

The Trajectory of Democracy in Sri Lanka from the Restriction of the Freedom of Expression during the COVID-19 Pandemic

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ABSTRACT: COVID-19 pandemic has heavily influenced the legal conduct of a state, especially Sri Lanka. This country is one of the so-called democratic states shown to abuse law conduct under the backdrop of emergency measures, so many people have been detained due to newly enacted policies. Since the beginning of this pandemic, various criticism of pandemic management has addressed the state-triggered government overreaches such as arrestable offenses and internet censorship in the name of public order. This research aimed to analyze whether the government's responses to opinions, critics, or any media format that embodies a form of speech are justified as an emergency measure against COVID-19. By analyzing further its implication for freedom of speech, it challenged the government's measurement of the limitation of freedom of expression in social media and analyzed the government's response to securing fundamental rights during emergency regulations. In addition, various rules from the authoritarian and democratic states compared further understand the framework on freedom of expression. This study showed a declining democratic value in Sri Lanka. Different legal conducts indicated that the Sri Lankan government does not comply with the rule of law and the fundamental rights of its citizen. This study emphasized the need for immediate legal reform, especially in various mishandled cases. State oppression of freedom of expression harms the public order and threatens state stability.

KEYWORDS: COVID-19 Pandemic, Democracy, Freedom of Expression.



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I. INTRODUCTION

Freedom of expression depicts the absence of restraint upon the ability of individuals or groups of individuals to communicate their ideas and experiences to others.¹ This freedom is a fundamental and crucial right given to the people to provide an open and accountable government.² Every citizen has the right to speak, write and express visual subjected to the limitation of freedom of expression.³ Such rights shape society, improve governance and nurture democratic institutions. In contrast, the judiciary and security enforcements have a significant role in protecting the people's rights to freedom of expression,⁴ indicating that the rule of law plays a crucial role in public order. For instance, authorities should not penalize a person based on mere criticism of the government. Consequently, the Constitution of Sri Lanka protects civil rights such as freedom of expression. The limitation of freedom of expression is often justified to create harmony in society, whereas necessity and proportionality are two elements that can impose the limitation. The government has the power to protect the people from the misuse of freedom of expression. However, the government potentially abuses the power given, limiting freedom of expression in the name of public order.

There is a rise in state abuse of power toward freedom of expression, especially during COVID-19.⁵ Noor Farihah outlines that the government tends to limit freedom of expression for various reasons, mainly emergency

¹ Jayampathy Wickramaratne, *Fundamental Rights in Sri Lanka* (Stamford Lake Publication, 2006).

² Zafar Abbas & Muhammad Zubair, "Freedom of Expression under Censorship is a threat to Democracy" (2020) 15:1 *The Dialogue* 18–26.

³ Arnold H Loewy, "Freedom of Speech as a Product of Democracy" (1993) 27:3 *University of Richmond Law Review* 427–439 at 428,429.

⁴ Judiciary and security forces' role is significant to preserve order, which can manipulate the law and its implementation in the worst practices. Such practice can be found in Jonathan Klaaren, "The Judicial Role in Defining National Security and Access to Information in South Africa" (2015) 11:3 *Democracy & Society* 275–297 at 283,284.

⁵ Joelle Grogan, "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis" (2022) *Hague Journal on the Rule of Law*.

and public order.⁶ Ideally, every state has its guidebook on managing crises, such as Indonesia's legal framework for state of emergency⁷. However, such a framework is non-existent; there is a call for an international treaty on pandemic preparedness.⁸ Therefore, it is room for abuse of power in the name of necessary measures.

In many countries, the state has violated the freedom of expression or free speech during the pandemic.⁹ According to Human Right Watch, 83 governments worldwide have used COVID-19 to justify violating the exercise of free speech.¹⁰ The victims were those who expressed with publications of their opinion about how the government policies during the pandemic.¹¹ Several cases of human rights abuse include the freedom of expression currently reported in Sri Lanka. The victim consists of journalists, activists, healthcare workers, political opposition groups, and others who criticized government responses to the coronavirus.¹²¹³

⁶ Noor Farihah Mohd Noor, "Freedom of Speech and the Pandemic" (2020) 5:21 International Journal of Law, Government and Communication 285–297.

⁷ Ali Marwan Hab, "Kegentingan yang Memaksa dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang" (2017) 14:1 Jurnal Legislasi Indonesia 109–122.

⁸ European Council, "An international treaty on pandemic prevention and preparedness," *Council of the European Union*, online: <<https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/>>.

⁹ United Nations Human Rights Office of the High Commissioner, "COVID-19 pandemic exposes repression of free expression and right to information worldwide, UN expert says", *United Nations Human Rights Office of the High Commissioner* (10 July 2020), online: <<https://www.ohchr.org/en/press-releases/2020/07/covid-19-pandemic-exposes-repression-free-expression-and-right-information>>.

