



HOW TO STAY OUT OF JAIL

WHILE REPORTING ON THE CRISIS

Freedom of speech and expression is a fundamental right enshrined in Sri Lankan law. These freedoms are not absolute, however, and at the moment, the government has taken upon itself broad powers that could have a very limiting effect on the media. Knowing the law, and the possible consequences of your actions, is necessary to keep yourself from incurring penalties, even criminal liability, for the material you publish.

Did you know?

The Constitution also protects your views relating to political opinion. The exclusion or suppression of anti-government news and views in newspapers – even privately owned and controlled – is a denial of the right to equal treatment AND is considered discriminatory.

Understanding your rights

The Supreme Court observed that freedom of speech and expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures, or any other mode. It includes freedom of the press and propagation of ideas

(Joseph Perera v. Attorney General 1992 1 SLR 19)



The scope of this right is extended to recognize the following:

Freedom of the Press

Right to seek and receive information

Right to obtain & record information

Right to impart information and ideas

Can media freedom be restricted?

Restrictions of the Freedom of Expression and publication **are permitted** under the Constitution, as specified through the laws of Sri Lanka. These are **LAWFUL RESTRICTIONS** against the freedom of expression and **cannot be evaded for any reason.**

Below are occasions when the government can lawfully restrict freedom of expression:

Defamation or incitement to an offence

In the interest of racial and religious harmony

Parliamentary Privilege

Contempt of Court

Public order and the protection of public health and morality

Meeting of just requirements of the general welfare of a democratic society

In the application to the tri forces (Army, Navy and Air Force), to restrict in the interest of the proper discharge of their duties

National Security



As you can see, these exceptions to freedom of speech are quite broad, and open to interpretation. This potentially gives the government a lot of control over the media.

Laws to keep in mind

The law allows the executive some degree of flexibility, especially on matters relating to national security and law enforcement. This legal discretion can be abused, since the law does not set limits on the powers of the executive in this regard. Therefore, the law can be utilized to restrict any dissent against the State, which can be bad news for media freedom.



The following are certain key laws that you should keep in mind:



Public Security Ordinance No.25 of 1947, as amended ("PSO"), and Emergency Regulations.

The PSO empowers the President to declare emergency regulations when he deems it to be in the interest of public security and the preservation of public order, and for the maintenance of supply and services essential to the life of the community. Once declared (through the publication in the Gazette), these regulations prevail over other laws of the State and **cannot be questioned in any court of law.**

Emergency regulations are temporary and last between two and four weeks, unless renewed through the procedure laid down in the PSO. Once the regulations are published, they are applicable to all, and may contain certain broad measures to restrict freedom of expression and speech, which could adversely affect the media. Noncompliance with the Emergency Regulations generally attracts criminal liability. Emergency law was declared on May 6, 2022 and extended until May 20, 2022. Currently, there are no emergency laws in force.



Penal Code

The Penal Code contains the laws relating to offenses and punishments and is a general law applicable to everyone. The Penal Code prescribes several "lawful restrictions" that can limit freedom of expression and speech as recognized by the Constitution. One of the commonly triggered provisions in the Penal Code that restricts media freedom is Section 120, which makes it an offence to "excite or attempt to excite disaffection" against the President and State.



Contempt of Court (Constitution)

“Contempt of Court” in simple terms refers to the disobedience of an order of the court. It can also be interpreted to refer to any conduct tending to obstruct or interfere with the orderly administration of justice. Public confidence in the system of administration of justice and the independence of the judiciary is considered important for any democratic process.

If any media under any form is perceived to attempt to interfere with the judiciary resulting in a loss of confidence in the administration of justice, it can attract a “contempt of court” charge. Article 105(3) of the Constitution empowers the Supreme Court and Court of Appeal to deal with matters of Contempt of Court.



Parliament (Powers and Privileges) Act No.21 of 1953, as amended.

The Constitution recognizes the restriction on freedom of speech and expression “in relation to parliamentary privilege.” For example, the Act empowers both the Parliament and the Supreme Court to punish any statements or actions that are deemed to interfere with the work of Parliament. This includes the publication of a work or statement that was expunged from the official report of Parliamentary Debates (HANSARD) and the publication of any statement that is deemed defamatory of the proceedings, the character of Parliament, or any member in respect to their conduct as a member of Parliament.



International Covenant on Civil and Political Rights Act No.56 of 2007

This Act was introduced to help implement articles in the International Covenant on Civil and Political Rights (ICCPR) that have not been operationalized through the Constitution or legislative measures. The Act protects a person's right to be recognized as a person before the law, the right to a fair trial, the rights of a child, the right to take part in Government, and the right to equal access to public services. In addition, it contains safeguards against any “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”



Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979 (as amended) [“PTA”]

The PTA is a special law enacted to deal with terrorism and terrorist threats in Sri Lanka and was intended to be a temporary provision. However, the Act has not been suspended or abolished and remains in force. Section 2(h) of the PTA is directly applicable to Media and Journalists.



Here are some things to keep in mind!



HELPFUL TIPS!

Arbitrary restrictions or violations of your fundamental rights protected under the Constitution by any public officer or public institution can be challenged in the Supreme Court. Lawful restrictions, however, cannot be challenged.

Article 11 of the Constitution (freedom from torture) is an absolute right guaranteed to every person and cannot be restricted in any manner for any reason, including for any “lawful restrictions” as mentioned above.

You are also entitled to make a complaint to the Human Rights Commission of Sri Lanka against violations of your fundamental rights, but these decisions are not enforceable.

A violation or breach of your rights can only be assessed based on the circumstances of each case. It is difficult to establish detailed rules with specificity to cover all aspects.

IN CIRCUMSTANCES WHERE YOU FEEL THAT YOUR RIGHTS ARE BEING VIOLATED, PLEASE SEEK LEGAL ADVICE AND REPRESENTATION.

HELP LINE

Legal Aid Commission and Centers:

https://www.gic.gov.lk/gic/index.php?option=com_org&Itemid=4&id=8&task=org&lang=en

Bar Association of Sri Lanka:

0773723823 (Prasad Perera AAL)

Human Rights Commission of Sri Lanka:

<https://www.hrcsl.lk/home/> (Hotline - 1996)

Emergency Ambulance Services:

Hotline - 1990

For mental health support:

CCC Foundation: Helpline - 133

NIMH: Helpline - 1926



How can you protect yourself from the risk of arrest?

If you are a journalist, always wear your media badge and vest when working at a public protest site. Ensure that your ID is always visible and around your neck.

If you are a citizen journalist, remove yourself from any gatherings that have a likelihood of turning violent.

DO NOT PARTICIPATE IN ANY VERBAL OR PHYSICAL ACTS THAT CAN BE CONSIDERED AS VIOLENT OR INCITING VIOLENCE!

Do not obstruct any public official from carrying out their duties for any reason.

Be prepared to contact someone if you get arrested (plan ahead, keep a family member or colleague on speed dial for emergencies, provide the number of a lawyer who can be contacted on your behalf if you are arrested).

Consider downloading privacy apps such as KeepSafe on your device to store all information so that third parties cannot access and delete confidential information and sources that you may obtain when covering topics or incidents.

Always ensure that your coverage is based on facts. Re-read your content to ensure that the information to be disseminated is within the boundaries of what is considered "lawful" as mentioned above. Working within the parameters of the laws that have been listed may mitigate your risks of arrest and detention.

