

**PROPOSAL TO THE PUBLIC REPRESENTATIONS
COMMITTEE:
BILL OF RIGHTS 2016**

Introduction

The discourse on drafting a new Constitution in Sri Lanka has created hopes for a fresh beginning. The “Bill of Rights 2016” enclosed herewith is an outcome of a discourse with similar hopes among the final year undergraduates of the Faculty of Law, University of Colombo. It is by strengthening the rights and liberties of the people can the State ensure a meaningful realization of the overall vision of the Constitution. The purpose of this endeavour is to propose a means to empower the people to transform the aspirations of a nation into a lived reality.

The provisions on fundamental rights contained in the proposal have been finalized after deliberations and debates among the students on their application, the possible consequences and the context of the application. The Chapter on Fundamental Rights and Freedoms in the draft Constitutional Bill of Sri Lanka in 2000 was used as the basis. References have been made to the international instruments on Human Rights and also the contemporary and vibrant Constitutions of other countries in the process of drafting.

FUNDAMENTAL RIGHTS AND FREEDOMS

Inherent right to life

Every person has an inherent right to life.

Right to Humane Treatment

- (1) Every person has the right to have his physical, mental, and moral integrity respected.¹
- (2) A person shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation, &c.

- (1) A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.
- (2) Save as otherwise provided by law, a person shall not be arrested except under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court in accordance with procedure prescribed by law.
- (3) Any person arrested shall be informed, in a language which is he or she understands, of the reason for the arrest and of the person's rights under paragraphs (4), (5) and (6) of this Article.
- (4) Any person arrested shall have the right to remain silent, to be informed immediately of the right to remain silent and of the consequences of not remaining silent.²

¹ Article 5, American Convention on Human Rights 1969.

² Article 35 (1), South African Constitution 1996.

- (5) Any person arrested shall have the right to communicate with any relative or friend of the person's choice, and, if the person so requests, such person shall be afforded means of communicating with such relative or friend.
- (6) Any person arrested shall have the right to consult and retain an attorney-at-law and such attorney-at-law shall be afforded all reasonable facilities by the State.
- (7) Any person arrested shall not be detained in custody or confined for a longer period than under all the circumstances of the case is reasonable and shall, in any case, be brought before the judge of a competent court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to such judge, and a person shall not be detained in custody beyond such period except upon, and in terms of, the order of such judge made in accordance with procedure established by law.
- (8) Any person detained in custody or confined who is entitled, under the provisions of any law, to be released on bail or on the person executing a bond, shall be so released.
- (9) Any person suspected of committing an offence shall be charged or indicted or released without unreasonable delay, having regard to the facts and circumstances of the case.
- (10) Any person charged with or indicted for an offence shall be entitled to be heard in person or by an attorney-at-law of the person's own choosing and shall be so informed by the judge.
- (11) (a) Any person charged with or indicted for an offence shall be entitled to be tried –
- i. without undue delay ;
 - ii. at a fair trial ;
 - iii. by a competent court ; and
 - iv. subject to sub-paragraph (b) of this paragraph, at a public hearing.
- (b) A judge may, in the judge's discretion, whenever the judge considers it necessary, in proceedings relating to sexual matters or where the interests of juveniles so require or in the interests of national security or public order necessary in a democratic society or in the interests of order and security within the precincts of such court, exclude therefrom, persons who are not necessary for the purposes of those proceedings.

(12) (a) Every person shall be presumed innocent until the person is proved guilty.

(b) Anything contained in any law shall not be held to be inconsistent with sub-paragraph (a) of this paragraph to the extent that such law imposes upon an accused the burden of proving particular facts.

(13) A person shall not be compelled to testify against himself or herself or to confess guilt.

(14) (a) A person shall not be held guilty of, or punished for, an offence on account of any act or omission which did not, at the time of such act or omission, constitute an offence, except for any act or omission which, at the time it was committed, was criminal according to the principles of public international law.

