “throwing stones” at their son. Upon being summoned by police, the victim had arrived at the Station on August 3rd to face the accusations against him. However, upon arrival he alleges he was subjected to assaults by the officers as witnessed by his wife. He has admitted himself to Matara Hospital upon release from the police and received treatment.⁴⁰

Abuses of process

In April 2020, while the country was in lockdown, attorney-at-law Hejaaz Hizbullah was detained under the Prevention of Terrorism Act. Even though the PTA requires the Minister of Defence to authorise such detention, no Minister of Defence had been appointed at the time the Criminal Investigations Department arrived at his home to take him away. He was not informed of any charges against him, though officials have informed the public that he had formerly represented the father of some of the parties responsible for the Easter Sunday attack of 2019. He remains in detention to date.⁴¹

Ahnaf Jazeem is a private tutor from Mannar who was also arrested in 2020 for unsubstantiated links to the Easter Sunday attack of 2019. He was arrested after a book of poetry published by him was found in a property linked to Hejaaz Hizbullah, which was used as a charitable school for children in the area. Officers who conducted the raid of the premises had gone on to arrest Ahnaf Jazeem after finding the book, despite the book being entirely in Tamil, which they could

not read or understand. Since his arrest, authorities have caused the book to be translated and evaluated by a panel of child psychiatrists who have in turn declared the book “incites violence, arouses sexual feelings, promotes suicide, glorifies death, talks of perceived injustice against Muslims across the world and incites hatred against the perpetrators of the violence in some of the poems”. However, prominent artists and native speakers of Tamil have gone on the record contradicting this finding, stating that the book promotes non-violence.⁴²

Conclusion

The pandemic has exposed, as it has in many places elsewhere, the many fissures running through Sri Lankan society, especially the economic disparities which have existed for decades. Such disparities impose greater vulnerabilities on the poor and, as this article perhaps demonstrates, the impact of the pandemic on personal liberty was also affected by the victim’s socioeconomic status. Governments all over the world should recognise these disparities in continuing their response to the pandemic in the coming months, if not years. Approaches emphasising the coercive power of the state will not only fail, but also leave scars within society which will outlive the novel coronavirus. The Sri Lankan government should set this example to the world by abandoning its current demonstrations of might, moving instead to an approach relying on strong relationships cultivated with affected communities, positive communications fostering cooperation by citizens, adequate relief for all segments materially impacted in the immediate term, and decisions based on expert advice.

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