

Sri Lanka :

STATE OF
**HUMAN
RIGHTS**

2018 - 2020



LAW & SOCIETY TRUST



SRI LANKA :
STATE OF HUMAN RIGHTS
2018 – 2020



Law & Society Trust

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ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
AI	Amnesty International
AIIB	Asian Infrastructure Investment Bank
CAT	Convention against Torture
CBSL	Central Bank of Sri Lanka
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CMC	Colombo Municipal Council
CRC	Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CWC	Ceylon Workers Congress
DHS	Demographic and Health Survey
DWC	Democratic Workers Congress
EPF	Employee Provident Fund
ETF	Employee Trust Fund
FLFP	Female Labour Force Participation
FR	Fundamental Rights
FTZ	Free Trade Zone
GBV	Gender-Based Violence
GC	General Comment
GMOA	Government Medical Officers' Association
GoSL	Government of Sri Lanka

HRCSL	Human Rights Commission of Sri Lanka
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICU	Intensive Care Unit
IGP	Inspector General of Police
ILO	International Labour Organisation
IPPF	International Planned Parenthood Federation
IS	Islamic State
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning/Queer
LJEWU	Lanka Jathika Estate Workers Union
LTTE	Liberation Tigers of Tamil Eelam
MCC	Millennium Challenge Corporation
MMDA	Muslim Marriage and Divorce Act
MPLRAG	Muslim Personal Law Reform Action Group
NCD	Non-Communicable Diseases
NUW	National Union of Workers
OBGYN	Specialist Obstetrician/Gynecologist
OECD	Organisation for Economic Co-operation Development
OHCHR	Office of the High Commissioner on Human Rights
OIC	Officer in Charge

PAC	Post-Abortion Care
PARL	Peoples Alliance for the Right to Land
PLC	People's Land Commission
RDHS	Regional Director of Health Services
SAITM	South Asia Institute of Technology and Medicine
SC	Supreme Court
SLBFE	Sri Lanka Bureau of Foreign Employment
SLMC	Sri Lanka Medical Council
SRH	Sexual and Reproductive Health
STI	Sexually Transmitted Infections
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UPF	Upcountry People's Front
URP	Urban Regeneration Project
WHO	World Health Organisation
WIN	Women in Need

OVERVIEW OF THE STATE OF HUMAN RIGHTS IN 2018-2020

*Dr Sakuntala Kadirgamar**

This edition of the State of Human Rights spans the years 2018-2020. This review over a three-year period has some advantages as it does more than document events, initiatives and happenings but it has the opportunity to track some movements – both improvements and slippages in the respective areas of judicial interpretation of fundamental rights. It also enables tracking the evolution and expansion in the key areas of civil, social and economic rights. In this respect, this publication specifically tracks the rights to religious freedoms, women’s rights, and the rights to health, housing and education and the judicial interpretation of these rights.

While constitutions may list an array of human rights in their recognition of core fundamental rights these, fundamental rights and human rights are not self-enforcing. They require the support of independent and imaginative courts and the government’s cooperation to make them a living reality. They

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also require a rights-conscious community to challenge state actions when required and to canvas those rights in the courts.

In looking back on a decade of judicial interpretation of fundamental rights in Sri Lanka, in the years 2018, 2019 and 2020 the courts have reached out for higher standards. The analysis of jurisprudence on fundamental rights for 2018, 2019 and 2020 suggests that the Sri Lankan Supreme Court has been robust, progressive and responsive in its judicial interpretation. The Court has strengthened its interpretation of rights recognised explicitly in the Constitution and has also elaborated on their scope. In other instances, the Court has recognised new aspects of previously recognised implicit rights, such as environmental rights and rights of persons with disabilities. Moreover, on a few occasions, the Court has offered explanations on foundational and conceptual aspects of judicial interpretation such as the relevance of the right to life in Sri Lanka and the application of the concept of human dignity. A more systematic approach to giving reasons for its judgments, including dissenting opinions will go a long way in establishing a robust jurisprudence.

During this period, the Court demonstrates a posture of engagement with applicable international law standards. Where necessary, the Court has cited relevant international treaties to further support its interpretation of fundamental rights.

This progressive trend is evident in the Court's approach to the grant of remedies too. The amount of compensation has increased significantly and cannot be any longer considered to be nominal.

There are indications that the Court is bolder even in presenting dissenting views and in the Court's grant of compensation. The Court has not confined itself to the grant of compensation and has offered remedies fit for purpose such as the directives issued to guide policy making in relation to the Police.

The question of access to justice in Sri Lanka, however, remains problematic. It is well recognised that there are undue delays and in several cases the delays extend to 10 years whereas the constitutional mandate is that proceedings should be concluded within three months. The court failed through its interpretation that the time period indicated in the laws are merely directive and not mandatory.

The report recognises that for a more accurate analysis of the fundamental rights jurisprudence, analysts must study the petitions for which leave to proceed is refused by the Court. Those rejected petitions ought to be analysed quantitatively as well as qualitatively to gain a fuller appreciation of the Court's attitudes towards the protection of fundamental rights.

The report also addresses the status of vulnerable communities. Women being among the most vulnerable groups in Sri Lanka, are affected in ways that are not often recognised during a national crisis. Women from minority communities and women subject to class divisions are affected in more complex ways that are hardly ever raised. Given these intersections, this report focuses on four major areas of interest to women's rights that were particularly significant during the years 2018 to 2020. Thus, this

study focuses on the human rights of women as workers, women in minority communities, women in leadership, and women's access to health. As women's participation in the workforce has been very low for the past 20 years there are few opportunities available for women in preparing them for the workforce, diversification of skills and very little has been done to facilitate women's access to the labour market. These include an education system that is intrinsically misogynistic, lack of crèches, lack of paternity leave, and dismal safety in public transport to name a few. Women in the labour force have also created a space for exploitation of working women. Women are paid less and made to work longer hours, as seen in the data collected on the impact of the COVID-19 pandemic on the apparel industry. Similarly, women are seen as expendable when considering little has been done to protect women migrant workers over several decades. The COVID-19 pandemic laid bare many of the issues faced by migrant workers, especially those who work as domestics and care-givers in the Middle-East.

The issues faced by women in various minority communities are vast, but the struggles faced by Tamil women in the north and Mahalaya women in the plantations and Muslim women suffering under discriminatory personal laws are particularly acute.

It is considered that some of these issues of discrimination and marginalisation could have been overcome if there was better representation of women in government. Women's representation in parliament has been fairly meagre throughout Sri Lanka's

history. A move to remedy this was made with the introduction of the 25 percent quota in local government. It was envisaged that these women would later be elected to parliament and thereby increase women's representation. However, even with the quota system, women contesting in the local government elections reported that they were intimidated and harassed. Besides the litany of traditional hardships suffered by women, new areas of research on women's access to and treatment on public transport and the treatment of women in the cyberspace and the rise in domestic violence indicate the greater strains on women. The impact of the pandemic on women also indicated their vulnerabilities. Women's issues and women's human rights need to be highlighted and brought to the attention of policy makers to ensure their needs are taken into consideration as we navigate the devastating economic crisis.

This report also reflects on the worrying trend in Sri Lanka politics between 2018-2020, focusing on the violations of the freedom of religion and beliefs (FORB) in Sri Lanka during this period. It notes that the enforcement of fundamental rights is just as much about politics as they are about legal instruments and international treaties. The violations of the FORB in Sri Lanka must be located within the context of a growing Sinhala-Buddhist nationalist ideology and the attendant blurring of the line between Buddhism and the State. At the local level, violations of human rights are also shaped by local concerns and grievances. Thus, while the discriminatory and violent experiences of minority religious groups in Sri Lanka may be understood as violations of human rights, they must also be

understood as manifestations of the larger political condition in the country during the time.

This report interrogates the meaning of the right to health in Sri Lanka. Applying a rights-based approach, it compels us to consider the availability, accessibility, acceptability and quality (3AQ) of health-related services, through a lens of equity and non-discrimination. This approach helpfully throws light on gaps and understudied areas in relation to Government of Sri Lanka's (GOSL) efforts to respect, protect and fulfil the right to health, it also raises a number of questions. For one, a Free Health policy guides the delivery of healthcare services in Sri Lanka, but the right to health is not explicitly enshrined in the constitution of the country. Thus, where does one place such policies in the absence of a constitutional guarantee to the right to health? Are collective claims on the state for Free Health any less valid than a mechanism that allows individual citizens to resort to legal action on the right to health?

The report views health in broad terms to include health education, reproductive health, the health of marginalised communities such as women, the disabled and economically marginalised communities, workers' right to health among others. It also encourages us to question our understanding of the individual right to health against collective entitlements to public health. Dwelling on the individual's health rights could obscure the bigger picture or societal structuring and patterning of ill health, influenced by macro political and economic actors and forces. These aspects are often neglected considerations in public health. The human rights establishment does not, for

instance, grapple with the steady weakening of public health systems across the world, and especially in the global South, under structural adjustment programmes and a government's own mis-directed priorities. Society also needs to understand privatisation of healthcare in the post-Cold War context through a human rights lens.

Traditionally, only the state was held accountable to ensure the right to health but today, intergovernmental entities that operate at the transnational level, for instance, the World Bank and International Monetary Fund, or philanthropic actors and multinationals, all of whom have considerable influence on global and national health policies and large budgets at various levels. How do we ensure that such actors also respect, protect and fulfil the right to health?

This report also addresses the issues of the right to housing – shelter and livelihoods, as a human rights issues, adopting a broad perspective in defining “housing,” and looking at key housing related incidents, policies and other significant developments that took place across the country from 2018 – 2020 from a human rights perspective.

The People's Land Commission report section includes incidents prior to the review period as well. However, it has been included in as the People's Land Commission report is a significant contribution to the land rights and housing rights space.

As the right to housing does not encompass shelter alone, it is regarded as an intersectional issue connected to socio-economic wellbeing, education, privacy and community. There is a need

to consider not just the supply or physical condition of housing for marginalized communities, but how housing affects other aspects of their wellbeing and rights.