(b) Any penalty more severe than the penalty in force at the time when an offence was committed shall not be imposed for such offence.

(15) Any person who has been convicted or acquitted of an offence in accordance with law by a competent court shall not be liable to be tried for the same offence save on the order of a court exercising appellate or revisionary jurisdiction.

(16) (a) No law shall be made for capital punishment.

(b) The arrest, holding in custody, detention or other deprivation of personal liberty of a person –

(i) pending investigation or trial shall, if not unreasonable having regard to the circumstances, not constitute punishment;

(ii) by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act or other such law as may be enacted in substitution therefore, shall not be a contravention of this paragraph.

(17) (a) Any restrictions shall not be placed on the rights declared and recognized by paragraph (4) paragraph (10), items (ii) and (iii) of sub-paragraph (a) of paragraph

(11), paragraph (13), paragraph (14), paragraph (15) and paragraph (16) of this Article.

(b) Any restrictions shall not be placed on the rights declared and recognized by paragraphs (1), (2), (3), (5), (6), (7), (8), (9) items (i) and (iv) of sub-paragraph (a) of paragraph (11) and paragraphs (12) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Right to equality

- (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) A citizen shall not be discriminated against one or multiple grounds, including the grounds of ethnicity, race, religion, belief, language, caste, gender, sex, sexual orientation, age, disability, political or other opinion, social origin, health status, economic and social status, place of birth, mode of acquisition of citizenship, marital status and maternity.
- (3) There shall be equal access and the participation of women and men in public employment and to the functions in the domain of the civil, political, economic, cultural and social life.³
- (4) A person shall not, on the grounds of ethnicity, race, religion, belief, language, caste, gender, sex, sexual orientation, age, disability, political or other opinion, social origin, health status, economic and social status, place of birth, mode of acquisition of citizenship, marital status and maternity or any one or multiple such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of such person's own religion.
- (5) Anything in this Article shall not prevent special measures being taken by law, subordinate legislation or executive action where necessary for the sole purpose of the protection or advancement of disadvantaged or underprivileged individuals or groups

³ Article 6, Madagascar Constitution 2010.

including those that are disadvantaged or underprivileged because of ethnicity, gender, sex, age or mental or physical disability.

Freedom of movement

- (1) Every person lawfully resident within the Republic is entitled to the freedom of movement within the Republic and of choosing such person's residence within the Republic.
- (2) Every person shall be free to leave the Republic.
- (3) Every citizen shall be entitled to return to the Republic.

Right to privacy

No one shall be subjected to arbitrary interference with his or her privacy, family, home, communication or correspondence, nor to attacks upon his honour and reputation.⁴

Freedom of thought, conscience and religion⁵

- (1) Everyone shall have the right to freedom of thought, conscience and religion.
- (2) This right shall include freedom to have or to adopt a religion or belief of his choice, and no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- (3) Everyone shall have the freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

⁴ Article 12, UDHR.

⁵ Article 18, ICCPR 1966.

Freedom of speech and expression

- (1) Every person is entitled to the freedom of speech and expression including the freedom to dissent. The right includes freedom of press and publication, the freedom to express opinions and to seek and impart information and ideas in any form.
- (2) The right in subsection (1) does not extend to propaganda for war, incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.⁶

Right to information⁷

Every citizen shall have the right to seek information on any matters of concern to her/him or the public.

Provided that nothing shall be deemed to compel any person to provide information about which confidentiality is to be maintained according to law.

Freedom of peaceful assembly and freedom of association

- (1) Every person is entitled to the freedom of peaceful assembly, the right to present petitions to authorities, and the right to have the receipts of such petitions acknowledged.⁸
- (2) Every person is entitled to the freedom of association.

Right to enjoy and promote culture and use of language

Every citizen is entitled alone or in association with others to enjoy and promote such citizen's own culture and to use such citizen's own language.

⁶ Article 16 (2), South African Constitution 1996.