¹⁰ Human Rights Watch, "Covid-19 Triggers Wave of Free Speech Abuse", *Human Rights Watch* (11 February 2021), online: <<https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>>.

¹¹ International Commission of Jurists, "Sri Lanka: COVID-19 restrictions should not undermine freedom of expression", *ICJ* (9 February 2021), online: <<https://www.icj.org/sri-lanka-covid-19-restrictions-should-not-undermine-freedom-of-expression>>.

¹² Human Rights Watch, *supra* note 10; Human Rights Watch, "Sri Lanka Events of 2021", *Human Rights Watch* (March 2021), online: <<https://www.hrw.org/world-report/2022/country-chapters/sri-lanka>>.

¹³ Office of the High Commissioner for Human Rights & International Bar Association, "The Right to Equality and Non-Discrimination in the Administration of Justice" in *Human Rights in the Administration of Justice: A Manual on Human*

Consequently, there is considerable police abuse, detainment, and prosecution under the COVID-19 pandemic measures in Sri Lanka.¹⁴ The excessive and abusive limitation during the early pandemic needs to be evaluated.¹⁵

The latest report from Amnesty International indicates that governments have established excessive restrictions on freedom of expression.¹⁶ The government's tendency to preserve proclaimed order, necessary measures, or even national security is within the point of arbitrariness, and such practice exists specifically in Sri Lanka. The Human Right Watch mentioned that the government had committed unlawful interference to strictly prevent someone from expressing their idea.¹⁷ Offenders are likely to be simply put on trial without the accountability measures needed, although to criticize a state is one of the civil rights.¹⁸ Citizens of a democratic state legitimately possess fundamental rights which protect

Rights for Judges, Prosecutors and Lawyers Professional Training Series 9 (Geneva and New York: United Nations Publications, 2003) at 674.

¹⁴ Human Rights Watch, "Sri Lanka: Police Abuses Surge Amid Covid-19 Pandemic", *Human Rights Watch* (6 August 2021), online: <<https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>>.

¹⁵ Amnesty International, "Covid-19: Global attack on freedom of expression is having a dangerous impact on public health crisis", *Amnesty International* (19 October 2021), online: <<https://www.amnesty.org/en/latest/news/2021/10/covid-19-global-attack-on-freedom-of-expression-is-having-a-dangerous-impact-on-public-health-crisis>>.

¹⁶ Amnesty International, "Governments and police must stop using pandemic as a pretext for abuse," *Amnesty International* (17 December 2020), online: <<https://www.amnesty.org/en/latest/news/2020/12/governments-and-police-must-stop-using-pandemic-as-pretext-for-abuse/>>; Luke Kemp, "The 'Stomp Reflex': When governments abuse emergency powers," *BBC* (28 April 2021), online: <<https://www.bbc.com/future/article/20210427-the-stomp-reflex-when-governments-abuse-emergency-powers>>.

¹⁷ *Disease pandemics and the freedom of opinion and expression*, by Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/44/49 (Human Rights Council, 2020).

¹⁸ The report indicates that the government of Sri Lanka tends to use the rule of law and neglect human rights maliciously, see *2021 Country Reports on Human Rights Practices: Sri Lanka*, by Bureau of Democracy, Human Rights, and Labour (Bureau of Democracy, Human Rights, and Labor, 2021).

them from expressing their idea.¹⁹ Therefore, people should not be curtailed from seeking, receiving, and imparting information. The Sri Lankan Government's vague legal justification needs to be evaluated. In the COVID-19 pandemic, a so-called state emergency still needs to be limited, especially proclaimed necessity.

Accordingly, this research aims to analyze whether the government's responses to opinions, critics, or any media format that embodies a form of speech are justified as an emergency measure against COVID-19. Then, this paper analyzes further its implication for freedom of speech. In addition, this research aims to challenge the government's necessary measurement of the limitation of freedom of expression in social media. This research limits cases of violation of freedom of expression during the pandemic mainly brought before the courts. However, some cases can be used based on judicial precedent. The recommendation would also be provided to improve the policies about the limitations on the freedom of expression, especially in the light of government emergency power.

This paper has two main parts of the discussion. The first part analyzes Sri Lanka's legal framework for freedom of expression and to what extent this framework has affected democracy in the country. The second part examines the government's trajectory through powers vested to these institutions against the potential to abuse power and limits the freedom of expression during the COVID-19 pandemic.

II. METHODS

The methodology was normative legal research that analyzed new regulations and cases related to freedom of expression in social media. The authors used a comparative legal research methodology to improve domestic law, focusing on comparing rules in different states, judicial decisions, and how legal problems were solved in practice. This study considered those detained for violating freedom of expression during COVID-19 and discussed how health priorities were treated in different

¹⁹ It applies to countries claiming to be democratic states, such as Sri Lanka. See *The Constitution of the Democratic Socialist Republic of Sri Lanka*, Article 14(1)(a).

states. Various book resources, such as Jayampathy Wickramaratne's on the fundamental rights in Sri Lanka, were used to analyze the topic.