The report has a section on COVID-19 and housing which goes beyond the traditional scope of 'housing' and includes other issues which intersects with the right to housing or shelter that must be included in any discussion on housing. COVID-19 has shown how housing arrangements of low-income communities have increased their vulnerability, affecting livelihoods, education and health. This includes an understanding that the right to housing must include the right to adequate space and privacy within one's home. In the context of the pandemic, it has also drawn attention to issues around the digital divide and the linkages between limited living spaces and in accessing a digital based education.

Substandard housing and tenure insecurity continue to severely impact the Malaiyaha Tamil community in the estate sector of Sri Lanka. Furthermore, there is a need to consider the dispossession that has taken place at the hands of the state. People have been subjected to military-directed land grabs and ethnicised land grabs in the North and East. They have also been subjected to the state's desire to 'liberate' land for commercial use and development by evicting the working-class and poor in Colombo.

This report also covers the human right to education. It has been argued that when education is framed as a human right,

it becomes necessary to examine how those articulating these rights frame them. Ideally, they should be framed based on broader ideas about social justice. Thus, education, as a right, cannot be understood outside the socio-political realities within which they are articulated. Similarly, we have seen that those who argue for educational equity, the right to sexual expression and the right to be free from corporal punishment all resorted to the language of human rights. In enacting broader socio-political issues as ones about human rights, such groups tend to turn human rights into a tool that they could use in their fight against socio-political injustice. One could possibly see this trend of citing human rights as the ground on which socio-political justice is demanded (rather than collective political mobilization, policy shifts, or social change) becoming more intense in the coming years as Sri Lanka now faces, on top of each other, severe economic and political crises. In such contexts, where actual socio-economic change driven by state funding and policy will be absent, human rights can become a powerful instrument for implementing change in the field of education by those who seek social justice and educational equity.

The chapter seeks to establish the way education as a human right is tied to the various social movements and their situated demands and definitions of human rights that come to shape debates about education rights; the chapter also takes into brief consideration how the political economy of education becomes a human rights issue. In this approach, the writer's emphasis is on the situatedness of human rights that is best studied from a sociological angle.

This report on the state of human rights from 2018 through to 2020 adopts an expanded approach to discussions on human rights in general and the rights to health, education and housing in particular. The question may well be asked whether the rights-based approach will remain effective in the context of neo-liberalism where many states must accommodate their national plans under the dictates of Western capitalist nations. These are some tensions that need to be resolved in tandem with health, education and housing rights advocacy in Sri Lanka and beyond. Charting these developments in the State of Human Rights publication establishes the baseline and the record for review and reflection.

JUDICIAL INTERPRETATION OF HUMAN RIGHTS 2018, 2019 AND 2020

*Dr Dinesha Samararatne**

1. Introduction

The three years under review in this volume highlight the dynamics between constitutionalism on the one hand, and accountable exercise of power in governance, elections, ethno-nationalism, economic growth, a response to a pandemic, national security and human rights on the other. These dynamics were made more obvious by the three crises Sri Lanka faced during this time: the Constitutional Crisis of 2018, the Easter Sunday attacks of 2019, and the COVID-19 pandemic of 2020. From a human rights perspective, these developments had very serious consequences on individuals and communities. The Constitutional Crisis of 2018 placed constitutional democracy itself at risk. It is only through a combination of key public institutions such as the Election Commission and the ruling of

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the Supreme Court in *Sampanthan v Attorney General* that this risk was effectively dealt with.¹ The Easter Sunday attacks revealed structural failures as well as failures in political will in governance due to personal and political differences. Unlike the Constitutional Crisis of 2018, the immediate effects of the Easter Sunday attacks were tragic loss of life, harm and severe trauma for the individuals, families and communities affected and for the country at large. These two critical events added momentum to a change of government and a significant shift in Sri Lanka's governance. President Gotabaya Rajapaksa who won the Presidential election of 2019 with a strong majority promised to restore a strong Executive Presidency. This was done by way of the 20th Amendment to the Constitution. The Government under his leadership advanced ethno-nationalist majoritarianism, increased militarization, and undermined constitutionalism. These trends intensified in 2020, particularly in the Government's response to the COVID-19 pandemic. Most measures taken to arrest the spread of the virus were extra constitutional and had no basis in law.²

During the period under review, discrimination against ethnic minorities and women continued. Discrimination against Muslims increased dramatically in the aftermath of the Easter Sunday attacks and during the pandemic.³ The economic dimension of Sri Lanka's crises gathered momentum during this time. The Easter Sunday attacks crippled the tourism

1. Dinesha Samararatne, 'Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis' *Asian Journal of Law and Society*,9 (2022): 1-25.

2. For a discussion see Bhavani Fonseka et al 'Sri Lanka: Pandemic – Catalyzed Democratic Backsliding' in *COVID-19 in Asia: Law and Policy Contexts*, ed. Victor Ramraj (Oxford University Press 2021) 349.

3. See for instance, *From Burning Houses to Burning Bodies* (Amnesty International 2021).

sector and had ripple effects across the economy. Soon after the Presidential elections, the government introduced tax reforms which reduced government income significantly. Consequently, Sri Lanka was locked out of international financial markets by the first half of 2020.⁴ The collapse and eventual bankruptcy of the economy were thereafter quick and painful. The lockdown of the country due to the pandemic and the failure to make timely decisions about debt restructuring and seeking the support of the International Monetary Fund resulted in a very severe and tragic economic collapse in 2022.⁵

During this time, the judiciary too was impacted. The 20th Amendment to the Constitution repealed the Constitutional Council and replaced it with the Parliamentary Council. Since then, the power of judicial appointment has been at the discretion of the President.⁶ The institutional measures re-introduced under the 19th Amendment at protecting the independence of the judiciary were removed. The number of judges on the appellate courts was also increased by this Amendment.⁷ The lockdowns and restrictions to movement and gathering introduced in response to the pandemic impacted the work of the Court, resulting in further delays in judicial proceedings on fundamental rights.

4. For a discussion see, Sri Lanka, 2021 Article IV Consultation, press release and statement by the Executive Director for Sri Lanka (March 2022).

5. For a discussion see IMF staff country reports, Sri Lanka, 2021 Article IV Consultation, press release and statement by the Executive Director for Sri Lanka (March 2022).

6. At the time of writing this chapter, the 21st Amendment has been enacted. Under the 21st Amendment, a Constitutional Council has been re-introduced to approve nominations made by the President to the higher judiciary. However, the Constitution Council is constituted differently to previous Councils under the 19th and 17th Amendments.

7. Under the 20th Amendment (2020) the number of Supreme Court judges was increased from 11 to 17 and the number of judges of the Court of Appeal was increased from 12 to 20. These amendments were introduced to the 20th Amendment Bill at Committee Stage.

2. Overview of Jurisprudence

The number of judgements on fundamental rights petitions issued during the period under review is as follows: 43 judgments in 2018, 50 judgements in 2019 and 28 judgements in 2020. Presumably, due to the pandemic, the output of the work reduced significantly in 2020. In the table below, I reproduce the number of judgements issued by year for the decade spanning from 2010 to 2020.

Table 1: Judgements under Article 126, 2010-2020

Year	No Judgements	Art 12	Art 11	Art 13	Other
2010	12	10 (83%)	04	03	-
2011	09	07 (77%)	-	-	14(1)(g)
2012	09	09 (100%)	-	-	-
2013	13	10 (76%)	02	02	15
2014	19	13 (68%)	01	01	14(1) (a) (c)
2015	16	15 (93%)	01	06	12(2), 14(1)€,14(1)(g)
2016	44	41 (93%)	06	13	14(1)(a), (c), (g)
2017	62	52 (84%)	12	13	10, 14A, (1)(g), (h)
2018	43	35 (81%)	06	07	14(1)(g), 14(1)(e)
2019	50	41 (84%)	09	08	14(1)(g), 14(1)(h), 14 (1) b
2020	28	25 (93%)	03	02	14(1)(g),
Total	303	258 (85%)	44	55	

When examining the above table two patterns are evident. The first is that the number of judgements issued by the Supreme Court under Article 126 has increased significantly since 2016, with the highest number of judgements being issued in 2017. Coincidentally, from 2015 to 2020, judicial appointments were made with the approval of the Constitutional Council under the 19th Amendment. The second is that throughout this decade an overwhelming majority of fundamental rights judgements have dealt with petitions on the right to equality. Despite the complaints and allegation of arbitrary arrests, torture in custody and even deaths in custody, the number of judgements related to those rights, remained noticeably low.

The backlog of fundamental rights petitions has been a serious problem. The table below reveals the nature of this issue. Approximately half the number of judgements issued in a given year concern petitions that were filed about 5 years previously. Under Article 126, the Supreme Court is required to determine fundamental rights petitions within two months. However, despite the text providing that the ‘Supreme Court shall ... dispose...within two months,’ The Supreme Court has held that this requirement is directory and not mandatory.⁸ Consequently, the actual delay in determining these petitions undermines justice and access to justice.

8. Article 126 (5) of the Constitution.

Table 2: Time Lag between Petition and Judgement 2018-2020

Year of Petition	2018	2019	2020
2001	1	0	0
2008	2	1	0
2009	4	0	2
2010	2	5	0
2011	1	5	1
2012	6	8	3
2013	1	2	1
2014	3	1	2
2015	3	3	0
2016	7	4	4
2017	7	8	3
2018	4	7	5
2019	-	4	6
2020	-	-	-

3. Integration of International Law

During the period under review, the Supreme Court has referred to and relied upon international human rights law treaties and soft law instruments in international law. The treaties referred to by the Court include, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.⁹ International soft law referred to by the Court includes

9. See for instance, *Priyantha v Inspector General of Police* SC(FR) 275/2013, SC Minutes 7 June 2019.

the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990).¹⁰ The Court also made reference to the Universal Declaration of Human Rights in several cases, particularly when commenting on state responsibility to ensure respect for human dignity.¹¹ For instance, in the case of *Anjali (Minor) v OIC Matara Police Station* the Court discussed constitutional guarantees and international law together in interpreting the scope of Article 13(1) and to justify the Court's conclusion.¹²

This judicial approach to international law is consistent with the Court's reception to international law from the 1980s. The rejection of the relevance of the Universal Declaration of Human Rights to the interpretation of law in Sri Lanka in the older case of *Leelawathie v Minister of Defence* seems to have been abandoned by the Court.¹³ More importantly, the Court seems to distance itself from the approach to international law in the *Singarasa case*, which is to limit the domestic application of international law only when Parliament has enacted enabling legislation.¹⁴ In this instance, the Court has relied on international law to interpret the scope of fundamental rights guarantees under the Constitution.