⁷ Article 27, Nepal Constitution 2015.

⁸ Article 33, Switzerland Constitution 1999.

Freedom to engage in any lawful trade, occupation, profession, business or enterprise

- (1) Every citizen is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise. The practice of a trade, occupation or profession may be regulated by law.
- (2) This right is subject to reasonable restrictions in relation to,
 - (a) the professional, technical, academic, financial, and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of the person entitled to such fundamental right ; and
 - (b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise, whether to the exclusion, complete or partial, of citizens or otherwise.
- (3) Where lack of proficiency of a national or any other language impedes the exercise of this right, reasonable time shall be provided for the citizens to acquire sufficient knowledge of that language.⁹

Education¹⁰

Every citizen shall have the right to compulsory and free education up to the age of fourteen, and free education up to the secondary level. Tertiary education shall be accessible to all citizens, on the basis of merit within the available resources.

Environment¹¹

- (1) Everyone has the right to an environment that is not harmful to their health or well-being.

⁹ Article 11 (2) (b) and (c), Draft Constitutional Bill of Sri Lanka 2000. The sub-paragraphs of the equality clause has been placed under 'freedom to occupation'.

¹⁰ Article 31, Nepal Constitution 2015.

¹¹ Article 24, South African Constitution 1996.

(2) Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Right to ownership of property

(1) Every citizen is entitled to own property alone or in association with others subject to the preservation and protection of the environment and the rights of the community.

(2) Any person shall not be deprived of the person's property except as permitted by law.

(3) Any property shall not be compulsorily acquired or requisitioned save for a clearly described public purpose or for reasons of public utility or public order and save by authority of law which provides for the payment of fair compensation.

Special rights of children

(1) Every child has the right –

(a) to a name from birth;

(b) to be protected from maltreatment, neglect, abuse or degradation; and

(c) to have an attorney-at-law assigned to the child by the State, and at State expense, in criminal proceedings affecting the child, if substantial injustice would otherwise result.

(2) Every child has the right –

(a) to family care or parental care or to appropriate alternative care when removed from the family environment; and

(b) to basic nutrition, shelter, basic health care services and social services.

(3) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (2).

(4) In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interest of the child shall be of paramount importance.

(5) Every child shall have the right to grow up in an environment protected from the negative consequences of the consumption of addictive substances harmful to the health of the child and, to the extent possible, from the promotion of such substances.

(6) A child shall not be employed in any hazardous activity.

(7) The rights recognized by this Article shall be in addition to any other right to which a child is entitled as a citizen or person under this Chapter.

(8) For the purposes of this Article "child" means a person under the age of eighteen years.

Freedom from forced labour

(1) A person shall not be required to perform forced labour.

(2) For the purposes of this Article, forced labour does not include -

(a) any labour required as a result of a lawful sentence or order of a competent court;

(b) any services of a military character, or in the case of a person who has conscientious objections to service as a member of the armed forces, any labour which that person is required by law to perform in place of such service;

(c) any service that may be reasonably required in the event of an emergency or calamity that threatens the life and well-being of the community; or

(d) any labour reasonably required as a part of normal civil obligations.

Right to safe conditions of work

(1) Every person has the right to safe conditions of work.

(2) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (1).

Social rights

(1) Every citizen has the right to have access to –

(a) health-care services including emergency medical treatment;

(b) sufficient food;

(c) clean water and hygiene;¹² and

(d) appropriate social assistance.

(2) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (1).

(3) Every person, as a consumer, has the right to goods and services of reasonable quality and to the protection of their health and safety.¹³

¹² Article 35 (4) Nepal Constitution 2015.

¹³ Article 46 (1) (a) and (c), Kenya Constitution 2010.

(4) A person shall not be evicted from the person's home or have the home demolished, except as permitted by law.