III. ANALYSIS OF SRI LANKAN LEGAL FRAMEWORK ON FREEDOM OF EXPRESSION

The primary source of law, such as legislation, case laws, and legal doctrine, will be analyzed in this chapter. It will discuss the Sri Lankan Constitution provisions, which mainly provide freedom of expression, and the extent of its limitation. The government has a legitimate interest in protecting people from unlimited free speech. On the other hand, people have the right to freedom of expression to express their idea. Therefore, the legal framework is the way to measure the legality of such prosecution based on the limitation of freedom of expression. The statutory Acts such as Computer Crime Act and Penal Code are significant to justify the limitation on freedom of expression under exceptional circumstances. The restriction would not be permissible if its legality were not based on the legislation. The case laws are used to draw the guidelines that constitute a proportionate and necessary factor of lawful detention on the grounds of limitation of freedom of expression.

A. Article 14(1)(a)

Article 14(1)(a) of the Sri Lanka Constitution outlines that every citizen is entitled to freedom of expression, including publication. The article enables people to convey their idea in any form of expression. Mark Fernando J, with G. P. S. De Silva CJ and Gunasekera J agreeing, held that Article 14(1)(a) entrenches the freedom of speech and expression and guarantees all forms of speech and expression.²⁰ Freedom of expression embraces free speech, the sanctity of an individual's opinion, a free press, and the transmission and receipt of ideas and information.²¹ This means the protected subject of freedom of expression is extended to a certain extent.

²⁰ Jayampathy Wickramaratne, *supra* note 1.

²¹ Freedom of Opinion and Expression, Human Rights in New Zealand 2010.

In the case of *Karunathilaka v Dayananda Dissanayake*, the court claimed that the right to vote is one form of speech and expression protected under Article 14(1)(a).²² The said case states that freedom of expression can be done in many forms. Criticism is one of the forms of expression. The government's development of free expression can be seen in how the freedom of expression is responded to in certain states. Many states have responded to the case of critics of the government.

Similarly, the Government of Sri Lanka detained the perpetrator who criticized the government's action in battling the pandemic and *disinfodemic*.²³ The said measure is to warn people to pay attention to the context of the information they share. The advancement of freedom of expression has been developed through the search for truth, democratic self-government, and autonomy and self-fulfillment.²⁴ A scholar once said that 'the press, confined to truth, needs no other legal restraint; the public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press and its demoralizing licentiousness. The majority can only see the truth of people's information to a certain extent. The criminal prosecution of the person who criticizes the government is an instance where the freedom of speech is not well interpreted. The criticism is used to validate the curtailment of freedom of expression. The suspected student of the University of Peradeniya who was remanded with an allegation of spreading fake news can be considered a disposition to evaluate. It was just merely criticism of the Sri Lanka government.

The Criminal Investigations Department (CID) arrested the suspect for uploading false and malicious news on Covid-19 via his Facebook

²² *Karunathilaka and Another V Dayananda Dissanayake, Commissioner of Elections and Others*, 1998 Supreme Court.

²³ The term disinformation pandemic criticizes the state of a pandemic accompanied by a similar pandemic of disinformation spread in society. See Ashwanee Budoo-Scholtz, "Controls to manage fake news in Africa are affecting freedom of expression," *The Conversation* (May 2020), online: <<https://theconversation.com/controls-to-manage-fake-news-in-africa-are-affecting-freedom-of-expression-137808>>.

²⁴ *Ibid.*

account.²⁵ The police said that the student had uploaded information saying that Kotelawala Defense University has been separately arranged for VIP persons suspected of being positive Covid-19 virus. However, such criticism should be examined before it falls under fake news. The state must constantly cross-examine the nature of such a person to share the information. The case prosecution above was based on the circular issued by the Media Division of the Sri Lanka Police.²⁶ The notice states that strict legal action will be taken against those who spread/share false or malicious information, news or messages. The wording of the notice is likely to hold the people to express their opinion. It is because people may be skeptical about the idea they have in mind. The notice/circular somehow has weakened the state officials in critically analyzing the violation of freedom of expression.²⁷ The state cannot just detain citizens and prosecute those who disagree with the government.

B. Article 15(2)

In many jurisdictions, the Courts recognized that the democratic rationale for freedom of expression requires a limitation on defamation laws so that the freedom of speech about public and elected officials is not chilled by the potential liability.²⁸ The limitation on freedom of expression In Sri Lanka, the democratic rationale appears in the Constitution in Article 15. Article 15(2) provides that the exercise and operation of freedom of expression are limited based on interests of racial and religious harmony or parliamentary privilege, contempt of court, defamation, or incitement to an offense. According to the said provision, the freedom of expression limitation based

²⁵ Lakmal Sooriyagoda, "University student remanded for uploading fake news," *Daily News* (2 April 2020), online: <<https://www.dailynews.lk/2020/04/03/law-order/215679/university-student-remanded-uploading-fake-news>>.