4. Right to Equality

Over the last three decades, the Sri Lankan Supreme Court has adopted a distinct approach to substantive equality. Its

10. Cited in *Anjali (Minor) v OIC Matara Police Station* SC (FR) 677/2012, SC Minutes 12 June 2019.

11. See for instance, *Lakmali v Inspector of Police, Embilipitiya Police Station* SC(FR) 577/2010, SC Minutes 17 December 2019 and *Anjali (Minor) v OIC Matara Police Station* SC (FR) 677/2012, SC Minutes 12 June 2019.

12. *Anjali (Minor) v OIC Matara Police Station* 22.

13. *Leelawathie v Minister of Defence* 68 NLR 487.

14. *Singarasa v Attorney General* [2013] 1 Sri LR Part 9 245

uniqueness lies in the way in which it has integrated principles of administrative law, the Indian approach to the interpretation of the right to equality (the New Doctrine of Equality) and the test of reasonable classification. A notable gap in this jurisprudence is that very few petitions seem to have invoked the right to be free from discrimination, thereby creating fewer opportunities for the Court to develop jurisprudence based on this right.

4.1 Right to Equality and Judicial Review

In the recent case of *Wijerathna v Sri Lanka Ports Authority*, the Court offered much needed clarity on the approach to the right to equality by Sri Lankan courts.¹⁵ This case was filed by a worker at the Ports Authority whose application for promotion to the post of station officer had been rejected. The Court held with the worker on the basis that the Ports Authority acted arbitrarily. Justice Kodagoda describes the right to equality as being essential for human flourishing and as a precondition for ‘peaceful co-existence of any plural society’ and for ‘sustainable peace.’¹⁶ Justice Kodagoda traces the Sri Lankan jurisprudence on the right to equality and notes that since the *Elmore Perera* case, the court has adopted ‘an expansive and more progressive definition...founded upon the concept of *substantive equality*, aimed at protecting persons from arbitrary, unreasonable, malicious and capricious executive and administrative action.’¹⁷ Justice Kodagoda too states his agreement with this approach but notes that ‘[it] is necessary to place on record that the ‘reasonable classification doctrine’ continues to play an important role in certain factual situations, in determining whether the right to

15. *Wijerathna v Sri Lanka Ports Authority* SC (FR) 256/2017, 11 December 2020.

16. *Wijerathna v Sri Lanka Ports Authority* 15.

17. *Wijerathna v Sri Lanka Ports Authority* 17.

equality has been infringed.’¹⁸ In contrast to the *Elmore Perera* case, here, the Court endorsed the *Royappah* case despite the differences between the Indian and Sri Lankan constitutions and noted that “both ‘equality between similarly placed persons’ and ‘substantive equality’ come within the scope of Article 12(1) of the Constitution.”¹⁹

Moreover, the Court employed the language of reasonableness and noted that persons exercising public power must exercise their discretion ‘for the purpose for which discretionary authority has been conferred, and not for the purpose of giving effect to personal objectives which are inconsistent with equality and influenced by irrational and subjective criteria’ and in public trust.²⁰ This approach is consistent with the judicial development of the doctrine of public trust in Sri Lanka, now spanning over three decades.²¹

4.2 Right to Education

For more than two decades, the Supreme Court has determined petitions in which decisions on admissions to state sponsored schools have been challenged under Article 12. This trend has continued during the period under review. This trend reveals on the one hand, concerns about the admission process and on the other hand, that resources of the highest Court of the land are being utilised, in effect, to consider appeals that challenge a routine administrative function of the state. In these judgements, the Court is routinely compelled to review the facts of each case

18 *Wijerathna v Sri Lanka Ports Authority* 17.

19. *Wijerathna v Sri Lanka Ports Authority* 18.

20. *Wijerathna v Sri Lanka Ports Authority* 22 -23.

21. See in this regard, Dinesha Samararatne, *Public Trust Doctrine: The Sri Lankan Version*, Dialogues on Democracy, International Centre for Ethnic Studies (ICES), Sri Lanka (2011)

against the applicable marking scheme. The question is whether the resources of the highest Court of the land should be utilised in this manner.

Table 32: Judgements on School Admission 2018-2020

	2018	2019	2020
No of judgements on school admission	09/43	13/50	5/28

Of these cases, *Silva v Secy., Ministry of Education* was unique.²² It concerned the consideration afforded to children of judicial officers in the admissions policy. Court recognised that there was no specific provision for considering the special circumstances of children of judicial officers, but further noted that between 2011 to 2016, it had been the practice to forward applications for admission through the Judicial Service Commission to the Ministry of Education.²³ Since 2017, only judicial officers who were transferred in that year were entitled for special consideration. The Court upheld the petitioner's claim that she had a legitimate expectation that this practice would be continued and that the change of policy was arbitrary (see more discussion on legitimate expectation under 4.3.). The Court held that the Ministry of Education had a duty to give advance notice of the change of policy. The Court further noted that a common policy should apply to judicial officers in the interest of safeguarding the independence of the judiciary.²⁴

22. *Silva v Secy., Ministry of Education* SC(FR) 222/2018, SC Minutes 18 June 2020.

23. *Silva v Secy., Ministry of Education* 7.

24. *Silva v Secy., Ministry of Education* 24.

During the period under review, the Court had to deal with several petitions arising out of the decision of the Sri Lanka Medical Council to refuse provisional registration to the graduates (83 in total) of the South Asia Institute of Technology and Medicine (SAITM).²⁵ The issue before Court was whether the Sri Lanka Medical Council had acted in an arbitrary manner in rejecting the request by the petitioners to register for the Examination for Registration to Practice Medicine. In one of these cases, *Kasthuriarachchi v Sri Lanka Medical Council*, the Court held that under section 29, the Medical Ordinance recognises ‘the freedom of Sri Lankan students to receive foreign medical education.’²⁶ The Court held that the pre-entry qualification imposed by the SLMC therefore ‘resembles the usurpation of powers of the Parliament’ and that ‘it is surprising to see the arbitrariness of the SLMC which alters the procedures and laws of the country’ and was therefore a violation of the right to equality and the right to engage in a lawful profession.²⁷ The issue of admission of medical graduates from non-state higher education institutions to the medical profession has been resisted for a long time in Sri Lanka. The Supreme Court settled this issue at least from the perspective of registration for graduates of SAITM. The policy question of higher education through non-state actors remains a live question in Sri Lanka.²⁸

25. *Dissanayake v SLMC* SC (FR) 442/2019, SC Minutes 23 July 2020; *Rushdan v SLMC* SC (FR) 400/2019, SC Minutes 23 July 2020; *Silva v SLMC* SC (FR) 399/2019, SC Minutes 23 July 2020; *Dissanayake v SLMC* SC(FR) 145/2019, SC Minutes 9 August 2019; Halpe v Director General of Health Services SC(FR) 54/2019, SC Minutes 30 July 2019.

26. *Kasthuriarachchi v Sri Lanka Medical Council* SC (FR) 459/2019, SC Minutes 23 July 2020, 3.

27. *Kasthuriarachchi v Sri Lanka Medical Council* 6-7.

28. ‘Why Doctors and Students are Protesting against Sri Lanka’s Only Private Medical College’ *Groundviews* 21 May 2017.

4.3 *Legitimate Expectation*

During the period under review, the Court has consolidated the legal doctrine on legitimate expectation as applicable in Sri Lanka. In *Ariyaratne v Illangakoon*, the Court relied extensively on the concept of reasonableness, legitimate expectation and to some extent proportionality in considering the fundamental rights petition. In this case, 93 individuals who had been appointed as Development Assistants (under the public service) to the Department of Police claimed that they had a legitimate expectation of being absorbed into the police force.²⁹ They filed a right to equality petition to make this claim which was rejected by the Court. However, in the determination, Justice Prasanna Jayawardena engaged in a detailed analysis of the doctrine of legitimate expectation and its development in English law, Indian law and Sri Lankan law.³⁰ Drawing from this detailed analysis, the Court laid down a test for the application of substantive legitimate expectation.³¹ In concluding his analysis, Justice Jayawardena confirmed that the doctrine of legitimate expectation had been incorporated into Sri Lanka's right to equality jurisprudence: 'it is well established that this Court will take into account an arbitrary or unjust frustration of a petitioner's legitimate expectation by a public authority when determining whether there has been a violation of that petitioner's fundamental rights guaranteed by Article 12 (1) of the Constitution.'³² The *Ariyaratne case* is also significant for the way in which the Court clarified the relationship between the test of reasonableness and legitimate expectation. After a careful assessment of the legal concepts, the

29. *Ariyaratne v Illangakoon* SC (FR) 444/2012, SC Minutes 30 July 2019

30. Cases discussed include *Coughlan*, *Begbie* and *In Re Finucane* (UK); *Union of India v Hindustan Development Corporation* (1993) SC 1085.

31. *Ariyaratne v Illangakoon* 54.

32. *Ariyaratne v Illangakoon* 56.

Court held that reasonableness and legitimate expectation are two distinct concepts.³³

*In Priyantha v Inspector General of Police*³⁴ the Court had to review whether a prohibition on marriage in appointment as an Assistant Superintendent of Police violated the petitioner's right to equality. The Ordinary Police Service requires its members to be unmarried. The petitioner relied on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to claim a right not to be discriminated on the basis of his marital status. However, the Court agreed with the respondents who claimed that 'such classification is based on rational and disciplinary matters of uniformed service...the classification is warranted for the better training and service of the Police Officers.'³⁵ The Court further agreed with the Counsel for the respondents and noted that as officers in charge of law and order they require 'strenuous physical and weapon training. The appointing authorities have put forward this argument as the reason for specifying that, these candidates should be unmarried with less or no family commitment for the purpose of training.'³⁶ The Court concluded that the classification was reasonable. The Sri Lankan Constitution does not recognise the right to marry. However, it could be argued that barring an Assistant Superintendent of Police from marrying can amount to a violation of the right to equality. The Court's basis for determining that the classification was reasonable is not clear. Arguably, the Court's reasoning can lead to the conclusion that any form of employment that requires 'strenuous physical and

33. *Ariyaratne v Illangakoon* 50

34. *Priyantha v Inspector General of Police* SC (FR) 275/2013, SC Minutes 7 June 2019.