Restrictions on Fundamental Rights

- (1) Any restrictions shall not be placed on the exercise of the right to equality other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or the protection of public health or for the purpose of securing due recognition and respect for the rights and freedoms of others.
- (2) Any restrictions shall not be placed on the exercise of the right of freedom of movement other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security or public order or national economy or 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 for the extradition of persons from the Republic.
- (3) Any restrictions shall not be placed on the exercise of the right to privacy other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or national economy or 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 for the enforcement of a judgment or order of a competent court.
- (4) Any restrictions shall not be placed on the rights declared and recognized by paragraph (3) of the Article on freedom of thought, conscience and religion other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, or for the purpose of securing due recognition and respect for the rights and freedoms of others.
- (5) Any restrictions shall not be placed on the right of freedom of speech and expression other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, the protection of public health or morality, racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement of an offence or for the purpose of securing due recognition and respect for the rights and freedoms of others.

- (6) Any restrictions shall not be placed on the exercise of the right of freedom of peaceful assembly and the right to petition other than such restrictions prescribed by any law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, the protection of public health or for the purpose of securing the due recognition and respect for the rights and freedoms of others.
- (7) Any restrictions shall not be placed on the exercise of the right of freedom of association other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, national economy or for the purpose of securing due recognition and respect for the rights and freedoms of others.
- (8) Any restrictions shall not be placed on the exercise of the right to enjoy and promote culture and use of language other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others.
- (9) The exercise and operation of the fundamental rights declared and recognized by Articles on equal protection of law, Freedom from arbitrary arrest, detention and punishment, freedom of movement, right to privacy, manifestation of religion, freedom of speech and expression, right of freedom of peaceful assembly and freedom of association shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them.

International obligations

The provisions of this Chapter shall be interpreted in light of the international obligations Sri Lanka has accepted by way of ratification.

Existing written law and unwritten law¹⁴

- (1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
- (2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

Commission for the reform of personal laws

- (1) Within three months of the commencement of the Constitution, the President shall establish a Commission (in this Article referred to as the "Commission") consisting of a minimum nine members, appointed by the President on the recommendation of the Constitutional Council, for the purpose of proposing reforms to personal laws with the objective of making such laws consistent with the provisions of this Chapter.
- (2) The President on the recommendation of the Constitutional Council shall appoint one member of the commission to be the Chairperson.
- (3) In appointing member to the Commission the following shall be taken in to consideration:
 - a) All members should have distinguished themselves in the field of law, human rights or any other relevant field.
 - b) Emphasis shall be placed on ensuring female representation, in particular, representation of those affected by the functioning of the personal laws.
 - c) Good faith effort shall be made to ensure that the membership of the Commission, to the maximum extent possible, is inclusive and diverse, particularly in terms of religion, ethnicity, race and geographical area.
- (4) The Commission shall publish its report and submit the same to the President within a period of two years from the date of its establishment. The President shall within six months cause such report to be placed before Parliament.
- (5) No changes to the report of the Commission shall be made after publication.

¹⁴ Article 26, Constitution of the People's Republic of Bangladesh 1972. Post enactment judicial review of legislation needs to be recognized to give full effect to this provision.

Remedy for the infringement of fundamental rights by State action

(1) Subject to paragraphs (2) and (3) of this Article, every person shall be entitled to apply to the Supreme Court as provided by (the respective) Article or to the Provincial High Court as provided by (the respective) Article, in respect of the infringement or imminent infringement, by State action, including executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter.

(2) Where the person aggrieved is unable or incapable of making an application under (the respective) Article or (the respective) Article by reason of physical, social or economic disability or other reasonable cause, an application may be made on behalf of such a person, by any relative or friend of such person, if the person aggrieved raises no objection to such application.

(3) An application under this Article may be made within six months thereof, in respect of any group or class of persons affected, in the public interest, by any person in that group or class or by any incorporated or unincorporated body of persons, acting bona fide.

(4) For the purposes of this Article and (other respective) Articles, "State action" does not include legislative or judicial action.