²⁶ Vimukthi Vidarshana, "Sri Lanka government intensifies crackdown on social media," *World Socialist Web Site* (9 April 2020), online: <<https://www.wsws.org/en/articles/2020/04/09/medi-a09.pdf>>.

²⁷ Centre for Policy Alternatives, "Regarding Notice Issued by the Police Media Division," *Centre for Policy Alternatives* (7 April 2020), online: <<https://www.cpalanka.org/regarding-notice-issued-by-the-police-media-division>>.

²⁸ *Lange v Australian Broadcasting Corporation* (1997)

on fake news during a state emergency is not covered. Therefore, the state should amend this provision. Article 15(2) should have covered what extent of limitations that can be used to protect the freedom of expression during a state of emergency. The provision, therefore, needs to be amended by providing the phrase of necessary limitation in a democratic state.

Fake news will be subjected to the limitation of freedom of expression if such news produces a conflict of rights.²⁹ The permissible ground for restrictions listed in article 19(3) of ICCPR includes restrictions on public health or national security. The limitation should be demonstrated to be necessary for ensuring respect for the right and reputations of others. There are several provisions regarding the limitation of freedom of expression; Article 2 of the ICCPR provides freedom from discrimination, while Article 7 of the ICCPR and Article 37(a) of the CRC provide freedom from cruel, inhuman, or degrading treatment. These provisions are justifiable according to the restrictions concerned. The necessity of detention shall not breach another freedom protected by these provisions. Article 15 provides that the limitation of freedom of expression has been criticized on the ground that the permissibility of restrictions on fundamental rights, especially during a state emergency when they are most vulnerable, is unduly wide.³⁰

During the COVID-19 pandemic, the restriction, based on the criticism of the government, has raised the question of permissible purposes.³¹ The

²⁹ Carolina Pina, "True friends: legal limits of fake news," *LLYC* (March 2017), online: <<https://www.uno-magazine.com/number-27/true-friends-legal-limits-fake-news>>.

³⁰ *Reporting on Human Rights in Sri Lanka*, by Centre for Policy Alternatives & International Federation Journalists (Centre for Policy Alternatives & International Federation Journalists) at 35.

³¹ Sri Lanka authorities on detaining critics raise concern from the Sri Lankan BAR Association. See Colombo Page, "Sri Lanka Bar Association expresses concern over police move to monitor social media for fake news related to COVID-19", *Colombo Page* (12 June 2021), online: <http://www.colombopage.com/archive_21A/Jun12_1623517401CH.php>; Civicus, "Despite UN Concerns Sri Lanka Continues to Detain Critics, Arrest Protesters and Entrench Impunity", *Civicus* (13 July 2021), online: <<https://monitor.civicus.org/updates/2021/07/13/despite-un-concerns-sri-lanka-continues-detain-critics-arrest-protesters-and-entrench-impunity>>; Harindrini Corea, "In Sri Lanka, state-sponsored disinformation and suppression of dissent taint COVID-19 response", *Global Voices* (2 June 2022), online: <<https://>

necessity to detain someone for criticizing might be decided on a case-by-case basis. The circular published by the Media Division of Sri Lanka police said that strict action would be taken against those who criticize, point out minor shortcomings/failures, or scold/chastise state officials performing their duties, adversely impacting the freedom of expression, in particular expression of dissent. According to the circular, the order contains an inappropriate area limiting freedom of expression. For instance, the criticism statement is one area where government should not diminish them. Criticism would signify that government work is not under moral values and standards. Therefore, issuing such a circular is inconsistent with the limitation of freedom of expression given by Article 15(2) of the Constitution.

C. Sri Lankan Penal Code

Section 465 provides that anyone knowing causes transmitted through telegraph or tenders to any public officer with the intent to defraud, injure, or annoy any person or to spread any false rumor, which may be detrimental to the government or the interests or the public shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Section 466 provides that whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or any person, cancels, destroy, injures or defaces, or secretes or attempts to secrete any document which is or purports to be a will, or any valuable security, or any record, register, book, or document, shall be punished with imprisonment, of either description for a term which may extend to seven years, and shall also be liable to fine. Section 118 of the Penal Code provides an offense to attempt to bring the President into contempt through any contumacies, insulting or disparaging words, whether spoken or intended to be read, or by signs or visible representation. Section 120 outlines the excitement of feelings of disaffection to the government, hatred to or contempt of the

administration justice, and raising of discontent or disaffection are punishable offenses.³²

D. Section 6 of the Computer Crime Act

Section 6 of the Computer Crime Act deals with offenses committed against national security, the national economy, or public order causing a computer to perform a function. This offense can also include hating speech regulated under Section 3 ICCPR Act No.56 of 2007, which states, "No person shall propagate war or advocate national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence." Therefore, an act of hate speech can be penalized as a form of limitation to misuse of freedom of expression. It is in line with article 20 of ICCPR, where the international community prohibits hate speech that constitutes incitement. Besides, Budapest Convention regulates this offense regarding hate speech on an online platform such as YouTube or Facebook. In light of the violation of freedom of expression, the above provisions could not be the basis of the incident against the Peradeniya Student. The potential damages to the national economy and security might not be affected by criticism. However, the fake news subjected to the Peradeniya would not damage the national security and economy. If the allegation were fake news, then Section 6, which was claimed by the police to detain the student based on fake news, would be dismissed. Therefore, the limitation on the ground of section 6 is inconsistent with Article 15(2).