35. *Priyantha v Inspector General of Police* 8.

36. *Priyantha v Inspector General of Police* 10.

weapon training’ such as the military ought to be denied the right to be married. The right to marry and found a family, however, has been recognised in international law.³⁷

The Court had to address another petition related to substantive equality in the case of *Jinadasa (on behalf of Citizen X, a person living with Human Immuno Virus) v Sri Lankan Airlines*. Here the petitioner alleged that his right to engage in lawful employment and right to equality were violated.³⁸ The petitioner in this case was infected with HIV. The Court held that the petitioner did not establish a violation of his right to lawful employment and that reasoning is analysed further below. This case was an opportunity for the Court to consider the scope of the right to equality as well as the right to be free from discrimination. However, the Court did not address these questions and dismissed the petition on the basis that the petitioner was not fit for employment as a member of the cabin crew of the national carrier in light of his illness. Here too, the basis for the view of the Court, is not very clear. The question arises as to the specific way in which being infected with HIV disqualifies a person from working in this capacity and the responsibility for establishing that link lies with the State and the Court.

4.4 Human Rights, Constitutionalism and Governance

Sampanthan v Sirisena is arguably one of the most significant cases of the decade in Sri Lanka’s fundamental rights jurisprudence as it had the effect of resolving Sri Lanka’s Constitutional Crisis

37. See, Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (1962); Article 16 of the Universal Declaration of Human Rights,

38. *Jinadasa (on behalf of Citizen X, a person living with Human Immuno Virus) v Sri Lankan Airlines* SC (FR) 434/2016, SC Minutes 26 February 2018.

of 2018.³⁹ On the 26th of October 2018, President Sirisena purportedly removed Prime Minister Wickremesinghe and appointed MP Mahinda Rajapaksa in his place. The Parliament was prorogued and subsequently dissolved by President Sirisena. Members of Parliament came before the Supreme Court by way of a fundamental rights petition to challenge the purported dissolution of Parliament by the President.⁴⁰

Given the significance and urgency of the matter, a Divisional Bench of the Court considered it on consecutive days and determined that the dissolution was arbitrary and therefore a violation of the right to equality. Since the mid- 1990s, the Sri Lankan Supreme Court has followed the approach of the Indian judiciary and held that arbitrary actions are a violation of the right to equality.⁴¹ Following that approach, the Court held in this case that the act of dissolution could be reviewed by the judiciary and was not a 'political question.'⁴² Rather, the Court noted that it was its duty to engage in judicial review and give 'tangible and effective life and meaning to the sovereignty of the people.'⁴³ The availability of impeachment of the President, Court argued, did not preclude judicial review. The Court categorically rejected the argument by the Attorney-General that the dissolution was part of the 'plenary powers of the President.'

39. *Sampanthan v Sirisena* SC (FR) 351-361/ 2018, SC Minutes 13 December 2018.

40. Under the 1978 Constitution, the President enjoyed full immunity from suit. In 2015, the 19th Amendment provided that a fundamental rights petition may be filed to challenge the violation or imminent violation of fundamental rights by the President. The new government elected in 2020 attempted to restore full immunity from suit to the President. The Supreme Court held that approval of the People at a referendum is required for restoring full immunity to the President.

41. For a detailed discussion see, Dinesha Samararatne, 'Judicial Borrowing and Creeping Influences: Indian Jurisprudence in Sri Lankan Public Law,' *Indian Law Review* 2, no. 3 (2018):205, 219 onwards.

42. *Sampanthan v Sirisena* 30.a

43. *Sampanthan v Sirisena* 31.

The words ‘plenary power’ simply means ‘full power’ or ‘complete power’ and should not be taken to and cannot be taken to mean a species of inherent unrestricted omnipotent power held by a Head of State which is akin to royal prerogative power. In this regard, it must be remembered that the President, who is the Head of State under the Constitution, is but a creature of the Constitution. His powers are only those which are specifically vested in him by the Constitution and the law.⁴⁴

The petitions concerned the question of when the President’s power to dissolve Parliament comes alive. In considering this question, the Court affirmed several principles of constitutional interpretation.

‘...when interpreting provisions in a Constitution, a Court must approach its task keeping in mind that the document before the Court is the foundation, charter of governance and guiding light of the nation. The Court is duty bound to carry out that task in a manner which correctly understands and interprets the provisions of the Constitution so as to uphold the Rule of Law and constitutional certainty. The Court must remain alive to the need to understand and apply the Constitution in accordance with the intention of its makers and also take into account social, economic and cultural developments which have taken place since the framing of the Constitution.⁴⁵

44. *Sampanthan v Sirisena* 37.

45. *Sampanthan v Sirisena* 64.

The Court also noted its constitutional duty to uphold the Rule of Law⁴⁶ and the constitutional prohibition against ‘unfettered or absolute discretion or power.’⁴⁷ Accordingly, the Court held that the purported dissolution of Parliament was arbitrary. This decision was historic in that it asserted the supremacy of the Constitution and principles of constitutionalism over the actions of the Executive President. The judiciary acted independently and upheld the rule of law and thereby prevented what would have amounted to Sri Lanka’s first unconstitutional and undemocratic change of government.⁴⁸

4.5 Rights of Persons with Disabilities

The Court had the opportunity to further emphasise the recognition afforded to rights of persons with disabilities in Sri Lanka in the case of *Ajith Perera v Minister of Social Services*.⁴⁹ The petitioner is a prominent disability rights activist and a person with physical disabilities. He complained to Court that despite previous rulings by the Court that the regulations on physical accessibility of buildings have not been implemented by the State.⁵⁰ The Court recognised the social model for addressing disabilities and the state responsibility for adopting this model as a signatory to the Convention on Rights of Persons with Disabilities. The Court connected the responsibility of the State to provide persons with disabilities ‘the opportunity to live their day-to-day lives on a platform of equality with others in

46. *Sampanthan v Sirisena* 66.

47. *Sampanthan v Sirisena* 67.

48. For a more detailed discussion and analysis, see, Dinesha Samararatne, ‘Resilience through Synergy? The Legal Complex in Sri Lanka’s Constitutional Crisis,’ *Asian Journal of Law and Society* 9 (2022): 1-25

49. *Ajith Perera v Minister of Social Services* SC (FR) 273/2018, SC Minutes 18 April 2019.

50. Disabled Persons (Accessibility) Regulations No 1 of 2006, as amended by Regulation 18 September 2009.

the community' with the concept of human dignity. The Court noted that human dignity 'is at the core of the fundamental rights enshrined in our Constitution. It is a fountainhead from which these fundamental rights spring forth and array themselves in the Constitution, for the protection of all the people of the country.'⁵¹ The Court issued a detailed order which is discussed further below. Persons with disabilities in Sri Lanka are marginalised and the respect for their human rights is low. The Constitution is silent on the rights of persons with disabilities. Therefore, the Court's detailed reasoning in this case performs a significant gap filling function. The Court has specified the responsibility of the state to fulfil its obligations under the CRPD as well as under the Constitution in terms of the right to equality.

4.6 Rights of the Environment

Kariyawasam v Central Environmental Authority is another outstanding judgement issued by the Court during the period under review in terms of judicial reasoning.⁵² The petitioner was a non-governmental organization, the Centre for Environmental Justice, working on environmental protection. This organization filed the petition in the public interest and complained that power generation by a thermal plant in Chunnakam was causing pollution of groundwater.

In a detailed judgement, the Court upheld the complaint and judicially recognised two central principles of environmental law. These two principles were the precautionary principle and the polluter pays principle. The former recognises that unless there is proof that a certain action will not cause environmental harm, such action should not be carried out. Using the polluter

51. *Ajith Perera v Minister of Social Services* 23.

52 *Kariyawasam v Central Environmental Authority* SC (FR) 141/2015, SC Minutes 4 April 2019.

pays principle, the Court was able to grant remedies against the power plant. The Court clarified that in Sri Lanka citizens have a 'fundamental right to be free from unlawful, arbitrary or unreasonable executive or administrative acts or omissions which cause or permit the causing of pollution or degradation of the environment.'⁵³ The Court specifically recognised the right of 'access to clean water', a right that is not expressly recognised in the Constitution. The Court observed that 'access to clean water is a necessity of life and is inherent in Article 27(2) (c) of the Constitution.'⁵⁴ Article 27(2)(c) is a Directive Principle of State Policy which declares that the state must ensure to all citizens 'an adequate standard of living'. This is probably one of the first times that the Court made a clear declaration on the right of 'access to clean water'. The Court relied extensively on the concept of sustainable development as developed in the *Eppawala case* and on the concept of the public trust doctrine in its reasoning.⁵⁵ Moreover, the Court affirmed that fundamental rights ought to be interpreted in light of the Directive Principles of State Policy:

*The Directive Principles of State Policy are not wasted ink in the pages of the Constitution. They are a living set of guidelines which the State and its agencies should give effect to. Thus, where a petitioner complains of a violation of his fundamental rights arising from the breach of a statutory or regulatory duty by the State or an agency of the State, a demonstration that the violation is also in contravention of one or more of the Directive Principles of State Policy, will lend strong support to his case.*⁵⁶

53. *Kariyawasam v Central Environmental Authority* 52.

54. *Kariyawasam v Central Environmental Authority* 53.

55. *Bulankulama v Minister of Industrial Development* [2000] 3 Sri LR 243

56. *Kariyawasam v Central Environmental Authority* 50.

The Constitution explicitly states that Directive Principles are non-justiciable. However, the Sri Lankan Supreme Court has consistently relied upon Directive Principles of State Policy to interpret the scope of state responsibility for respecting fundamental rights.⁵⁷ The Court has followed the Indian Supreme Court in this regard. In the *Chunnakam* judgement the Court adopted this approach to make a significant contribution to the environmental jurisprudence in Sri Lanka.

5. Right to be Free from Cruel, Inhuman, or Degrading Treatment or Punishment

During the period under review, the Court has further strengthened Sri Lanka's well-developed jurisprudence on the right to be free from torture. The practice of torture has been a systemic problem in Sri Lanka and has continued despite the strong rulings by the Supreme Court.⁵⁸

5.1 Definition

In *Shantha v Sub-Inspector, Police Station, Meegahathenna* where the Court upheld a petition alleging torture, the Court also made observations about the approach to the interpretation of the definition of torture.⁵⁹ The Court noted, 'It is always a matter of the degree, persons and circumstances which result in the threshold of torture being crossed.'⁶⁰ The Court noted that Article 11 cannot

57. See for instance, *Bulankulama v Minister of Industrial Development* [2000] 3 Sri LR 243 and *Haputhantirige v AG* [2007] 1 Sri LR 101.

58. See for instance, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his Mission to Sri Lanka : note / by the Secretariat (UN 2016).

59. *Shantha v Sub-Inspector, Police Station, Meegahathenna* SC (FR) 479/2009, SC Minutes 23 October 2018.

60. *Shantha v Sub-Inspector, Police Station, Meegahathenna* 20.

be limited by the Convention against Torture Act (1994). Rather, the Court held that “a narrow definition of ‘torture’ on a ‘purpose related basis’ should not be applied to restrict the sweep of the absolute prohibition declared by Article 11. Instead, in my view, that narrow definition is relevant only to define criminal liability “as set out in the Act.⁶¹ This judicial observation is significant because the definition of torture under the Convention against Torture Act in Sri Lanka excludes ‘suffering’ which is included in the definition of torture under the Convention.⁶² The Court is expressly adopting a broader definition under Article 11 and expressly delinking the definition under the Convention against Torture from the scope of Article 11.

5.2 Medical Evidence

Anuradha v Head Quarter Inspector of Police was a rare and progressive instance where the Court recognised a violation of this right in the absence of clear medical evidence.⁶³ The petitioner had been arrested on the allegation of theft and subjected to severe assault by the police. He had been produced before an Ayurvedic doctor but not before a Judicial Medical Officer. The medical evidence before the Court was the Bed Head Ticket. In upholding the petitioner’s right to be free from torture the Court cited the Convention against Torture, the Universal Declaration of Human Rights, several Departmental Orders of the Police Department and judicial precedent. Interestingly, the Court made reference to the concept of human dignity too:

61. *Shantha v Sub-Inspector, Police Station, Meegahathenna* 21.

62. Section 12 of the Convention against Torture Act of 1994.

63. *Anuradha v Head Quarter Inspector of Police* SC (FR) 369/2013, SC Minutes 22 October 2020.

This unqualified nature of the right and the fact that this provision [Art 11] is entrenched makes it abundantly clear that the Constitution envisages ‘zero tolerance’ towards cruel, inhuman or degrading treatment which is the antithesis of ‘Human Dignity.’⁶⁴

A similar approach was adopted in the case of *Perera v OIC, Police Station, Hettipola*.⁶⁵ Here, in addition to the Convention against Torture, the Court also cited the Convention against Torture Act 1994. Moreover, the Court noted the responsibility of the State to ‘take more proactive steps to address the gap between the law and practice.’⁶⁶ It is commendable that the Court recognised the systemic nature of practices of torture:

*The consistent pattern of police violence, custodial torture and death as evidenced by the considerable number of Fundamental Rights petitions filed before this Court, indicates that the State should consider addressing and mitigating the problem...As a society that is committed to protecting the **Dignity and Well-being of the People** ...the violation of the right to liberty...should be of serious concern and in my view, the State should take more proactive steps to address the gap between law and practice.^{67 68} (emphasis in original text)*

In *Kumara v OIC Katunayake*,¹³ petitioners came before the Supreme Court to complain that their right to be free from torture was violated (along with their right to equality and their freedom

64. *Anuradha v Head Quarter Inspector of Police* 12.

65. *Perera v OIC, Police Station, Hettipola* SC (FR) 296/2014, SC Minutes 16 June 2020.

66. *Perera v OIC, Police Station, Hettipola* 12.

67. *Perera v OIC, Police Station, Hettipola* 11-12.

68. *Lakmal v Inspector of Police, Embilipitiya Police Station* 13.

of assembly) when the police assaulted them in 2011 during a protest against the proposed Employees' Pension Benefits Fund Bill.⁶⁹ The Court upheld that claim and held further that the right to be free from arbitrary arrests of 9 of the 13 petitioners had been violated as well. The Court noted that:

*'This view that the protestors' right to demonstrate their opposition to the bill extends only to an arbitrary extent that the Police thinks acceptable and not to the full extent guaranteed by the Constitution and, any action in excess can be quelled mercilessly appears to be the general attitude of the Police towards the protesters as later manifested in the violence they unleashed against them.'*⁷⁰

The protest by workers of the Free Trade Zone in 2011 was a critical event in the push against the government of that time. The workers mobilised to resist efforts made by the government to limit the employment benefits of workers who were already working under exploitative conditions. Moreover, the strong dissent by the workers came at a time when the government was accused of failing to respect the fundamental rights of its citizens.⁷¹ This petition as well as the judgement highlights the indivisibility of human rights, and more specifically the links between the civil and political rights of the freedom of speech, assembly and protest with the economic right to employment and a decent wage.

69. *Kumara v OIC Katunayake* SC (FR) 265-274, 346-348, SC Minutes 5 April 2019.

70. *Kumara v OIC Katunayake* 37.

71. For an analysis see, Sandya Hewamanne 'Global Worker Protests and Tools of Autocratization in Sri Lanka' in *Routledge Handbook of Autocratization in South Asia*, ed. Sten Widmal, (Routledge 2021) 310

6. Right to be Free from Arbitrary Arrest and Detention

During the period under review, the Court made notable progress and developed jurisprudence in relation to the constitutional prohibition against arrest of children and deaths in custody. The Court also affirmed its previous jurisprudence on this right. For instance, in *Manjula v OIC Kekirawatwo Jehovah's witnesses*, a mother and daughter, had been accused of breaching the peace and detained overnight for seeking to promote their religion.⁷² The Court categorically held that the detention was unlawful and a violation:

*The police officers were probably motivated by a desire to prevent disharmony in their community and, even perhaps, a desire to protect their own religion from what they saw as incursions of another faith. Those motives are human traits and are understandable. However, police officers must act lawfully and also act respectfully of the rights of all persons in the country including persons who profess different beliefs or who are different in some other way, even where those different beliefs or ways are distasteful to the police officers. Zealotry and harassment in its cause by police officers, are not to be countenanced.*⁷³

6.1 Arrest of Children

In *Anjali (Minor) v OIC Matara Police Station* the police had arrested and detained a 15- year- old girl and subjected her to cruel and degrading treatment.⁷⁴ She was detained overnight

72. *Manjula v OIC Kekirawa* SC (FR) 241/2014, SC Minutes 18 July 2018.

73. *Manjula v OIC Kekirawa* 24-25.

74. *Anjali (Minor) v OIC Matara Police Station* SC (FR) 677/2012, SC Minutes 12 June 2019.

in a police cell without food and subsequently detained in a hospital for 8 days. The police had produced her for a medical examination without producing her before a Magistrate. The police had purportedly arrested this child to obtain a statement from her about being subjected to sexual abuse. In a strongly worded and carefully reasoned judgement, the Court upheld the petitioner's complaint. The Court cited the jurisprudence of the Court as well as the Convention on the Rights of the Child, the Convention against Torture, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights to support its reasoning. The Court noted the systemic nature of the abuse of power by the Police:

This Court also takes the opportunity to note with concern the increasing number of incidents of abuse of power by law enforcement authorities. There is no doubt that what is brought before Courts is a fragment of the totality of incidents taking place across the country.

The facts reported in this case reveal the systemic and entrenched nature of unconstitutional conduct on the part of the police. The Supreme Court's judgement unequivocally condemns the actions of the police in this instance. However, it is evident that to address the root causes of this serious problem, the executive and the legislature must fulfil their responsibilities. The officers found to have violated fundamental rights of individuals under Article 126 should be prosecuted and punished. Failure to do so can result in weakening the impact of the Supreme Court judgements.

6.2 Death in Custody

For the first time in this decade (2010 to 2020), in the case of *Lakmali v Inspector of Police, Embilipitiya Police Station*, the Supreme Court had the occasion to rule on deaths in custody.⁷⁵ The wife of a man who died in custody petitioned the Court on his behalf. In holding that the victim's right to be free from arbitrary arrest and the right to be free from torture have been violated, the Court made several strong pronouncements. The Court observed that the Constitution must be interpreted as 'a living document' and reasoned that the concept of human dignity and the right to life has been recognised implicitly in the Sri Lankan Constitution:

*The Fundamental Rights Chapter in our Constitution does not expressly refer to a right to life. However, the Constitution, as a living document, should not be construed in a narrow and pedantic sense. I am of the view that constitutional interpretation should be informed by the values embodied in it. The preamble/svasti... recognises **Dignity and Well-being of the People**...in my view, recognition of a right to life is in furtherance of this fundamental value.*⁷⁶ (emphasis in original text)

Here too, the Court cited the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Convention on the Rights of Persons with Disabilities to further support its

75. *Lakmali v Inspector of Police, Embilipitiya Police Station* SC (FR) 577/2010, SC Minutes 17 December 2019.