In relation to the limitation provided in Section 6 of the Computer Crime Act, the recipient's right is protected under Article 126. They could claim that the right to receive information has been violated. Section 6 of the CCA is relevant to the recipient as they become the party that could examine whether such information impacts national security or public health. According to Sri Lankan Jurisprudence Supreme Court, the

³² Furthermore, state police stated that the suspect could be arrested without a warrant. See Pamodi Waravita, "No warrant needed for 'fake news' arrests," *The Morning* (9 June 2021), online: <<https://www.themorning.lk/no-warrant-needed-for-fake-news-arrests>>.

recipient's freedom is included in freedom of speech and expression. A dissenting opinion in *Visuvalingam v Liyanage* stated that a regular reader of newspapers has *locus standi* to seek relief in an application under Article 126.³³ The right of the recipient to seek relief is not limited to emergency regulations.³⁴ In the case of *Fernando v The Sri Lanka Broadcasting*, freedom of speech is the right of one person to convey views, ideas, and information to others.³⁵ The recipient is deserved to get the idea which the recipient is essential to get the idea to exchange the idea and information. Regarding criticism, the criticism is permissible according to Article 14(1)(a). A personal opinion towards the government might not insult any individual but is subject to the state body.

During the pandemic, the people's right to receive information, regardless worthiness of such content, is still fundamental to our free society, especially to combat disinformation.³⁶ In the case of *Visuvalingam v Liyanage*, the Supreme Court held that public discussion was critical in a democracy. The court continued that public discussion demanded the recognition of the right of the person who is the recipient of information. In the case of *Red Lion Broadcasting*, the right to receive information include oral interviews, publications, tape recordings, photographs, and the like. The said legal opinion was conveyed to interpret Article 14(1)(a). The protection given by Article 14(1)(a) covers all kinds of expressions. Therefore, anyone could express their idea through any communication platform, including audio, audio-visual, or just visual form, according to Article 14(1)(a).

In *Joseph Perera v Attorney-General*, Sharvananda CJ observed; Freedom of speech and expression consists primarily not only in the liberty of the citizen to speak and write he chooses but in the liberty of the public to hear and read what it needs. This case can be a legal jurisprudence towards

³³ *VISUVALINGAM AND OTHERS v LIYANAGE AND OTHERS*, 1984 Supreme Court of Sri Lanka.

³⁴ *The Constitution of the Democratic Socialist Republic of Sri Lanka* Article 12 (1).

³⁵ *FERNANDO V THE SRI LANKA BROADCASTING CORPORATION AND OTHERS*, 1996 Supreme Court of Sri Lanka at 166-167.

³⁶ R C O Jordan, "Access to information is the cure of disinformation," *United Nations RCO Jordan*.

exercising the freedom of expression on the internet. People's opinions have their allocated space in a modern democracy. The fundamental principle involved here is the people's right to know.³⁷ The right of the people to hear is within the concept of freedom of speech.³⁸ In Joseph Perera's case, Sharvananda CJ states that freedom of speech and expression means the right to freely express one's convictions and opinions by word of mouth, writing, printing, pictures, or any other mode.³⁹ It includes expressing one's ideas through banners, posters, signs, and the freedom of discussion and dissemination of knowledge. It includes the freedom of the press and the propagation of ideas. According to this case, the criticism is not subjected to fake news as in the Peradeniya student case.

E. ICCPR Act Article 3(1)

Article 3(1) of ICCPR, which Sri Lanka has ratified, provides that No person shall propagate war or advocate national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. This provision is the limitation on freedom of expression based on hate speech. However, this provision can be applied as the limitation is necessary to prevent the state from a security threat. On the other hand, section 6 of CCA should be read with this act to be consistent with the limitation of freedom of expression according to Article 15(2) of the Sri Lanka Constitution. Section 6 of the CCA deals with internet users, meaning that internet users are likely to have less impact on national security. The limitation of freedom of expression based on necessity in a democratic state can be applied. Therefore, ICCPR Act Article 3(1) and Section 6 of the Computer Crime Act have legal validity in detaining someone for limitation of freedom of expression.

³⁷ *Joseph Perera alias Brutten Perera v The Attorney General and others*, 1987 Supreme Court.

³⁸ Tanja Porčnik, *Access to Information in Times of Crisis* (ResearchGate, 2020); Isaac Smith, "Say it again for the people in the back: Freedom to speak includes the freedom to hear," *Fire* (19 July 2017), online: <<https://www.thefire.org/say-it-again-for-the-people-in-the-back-freedom-to-speak-includes-the-freedom-to-hear/>>.