76. *Lakmali v Inspector of Police, Embilipitiya Police Station* 13.

reasoning on recognising the right to life in Sri Lanka.⁷⁷ In this way, the Court recognised a right to life despite the silence in the Constitution in this regard. This judicial approach is consistent with the ruling of the Court in *Sriyani Silva v OIC Iddamaligoda*.⁷⁸

7. Religious Freedom

The case of *Manjula v OIC Kekirawagave* raise questions about whether religious freedom in Sri Lanka included the right to propagate a religion.⁷⁹ The question was whether the promotion of their religion through unsolicited house visits amounted to an essential practice of the two Jehovah's witnesses, and part of religious teaching. After a detailed consideration of the facts and the nature of religious doctrine of Jehovah's witnesses, the Court held that unsolicited house visits were not part of religious belief or practice.⁸⁰ Rather, the Court noted that the actions of the petitioners amounted to religious propagation and held that unlike in India, the freedom to propagate religion is not recognised in Sri Lanka.⁸¹ The Court however, reiterated that 'They should not have been arrested...It hardly needs to be said that discussion about religion between people of different beliefs and faiths are lawful and are a valued trait of civilized society.'⁸²

The facts of this case had a direct bearing on the freedom of conscience and religion that is recognised under the Constitution as an absolute right. The facts of this case illustrate the ways in

77. *Lakmali v Inspector of Police, Embilipitiya Police Station* 13.

78. *Sriyani Silva v OIC Iddamaligoda*[2003] 2 Sri LR 63.

79. *Manjula v OIC Kekirawa* SC (FR) 241/2014, SC Minutes 18 July 2018.

80. Art 14(1)(e) of the Constitution.

81. *Manjula v OIC Kekirawa* 36

82. *Manjula v OIC Kekirawa* 35-36.

which the freedom to manifest a religion or belief overlaps with the freedom of conscience and religion.

8. Right to Employment

Jinadasa (on behalf of Citizen X, person living with Human Immuno Virus' v Sri Lankan Airlines was a case where the petitioner alleged that his right to engage in lawful employment and right to equality were violated.⁸³ Sri Lankan Airlines had selected him for its cabin crew but subsequently denied employment on the basis of the medical test which established that he was infected with the Human Immuno Virus (HIV). The petitioner claimed that these actions were also in violation of the National Policy of HIV and Aids in the World of Work in Sri Lanka (2010). The Court reasoned that the petitioner had made a false declaration to his prospective employer that 'he does not have any sexually transmitted disease' and had therefore breached the employer's trust. The Court observed that 'Citizen X is blowing hot and cold. Such a person is not entitled to get relief from the court.'⁸⁴ The Court then went on to note that 'In my view, it is not safe to permit such a person to work as a cabin crew member.'⁸⁵ The Court did not explain what 'safe' means here. The petition was accordingly dismissed. This petition was a rare opportunity for the Court to consider the scope of the right to employment under the Sri Lankan Constitution and its overlap with the right to be free from discrimination. However, the Court did not venture to engage in that jurisprudential analysis.

83. *Jinadasa (on behalf of Citizen X, person living with Human Immuno Virus' v Sri Lankan Airlines* SC(FR) 434/2016, SC Minutes 26 February 2018.

84. *Jinadasa (on behalf of Citizen X, person living with Human Immuno Virus' v Sri Lankan Airlines* 6.

85. *Jinadasa (on behalf of Citizen X, person living with Human Immuno Virus' v Sri Lankan Airlines* 6.

9. Access to Justice

In this section, I assess the jurisprudence of the Court during the period under review from the perspective of applicable procedure. The procedure stipulated under Article 126 and the Supreme Court Rules determine the quality of access to justice available to those who seek to vindicate their fundamental rights under Article 126.

9.1 *The One Month Rule*

The Court had occasion to consider whether time would run against a petitioner if they had made a complaint about the alleged violation to the Human Rights Commission in the case of *Nadeesha v Ceylon Petroleum Storage Terminals Ltd*.⁸⁶ According to section 13 (1) of the Human Rights Commission Act, time does not run when a complaint on the same matter is before the Commission. After a close examination of judicial precedent, the Court noted that the petitioners must have the benefit of section 13 as they had been prompt in filing a complaint before the Commission. The Court further noted that it cannot remain ‘blind to facts and circumstances’ in interpreting the time bar under Article 126.⁸⁷ In *Udaya v Director General, Dept. of National Botanic Gardens* the Court took due note of the fact that even though the petitioner filed a complaint before the Commission, they had not filed further documents to support their claim that the inquiry before the Commission is pending.⁸⁸ The Court therefore dismissed the petition on the basis that it

86. *Nadeesha v Ceylon Petroleum Storage Terminals Ltd* SC (FR) 244/2017, SC Minutes 22 February 2019.

87. *Nadeesha v Ceylon Petroleum Storage Terminals Ltd* 14.

88. *Udaya v Director General, Dept of National Botanic Gardens* SC (FR) 276/2016, SC Minutes 5 April 2019.

was out of time. A similar petition was upheld in the case of *Kithsiri v Minister of Provincial Councils and Local Government*.⁸⁹

9.2 Leave to Proceed and Reasons

According to the Supreme Court rules, the fundamental rights petition must be granted leave to proceed before the merits of the petition can be considered by the Court. It is difficult to identify the number of petitions in which the Court has refused leave to proceed. Importantly, when leave to proceed was refused, there have been instances in which the Court did not provide reasons for its decision. A notable example is the Supreme Court's refusal to grant leave to proceed with the petition challenging the postponement of parliamentary elections in 2020. After his election in 2019, President Gotabaya Rajapaksa dissolved Parliament at the earliest available opportunity, which was 2nd of March 2020. COVID-19 was declared a global pandemic around the same time. The Elections Commission was now tasked with the responsibility of conducting a general election during a pandemic. After nominations were received by the Elections Commission, the Commission issued a Gazette Notification postponing the elections without specifying the date for the election.⁹⁰ The Constitution requires that a new parliament be elected within three months of its dissolution and the indefinite postponement was a clear violation of this critical constitutional provision.⁹¹ Predictably, this announcement gave rise to controversy and contestation.

89. *Kithsiri v Minister of Provincial Councils and Local Government* SC (FR) 362/2017, SC Minutes 10 January 2018.

90. Gazette Extraordinary 21 March 2020

91. Art 70(5) of the Constitution.

Several petitions were filed before the Supreme Court in this regard. A bench of five justices dismissed the petitions without granting leave to proceed to the petitioners having heard the matter, in person, for several days.⁹² There are no specific constitutional provisions that mandate that the Supreme Court should provide reasons for its decision to refuse leave to proceed in a fundamental rights petition. However, the Supreme Court has recognised that public officers have a duty to give reasons for their decisions. Moreover, judicial reasoning is predicated on reasoning which must be transparent and clear. In this particular instance, the petition had immediate and serious implications for constitutionality of governance in Sri Lanka. It would have been most appropriate therefore, for the Supreme Court to provide written reasons for its refusal to grant leave to proceed. On the 5th of August 2020, approximately five months later, the elections were conducted adhering to social distancing protocols and without any serious incidents of violence. In the meantime, for the first time in Sri Lanka's history of constitutional governance, Parliament was not duly reconstituted within the constitutionally mandated time period.

9.3 Language

In the case of *Unawatuna v the Attorney General*, the Court had the rare opportunity to consider language rights in the context of its jurisprudence.⁹³ Sri Lanka's official languages are Sinhala and Tamil. English is a link language. However, Sri Lanka's appellate courts function in English. Pleadings, proceedings

92, Meera Srinivasan, 'Sri Lanka's Top Court Dismisses Petitions Challenging Poll Date,' *The Hindu* 2nd June 2020 <https://www.thehindu.com/news/international/sri-lankas-top-court-dismisses-petitions-challenging-poll-date/article31733871.ece>

93. *Unawatuna v the Attorney General* SC (FR) 357, SC Minutes 14 October 2020.

and judgements are issued in English and no official translations are made available. In this case, the petitioner sought a Sinhala translation of a judgement. This was the judgement issued by the Court on the purported dissolution of the Parliament in 2018. The Court held that Article 24(3) of the Constitution required translations of Court proceedings to be made available only to a party to the case ‘*if he is not conversant with the language used in court.*’ Because the petitioner was not a party to the case, the Court concluded that he was not entitled to a translation.

The normative implications of this judgement are significant. According to this judgement, in order to receive an official translation of a judgement (into Sinhala or Tamil from English) the applicant must satisfy two criteria. One is that the applicant must be a party to the case and the second is that he must satisfy the Court that he is not ‘conversant’ in English. Why should the petitioner’s right to receive a translation of the judgement in one of the official languages of the country be subject to an assessment of the Court? The Constitution recognises the right of persons to receive official communication issued by a public institution or local authority in Sinhala or Tamil.⁹⁴ The Constitution does not define ‘public institution.’ However, Article 22 recognises that legislation may stipulate that public records shall be translated to either of the National Languages.⁹⁵ The judgement however gives rise to a question as to whether the Court has a constitutional duty to provide translations of its English judgements. As per the *Unawatuna case*, it is not a right. Rather it is a service that may be available only to a party to the case. Even then, whether a translation would be made available is subject to an assessment

94. Art 22 of the Constitution.

95. Art 22(2)(b)

by the Court about the English language skills of the petitioner. In my view this judicial approach undermines access to justice.

10. Remedies and Enforcement

During the period under review, the Court has expanded its ‘just and equitable jurisdiction’ through the grant of strong and innovative remedies in several cases. In some instances, this has been achieved through orders to strengthen enforcement of the law and by issuing specific guidelines to reinforce enforcement. In other instances, the Court has even made orders for compensation against non-state actors even though Articles 17 and 126 read together make it clear that the remedy is available only against executive or administrative action or inaction.

10.1 Enforcement

In *Ajith Perera v Minister of Social Services*.⁹⁶ The Court made detailed orders for the enforcement of Disabled Persons (Accessibility) Regulations. They included directions to enforce compliance ‘at the earliest possible opportunity’ subject to any budgetary considerations that may apply; to ensure that approvals were not granted to public buildings which did not comply with these regulations; to monitor compliance; to pursue disciplinary proceedings against public officials who have granted approvals in violation of these regulations and to institute criminal actions as per the Act.⁹⁷

Another example of enforcement of applicable regulations by the Supreme Court is the case of *Jayanetti v Urban Development*

96. *AjithPerera v Minister of Social Services* SC (FR) 273/2018, SC Minutes 18 April 2019.

97. *Ajith Perera v Minister of Social Services* 25-27.

Authority.⁹⁸ The petitioners complained to the Court that a school had been constructed in violation of applicable zoning regulations. The Court upheld the claim and held that the right to equality and the freedom of movement and of choosing his/her residence within Sri Lanka had been violated. The Court ordered that all illegal buildings should be demolished and that any applicable permits granted to the institute that was running the school, be canceled.

10.2 Guidelines

In *Anjali (Minor) v OIC Matara Police Station*, the Court took the commendable step of directing the Inspector General of Police to issue guidelines for the Police. The Court went a step further and listed the aspects that should be addressed in those guidelines. The Court emphasised the duty to respect and protect human dignity, to act on the basis of ‘legality, necessity, non-discrimination, proportionality’ and humanity and without discrimination.⁹⁹ The Court issued special guidance on how the Police should deal with children and women. The Court emphasised that ‘detention or imprisonment of children shall be an extreme measure of last resort, and detention shall be for the shortest possible time.’¹⁰⁰

The Court noted in *Anuradha v Head Quarter Inspector of Police*, that it has required the State to ‘take strict measures to prevent abuse of authority by government officials, especially the police but there is no report or action plan before this Court that the government has taken adequate measures to curb these

98. *Jayanetti v Urban Development Authority* SC (FR) 621/2019, SC Minutes 3 April 2019.

99. *Anjali (Minor) v OIC Matara Police Station* SC (FR) 677/2012, SC Minutes 12 June 2019.

100. *Anjali (Minor) v OIC Matara Police Station* 22.

situations from arising continuously.’¹⁰¹ The IGP was ordered by the Court to pay the victim Rs. 100,000 and the two respondents were ordered to pay Rs. 50,000 each from their personal funds. In *Perera v OIC, Police Station, Hettipola*, in addition to compensation to be paid by respondents from their personal funds, the Court also ordered the payment of Rs. 100,000 from the funds of the Police Department.¹⁰²

Locomotive Assistants Union v Sri Lanka Railways Department involved a new scheme of recruitment which had not been implemented.¹⁰³ The Court held that the non-implementation was a violation of the right to equality of the petitioners and directed the respondents to ‘take all necessary steps...forthwith, and to report the progress of the action taken in that regard to this Court on the 30th November 2020. This directive, however, is to be carried out subject to any budgetary constraints the State might be facing.’¹⁰⁴ This ruling resonates with the standard in the International Covenant on Economic, Social and Cultural Rights which permit the fulfilment of ESCRs subject to available resources.

10.3 Executive and Administrative Action and Omissions

In *Perera v District Scout Commissioner*, the Court had the opportunity to consider the scope of ‘administrative and executive action under Arts 17 and 126.’¹⁰⁵ The question before the Court was whether the Scout Commissioner of the Sri Lanka

101. *Anurdha v Head Quarter Inspector of Police* SC (FR) 369/2013, SC Minutes 22 October 2020, 15-16.

102. *Perera v OIC, Police Station, Hettipola* SC (FR) 296/2014, SC Minutes 16 June 2020, 12.

103. *Locomotive Assistants Union v Sri Lanka Railways Department* SC (FR) 29/2018, SC Minutes 16 July 2020.

104. *Locomotive Assistants Union v Sri Lanka Railways Department*, 26.

105. *Perera v District Scout Commissioner* SC (FR) 335/2018, SC Minutes 20 May 2020.

Scout Association came within the scope of these articles. The Court considered three tests: the functional test, the government control test and the sovereignty test as developed in Sri Lankan and Indian jurisprudence. The Court then applied what it described as the ‘governmental instrumentality or agency test’ and concluded that the Scout Association did not come within the Court’s jurisdiction under Arts 17 and 126, because their functions were not governmental in nature, nor did they possess ‘the sovereign power of the State.’¹⁰⁶

10.4 Compensation by Non-State Actors

As per Article 126, remedies for violation of fundamental rights are only available against executive and administrative action. However, the Supreme Court has granted remedies against non-State actors. In the 1990s this was in the form of monetary compensation that was to be paid partly by the State and partly by individual public officers who were responsible for the violation of fundamental rights. In the period under review, the Court directly ordered compensation be paid only by a non-state actor. In *Kariyawasam v Central Environmental Authority*, the Court applied the polluter pays principle to require a non-state actor to pay compensation not to the petitioners but to the residents affected by the pollution of groundwater in Chunakam.¹⁰⁷ The Court ordered that Rs. 20 million be divided among the households within 1.5 km radius of the power station. The Court determined that the respondents were ‘collectively and individually responsible for the integrity of the process.’¹⁰⁸

106. *Perera v District Scout Commissioner* 10.

107. *Kariyawasam v Central Environmental Authority* SC (FR) 141/2015, SC Minutes 4 April 2019

108. *Kariyawasam v Central Environmental Authority* 65.

Moreover, the amount of compensation that the Court ordered private actors to pay personally has increased. In *Lakmali v Inspector of Police, Embilipitiya Police Station*, as compensation for a death in custody, the Court ordered four respondents to pay Rs. 250,000 each personally due to their individual liability, three other respondents were ordered to pay Rs.25,000 for failing to fulfil their responsibilities and the State to pay Rs. 1 million for failing in its responsibility.¹⁰⁹ In *Kumara v OIC Katunayake*, the Court granted differentiated amounts of compensation to the several petitioners ranging from Rs 50,000 to Rs. 250,000 payable by the State.¹¹⁰

Judicial decisions do not provide reasons as to how the amount of compensation that it orders to be paid is calculated. Moreover, judgements are silent on the basis on which the Court distinguishes between the amount of compensation to be paid by the State and the amounts to be paid directly by individuals. Furthermore, the overall trends in judicial policy on compensation, how and when compensation is actually paid to victims, has not been the subject of study in Sri Lanka. Information and analysis of these developments are necessary to more fully appreciate the actual effect of the remedies granted by the judiciary for the violation of fundamental rights.

10.5 Judicial Dissent

Dissenting opinions are noteworthy in Sri Lanka due to their rare occurrence. Beyond this reason, dissents are an indicator

109. *Lakmali v Inspector of Police, Embilipitiya Police Station* SC (FR) 577/2010, SC Minutes 17 December 2019, 15.

110. *Kumara v OIC Katunayake* SC (FR) 265-274, 346-348, SC Minutes 5 April 2019.

of the ways in which the judicial mind functions. Multiple judgements, even if in agreement, contribute to the depth of the jurisprudence of a legal system. Dissents make a critical contribution by foregrounding the different interpretations of the law. Multiple and dissenting opinions of the Court highlight the contingent nature of the law and the possibilities within it for multiple meanings and outcomes. During the period under review, in *Senudhi v Sirimavo Bandaranayaka Vidyalaya*, Justice Amarasekera dissented on the interpretation of the facts and the applicable marking scheme in a petition regarding school admission.¹¹¹

Nevis v Superintendent, Vavuniya Prison is another case where a dissenting judgement was issued during this period.¹¹² The petition had been filed by the father of an inmate who had died due to injuries sustained during a prison riot. After considering the evidence ‘in its totality’ the majority dismissed the petition. Justice Amarasekera dissented on the basis that ‘there is no evidence to say that the named respondents in the caption are directly involved in the infringement, but it is clear that the infringement took place and the State is liable.’¹¹³ Justice Amarasekera ordered Rs. 200,000.00 as compensation for the violations of Article 11. The dissent further drew the attention of the prison authorities of the need to conduct investigations into the allegations of assault after a prison riot.

111. *Senudhi v Sirimavo Bandaranayaka Vidyalaya* SC (FR) 21(2019) SC Minutes 13 February 2020.

112. *Nevis v Superintendent, Vavuniya Prison* SC (FR) 660/2012, SC Minutes 23 May 2019.

113. *Nevis v Superintendent, Vavuniya Prison* 18.

11. Conclusion : 2018-2020 a Period of Progress for Judicial Interpretation

The analysis of jurisprudence on fundamental rights for 2018, 2019 and 2020 suggests that the Sri Lankan Supreme Court has been robust, progressive and responsive in its judicial interpretation. The Court has strengthened its interpretation of rights recognised explicitly in the Constitution and has also elaborated on their scope. In other instances, the Court has recognised new aspects of previously recognised implicit rights, such as environmental rights and rights of persons with disabilities. Moreover, on a few occasions, the Court has offered explanations on foundational and conceptual aspects of judicial interpretation such as the relevance of the right to life in Sri Lanka and the application of the concept of human dignity. The Court demonstrates a posture of engagement with applicable international law standards. Where necessary, the Court has cited relevant international treaties to further support its interpretation of fundamental rights.

This progressive trend is evident in the Court's approach to the grant of remedies too. The amount of compensation has increased significantly and cannot be any longer considered to be nominal in the manner anticipated by Justice Amarasekera in *Saman v Leeladasa*.¹¹⁴ There are indications that the Court is gradually moving in the direction of the dissenting view of Justice Fernando in the same case, in the Court's grant of compensation. The Court has not confined itself to the grant of compensation and has offered remedies fit for purpose such as the directives issued to guide policy making by the Police.

114. *Saman v Leeladasa* [1989] 1 Sri LR 1.

The question of access to justice, however, remains. In my study of the jurisprudence of the Court in the last decade, I have continuously noted issues with regard to delays under Article 126. In several cases the delay is approximately 10 years, whereas the constitutional mandate is that proceedings should be concluded within three months. Finally, as noted in my previous work, for a more accurate analysis of the fundamental rights jurisprudence, analysts must study the petitions for which leave to proceed is refused by the Court. Those petitions ought to be analysed quantitatively as well as qualitatively. In conclusion, looking back on a decade of judicial interpretation of fundamental rights in Sri Lanka, it can be said that the years 2018, 2019 and 2020 have been a high point.

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Rushdan v SLMC, SC (FR) 400/2019, SC Minutes 23 July 2020;

Sampanthan v Sirisena, SC (FR) 351-361/ 2018, SC Minutes 13 December 2018

Shantha v Sub-Inspector, Police Station, Meegahathenna, SC (FR) 479/2009, SC Minutes 23 October 2018.

Silva v Secy, Ministry of Education, SC (FR) 222/2018, SC Minutes 18 June 2020.

Silva v SLMC, SC (FR) 399/2019, SC Minutes 23 July 2020;

Singarasa v Attorney General [2013] 1 Sri LR Part 9 245

Sriyani Silva v OIC Iddamalgoda [2003] 2 Sri LR 63.