³⁹ Supreme Court, 1987 *Joseph Perera alias Brutten Perera v. The Attorney General and others*.

IV. FUTURE IMPACTS OF AUTHORITARIAN COVID-19 MANAGEMENT

The inability to manage the state's crisis would likely trigger a rise in political and social order and security instability. Such a manner, especially during the COVID-19 pandemic, threatens public trust.⁴⁰ The report suggests a growing trend of anti-government protests related to COVID-19 from authoritarian countries worldwide.⁴¹ Hence, regime change tendency would arise and significantly impact regime durability.⁴² The characteristics of an authoritarian state are the tendency to cover up, fabricate, manipulate, lie, cheat, and even lack conscience.⁴³ Those characteristics do not help improve public health. The government claims the country is democratic, but the measures above are vaguely justifiable.

Evidence suggests that there has been a rise in excessive supervision of freedom of speech in Sri Lanka for the past 11 years, especially on media and internet freedom.⁴⁴ In contrast, authoritarian measures in China during the COVID-19 pandemic effectively improved public health.⁴⁵ However,

⁴⁰ Thomas Carothers & David Wong, "Authoritarian Weaknesses and the Pandemic," *Carnegie Endowment for International Peace* (11 August 2020), online: <<https://carnegieendowment.org/2020/08/11/authoritarian-weaknesses-and-pandemic-pub-82452>>.

⁴¹ Carnegie Endowment for International Peace, "Global Protest Tracker" in *Global Protest Tracker* (Carnegie Endowment for International Peace, 2022).

⁴² Thomas Carothers & David Wong, *supra* note 40.

⁴³ Frederick M Burkle, Jr, "Declining Public Health Protections within Autocratic Regimes: Impact on Global Public Health Security, Infectious Disease Outbreaks, Epidemics, and Pandemics" (2020) 35:3 *Prehospital and Disaster Medicine* 237–246.

⁴⁴ *Freedom of Expression and the Internet in Sri Lanka*, by Centre for Policy Alternatives (Colombo: Centre for Policy Alternatives & Friedrich Naumann Stiftung für die Freiheit (FNST), 2010); Celia Davies, "Online Freedom of Expression in Sri Lanka," *Groundviews* (13 February 2015), online: <<https://groundviews.org/2015/02/13/online-freedom-of-expression-in-sri-lanka>>; *Media Freedom in Sri Lanka*, by Viranjana Herath, Incidence & Trends (Colombo: Free Media Movement Sri Lanka, 2021); Freedom House, "Freedom on the net 2021: Sri Lanka", *Freedom House* (2021), online: <<https://freedomhouse.org/country/sri-lanka/freedom-net/2021>>.

⁴⁵ Gao Jinghua & Zhang Pengfei, "China's Public Health Policies in Response to COVID-19: From an 'Authoritarian' Perspective" (2021) 9 *Frontiers in Public Health*, online: <<https://www.frontiersin.org/article/10.3389/fpubh.2021.756677>>.

its measures depend heavily on correct implementations, firm leadership, and good crisis management.⁴⁶

V. CONCLUSION

The Sri Lankan Constitution does not explicitly provide a clear definition of criminalization in the case of fake news. The state frequently referred to the limitation of freedom of expression based on fake news. However, no clear provision constitutes the limitation of freedom of expression. Freedom of expression becomes a problem when it produces a conflict of rights.⁴⁷ The rights conflict has become a highlight to justify the limitation on freedom of expression, and the legality of such allegations should be scrutinized. There is no firm reasoning that such circulation of information endangers public security. Thereupon, restricting the disclosure of information based on public security is also nonsense.⁴⁸ In addition, an act cannot be penalized unless it tends to undermine public order or incite the commission of an offense. What happened with Peradeniya Student, who criticized the quarantine center, did not fulfill any tendencies mentioned. Debate on public issues should be uninhibited, robust, and wide-open, which may well include vehement, caustic, unpleasant, and sharp attacks on the government.⁴⁹ The debate is permissible as long as the conversation does not constitute any limitation of freedom of expression, such as hate speech.

Article 19(3) of the ICCPR permits limitations on the rights recognized in article 19(2), which are; (1) provided by law and (2) necessary for respect of the rights or reputations of others, for the protection of national security, public order, or public health or morals.⁵⁰ The United Nations Special Rapporteur on Freedom of Opinion and Expression emphasized that States apply the test of legality, necessity, and proportionality to limit

⁴⁶ *Ibid.*

⁴⁷ Carolina Pina, *supra* note 29.

⁴⁸ Jayampathy Wickramaratne, *supra* note 1 at 621.

⁴⁹ *Ibid* at 624.

⁵⁰ Australian Human Rights Commission, "4 Permissible limitations of the ICCPR right to freedom of expression", *Australian Human Rights Commission*.

freedom of expression even in cases of public health threats.⁵¹ Therefore, the Sri Lankan Government should review the past prosecution. Amaratunga's case was compensated as his form of expression was proven not to affect national security and public health. Similarly, if the Peradeniya student critics were likely to have minimal impact on public health threats, he should be compensated. Therefore, the proclaimed threat to public order from freedom of expression is false. Limiting freedom of expression on any platform imposes greater danger on democratic societies. Excessive limitations would lead a state towards an authoritarian regime. In addition, the prohibition of criticism of the government might lead the people to express their idea in such an unlawful manner. Hence, Sri Lankan legal framework needs a clear evaluation of democratic, accountable, and robust legal supremacy.

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REFERENCES

- Ali Marwan Hab, "Kegentingan yang Memaksa dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang" (2017) 14:1 Jurnal Legislasi Indonesia 109–122.
- Amnesty International, "Covid-19: Global attack on freedom of expression is having a dangerous impact on public health crisis", *Amnesty International* (19 October 2021), online: <<https://www.amnesty.org/>

⁵¹ Ashwanee Budoo-Scholtz, *supra* note 23.

en/latest/news/2021/10/covid-19-global-attack-on-freedom-of-expression-is-having-a-dangerous-impact-on-public-health-crisis/>.

———, "Governments and police must stop using pandemic as a pretext for abuse," *Amnesty International* (17 December 2020), online: <<https://www.amnesty.org/en/latest/news/2020/12/governments-and-police-must-stop-using-pandemic-as-pretext-for-abuse/>>.

Aniket Kulkarni et al., "Role of government in public health issues" (2014) 3:2 *Journal of Scientific and Innovative Research* 244–250.

Arnold H Loewy, "Freedom of Speech as a Product of Democracy" (1993) 27:3 *University of Richmond Law Review* 427–439.

Ashwanee Budoo-Scholtz, "Controls to manage fake news in Africa are affecting freedom of expression," *The Conversation* (Mei 2020), online: <<https://theconversation.com/controls-to-manage-fake-news-in-africa-are-affecting-freedom-of-expression-137808>>.

Australian Human Rights Commission, "4 Permissible limitations of the ICCPR right to freedom of expression", *Australian Human Rights Commission*.

Bureau of Democracy, Human Rights, And Labor, *2021 Country Reports on Human Rights Practices: Sri Lanka*, by Bureau Of Democracy, Human Rights, And Labor (Bureau of Democracy, Human Rights, and Labor, 2021).

Carnegie Endowment for International Peace, "Global Protest Tracker" in *Global Protest Tracker* (Carnegie Endowment for International Peace, 2022).

Centre for Policy Alternatives, *Freedom of Expression and the Internet in Sri Lanka*, by Centre for Policy Alternatives (Colombo: Centre for Policy Alternatives & Friedrich Naumann Stiftung für die Freiheit (FNST), 2010).

Carolina Pina, "True friends: legal limits of fake news," *LLYC* (March 2017), online: <<https://www.uno-magazine.com/number-27/true-friends-legal-limits-fake-news/>>.

Celia Davies, "Online Freedom of Expression in Sri Lanka," *Groundviews* (13 February 2015), online: <<https://groundviews.org/2015/02/13/online-freedom-of-expression-in-sri-lanka/>>.

Centre for Policy Alternatives, "Regarding Notice Issued by the Police Media Division," *Centre for Policy Alternatives* (7 April 2020), online: <<https://www.cpalanka.org/regarding-notice-issued-by-the-police-media-division/>>.

———, *Reporting on Human Rights in Sri Lanka* (Centre for Policy Alternatives (CPA) & International Federation Journalists (IFJ)).

Civicus, "Despite UN Concerns Sri Lanka Continues to Detain Critics, Arrest Protesters and Entrench Impunity," *Civicus* (13 July 2021), online: <<https://monitor.civicus.org/updates/2021/07/13/despite-un-concerns-sri-lanka-continues-detain-critics-arrest-protesters-and-entrench-impunity/>>.

Colombo Page, "Sri Lanka Bar Association, expresses concern over police move to monitor social media for fake news related to COVID-19", *Colombo Page* (12 June 2021), online: <http://www.colombopage.com/archive_21A/Jun12_1623517401CH.php>.

D Amaratunga et al., "The COVID-19 outbreak in Sri Lanka: A Synoptic analysis focusing on trends, impacts, risks, and science-policy interaction processes" (2020) 8 *Progress in disaster science*, online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7836425/>>.

European Council, "An international treaty on pandemic prevention and preparedness," *Council of the European Union*, online: <<https://www.consilium.europa.eu/en/policies/coronavirus/pandemic-treaty/>>.

Frederick M Burkle, Jr, "Declining Public Health Protections within Autocratic Regimes: Impact on Global Public Health Security, Infectious Disease Outbreaks, Epidemics, and Pandemics" (2020) 35:3 *Prehospital and Disaster Medicine* 237–246.

Freedom House, "Freedom on the net 2021: Sri Lanka", *Freedom House* (2021), online: <<https://freedomhouse.org/country/sri-lanka/freedom-net/2021>>.

Gao Jinghua & Zhang Pengfei, "China's Public Health Policies in Response to COVID-19: From an 'Authoritarian' Perspective" (2021) 9 *Frontiers in Public Health*, online: <<https://www.frontiersin.org/article/10.3389/fpubh.2021.756677>>.

Harindrini Corea, "In Sri Lanka, state-sponsored disinformation and suppression of dissent taint COVID-19 response", *Global Voices* (22 June 2022), online: <<https://globalvoices.org/2022/06/22/in-sri-lanka-state-sponsored-disinformation-and-suppression-of-dissent-taint-covid-19-response/>>.

Human Rights Watch, "Covid-19 Triggers Wave of Free Speech Abuse", *Human Rights Watch (HRW)* (11 February 2021), online: <<https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>>.

———, "Sri Lanka Events of 2021", *Human Rights Watch (HRW)* (March 2021), online: <<https://www.hrw.org/world-report/2022/country-chapters/sri-lanka>>.

———, "Sri Lanka: Police Abuses Surge Amid Covid-19 Pandemic", *Human Rights Watch (HRW)* (6 August 2021), online: <<https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>>.

Human Rights Council, *Disease pandemics and the freedom of opinion and expression*, by 1-19, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/44/49 (Human Rights Council, 2020).

International Commission of Jurists, "Sri Lanka: COVID-19 restrictions should not undermine freedom of expression", *ICJ* (9 February 2021), online: <<https://www.icj.org/sri-lanka-covid-19-restrictions-should-not-undermine-freedom-of-expression/>>.

Isaac Smith, "Say it again for the people in the back: Freedom to speak includes the freedom to hear," *Fire* (19 July 2017), online: <<https://www.thefire.org/say-it-again-for-the-people-in-the-back-freedom-to-speak-includes-the-freedom-to-hear/>>.

Jayampathy Wickramaratne, *Fundamental Rights in Sri Lanka* (Stamford Lake Publication, 2006).

Jonathan Klaaren, "The Judicial Role in Defining National Security and Access to Information in South Africa" (2015) 11:3 *Democracy & Society* 275–297.

Joelle Grogan, "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis" (2022) *Hague Journal on the Rule of Law*.

Lakmal Sooriyagoda, "University student remanded for uploading fake news," *Daily News* (2 April 2020), online: <<https://www.dailynews.lk/2020/04/03/law-order/215679/university-student-remanded-uploading-fake-news>>.

Luke Kemp, "The 'Stomp Reflex': When governments abuse emergency powers," *BBC* (28 April 2021), online: <<https://www.bbc.com/future/article/20210427-the-stomp-reflex-when-governments-abuse-emergency-powers>>.

Noor Fariyah Mohd Noor, "Freedom of Speech and the Pandemic" (2020) 5:21 *International Journal of Law, Government and Communication* 285–297.

Office of the High Commissioner for Human Rights & International Bar Association, "The Right to Equality and Non-Discrimination in the Administration of Justice" in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* Professional Training Series 9 (New York and Geneva: United Nations Publications, 2003).

Pamodi Waravita, "No warrant needed for 'fake news' arrests," *The Morning* (9 June 2021), online: <<https://www.themorning.lk/no-warrant-needed-for-fake-news-arrests/>>.

RCO Jordan, "Access to information is the cure of disinformation," *United Nations RCO Jordan*, online: <<https://www.un.org/en/coronavirus/access-information-cure-disinformation>>.

Tanja Porčnik, *Access to Information in Times of Crisis* (ResearchGate, 2020).

Thomas Carothers & David Wong, "Authoritarian Weaknesses and the Pandemic," *Carnegie Endowment for International Peace* (11 August 2020), online: <<https://carnegieendowment.org/2020/08/11/authoritarian-weaknesses-and-pandemic-pub-82452>>.

United Nations Human Rights Office of the High Commissioner, "COVID-19 pandemic exposes repression of free expression and right to information worldwide, UN expert says", *United Nations* (10 July 2020), online: <<https://www.ohchr.org/en/press-releases/2020/07/covid-19-pandemic-exposes-repression-free-expression-and-right-information>>.

Vimukthi Vidarshana, "Sri Lanka government intensifies crackdown on social media," *World Socialist Web Site* (9 April 2020), online: <<https://www.wsws.org/en/articles/2020/04/09/medi-a09.pdf>>.

Viranjana Herath, *Media Freedom in Sri Lanka*, by Viranjana Herath, Incidence & Trends (Colombo: Free Media Movement Sri Lanka, 2021).

Zafar Abbas & Muhammad Zubair, "Freedom of Expression under Censorship is a threat to Democracy" (2020) 15:1 *The Dialogue* 18–26.

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