Udaya v Director General, Dept of National Botanic Gardens, SC (FR) 276/2016, SC Minutes 5 April 2019.

Union of India v Hindustan Development Corporation (1993), SC 1085.

Wijerathna v Sri Lanka Ports Authority, SC (FR) 256/2017, 11 December 2020

WOMEN'S RIGHTS: WOMEN'S ISSUES BETWEEN 2018-2020

*Megara Tegal**

1. Introduction

The period from 2018 to 2020 were turbulent years in Sri Lankan history. A few pivotal events that occurred during this period include a constitutional crisis brought about by the then-President Maithripala Sirisena sacking Prime Minister Ranil Wickremesinghe, the Easter bombings, and the COVID-19 pandemic which was also one of the leading factors that precipitated a dire economic crisis.

As these events, among others, unfolded, vulnerable groups were trapped in the centre of the crises. Women, one of the population's most vulnerable groups, were affected by these incidents both directly and indirectly. In this chapter, I will explore the manner in which women were affected in relation to four specific areas; women and labour, women in minority communities, women in leadership, and women's health.

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2. Women and Labour

According to the International Labour Organisation,¹ the female labour force participation (FLFP) rate in Sri Lanka remained remarkably low, between 30 to 35 per cent in the past two decades, for a country that has had a consistently high education level as well as other social indicators for women. Consequently, a significant number of women in Sri Lanka lack the financial independence of earning their own wages and obtaining social securities such as pensions. Pensions, Employee Provident Fund (EPF) and Employee Trust Fund (ETF) are only available to those employed in the formal sector, whether in the public or private sphere; those employed in the informal sector have no such security measures.

A low FLFP rate also indicates that a large number of the population within the working age, is removed from the labour force, and Sri Lanka is not nearly as productive as it could, or even should, be for a country with soaring debts. According to the World Bank estimates,² Sri Lanka could see an overall income gain of 16 per cent by 2040 if gender gaps are closed in 50 years.³

A 2017 study revealed the number of women who have never participated in the labour force was actually very few. Most Sri Lankan women usually engage in some form of economic activity

1. ILO, Factors Affecting Women's Labour Force Participation in Sri Lanka, Colombo: International Labour Organisation, 2016, Retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf

2. World Bank, Women in the Workforce and why it Matters for Sri Lanka, 2020, <https://www.facebook.com/watch/?v=2738420812862000>. Accessed 4 2 2022

3. This report was published prior to the floating of the Sri Lankan rupee and the steep increase in inflation. The estimate therefore will be far greater at the time of publishing this article. However, the premise of the statement remains valid, but job creation is also necessary to absorb the workforce and generate revenue.

for a few years but they eventually leave due to factors such as marriage, motherhood, ill-health and workplace difficulties; while external factors for their retirement to their homes include economic, socio-cultural and labour market conditions.⁴ Another interesting fact presented in the study was that the FLFP rate of women in rural, urban and estate sectors was fairly similar. Therefore, Semasinghe's research suggests access to more developed cities, better schools, more employment opportunities and so on, do not necessarily encourage Sri Lankan women to enter the labour force. However, the World Bank asserts, that the gender wage gap, travel to work and limited marketable skills of women also contribute significantly to the low FLFP rate.⁵ This could mean that while women may live in urban areas, their lack of marketable skills, for instance, adversely affect their chances of securing employment. The World Bank has not indicated what these "marketable skills" might be, however, skills with diploma accreditation in nursing or other vocational jobs would certainly be advantageous.

What these studies may leave out however, are the women employed in the informal sector and agriculture. Women's work in the household, including care work, and domestic labour such as cooking for the family and cleaning up, play an important social reproductive role for employed family members. Social reproduction is the process of reproducing the worker, which ensures they are able to return to work and complete tasks for which they are paid a wage.

4. Wanninayake M. Semasinghe, "Women's Labour Force Participation in Sri Lanka: An Inquiry into the Factors Influencing Women's Participation in The Labour Market," *International Journal of Social Science and Humanity*, 7 no.3 (2017): 184-187.

5. World Bank, *Women in the Workforce and Why it Matters for Sri Lanka*, 2020, <https://www.facebook.com/watch/?v=2738420812862000> (Accessed 4 2 2022).

Women in rural areas are not only burdened with social reproductive work, but also agricultural work for which they are not compensated. Similarly, women who run home-based businesses and those who sell food parcels and craft items, are often not acknowledged for what they produce.

Another group of women workers that need recognition are the Malaiyaha Tamils who work on tea estates. UN Special Rapporteur, Tomoya Obokata, pointed out that women workers continue to be paid less than their male counterparts. He also noted:

Domestic workers who are Malaiyaha Tamils tend to work longer hours, are paid less and are known for not reporting their employers. Many are in-house domestic workers, and as a result, they are at risk of facing higher levels of exploitation and discrimination as well as physical, verbal and sexual harassment and abuse.⁶

That said, returning to the research at hand, which asserts that women's labour force participation is low, it must be noted that there are certain industries and services in which female labour force participation outnumbers male labour force participation. These include the garment industry and outward labour migration of semi-skilled to unskilled female workers. This chapter will focus on these two areas specifically given that there were major developments and events surrounding these industries during the years 2018 to 2020.

6. Diana Joseph, "Women in the Estate Sector Face Many Layers of Discrimination," *Groundviews*, August 18, 2022, <https://groundviews.org/2022/08/18/women-in-the-estate-sector-face-many-layers-of-discrimination>

2.1 Garment industry workers

The textile and apparel industry took root in Sri Lanka in the 1950s. The apparel industry grew rapidly a few decades later when it was seen as a means to boost foreign revenue, and large investments were made towards the establishing of the Board of Investors (BOI) and free trade zones (FTZ). Following the signing of the Multi-Fibre Agreement in the 1970s, the island saw a rapid growth of the industry, and by 1992, it became the country's highest foreign exchange earner.⁷ Today, according to the SLEDB: "[Sri Lanka] has the highest apparel exports per capita of any exporting nation in the region. ... Sri Lanka's top three apparel companies are already amongst the world's 50 most important suppliers, and in 2018 the industry's aggregate export revenue amounted to US \$4960 million, just shy of the high-water mark of US \$5 billion."⁸

This massive industry, which is a primary source of revenue for the country, is fuelled by women. "Women make up about eight in every 10 workers in the sector and most come from rural areas in search of jobs."⁹ The large work force is also underpaid as the gender pay gap has persisted in the industry.

Recent research revealed that even during the COVID-19 pandemic men received 10 percent higher income than women in the industry.¹⁰ Women did receive more pay during the

7. Rupa Dheerasinghe, "Garment Industry in Sri Lanka Challenges, Prospects and Strategies," *Staff Studies* 33, no. 1 (2009): 33-73.

8. Sri Lanka Export Development Board, About Apparel and Textiles Industry in Sri Lanka, February 5, 2022, <https://www.srilankabusiness.com/apparel/about/>

9. "Crisis after COVID-19 for Sri Lankan Women Who Dress the West," *The Hindu*, May 9, 2022, <https://www.thehindu.com/news/international/crisis-after-COVID-19-for-sri-lankan-women-who-dress-the-west/article65397272.ece>

10. Asia Floor Wage Alliance, Money Heist: COVID-19 Wage Theft in Global Garment Supply Chains, 2021, (Colombo: AFWA).

lockdown, but this was only due to the overtime they clocked in when production shifted from wearing apparel, to PPE suits. According to the AFWA research, when demand for PPE suits plateaued, women workers returned to their regular working hours and regular pay.

Shutdowns, shortages, pay problems and looming strikes are playing out across the island, with the female backbone of the garment industry paying the highest price. Many rural, low-paid women have already lost their jobs or say they have taken on loans or extra shifts to make ends meet each month - all for the cost of a Victoria's Secret negligence.¹¹

The Hindu article further stated that thousands of garment workers faced reprisals and worked through difficult conditions, including multiple COVID-19 outbreaks that swept factory floors. Labour rights activists informed Human Rights Watch (HRW):

that numerous workers from different factories complained to them that they lost pay when they fell sick or needed to quarantine. The activists said that the police or military personnel had intimidated them to stop them from speaking out.¹²

The report further stated that following the outbreak suspected to have broken out in the Brandix Lanka Limited, the government

11. "Crisis after COVID-19 for Sri Lankan Women Who Dress the West," *The Hindu*, May 9, 2022, <https://www.thehindu.com/news/international/crisis-after-COVID-19-for-sri-lankan-women-who-dress-the-west/article65397272.ece>

12. Human Rights Watch, Sri Lanka: Protect Garment Workers' Rights During Pandemic, July 12, 2021, <https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>

made it mandatory for all factories to have COVID-19 health committees, but HRW discovered most factories throughout the sector had not set up these committees.¹³ Many employees were compelled to work while battling COVID-19 infections despite government guidelines requiring garment factories take occupational health and safety measures for ventilation, screening, testing, and isolating infected workers. One activist claimed this was because workers were afraid of losing their jobs if they revealed they were unwell. Alternatively, another activist alleged that the factory management did not administer PCR tests because they did not want their labour force dwindling by sending infected persons on sick leave.

HRW also notes:

On May 20, a court in Galle detained a manager from the Koggala FTZ on charges under the Quarantine and Prevention of Diseases Act, after the manager allegedly concealed information and failed to follow instructions from public health officials following an outbreak in the factory. Although this prosecution was unusual, activists told Human Rights Watch they believed factory violations of quarantine rules are widespread.¹⁴

Highlighting the role of the military, the report further stated:

Following the major outbreak at a Brandix factory in October, trade unions filed a complaint with the Human Rights Commission of Sri Lanka alleging that soldiers

13. Ibid.

14. Human Rights Watch, Sri Lanka: Protect Garment Workers' Rights During Pandemic, July 12, 2021, <https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>

“rounded up” 98 workers from various factories in the middle of the night and arbitrarily detained them in an unsanitary quarantine facility. In response, the army accused the complainants of pursuing “hidden plans,” and said the military should not be “insulted or downgraded. [...] Security force intimidation of workers is particularly acute in the Tamil-majority north of Sri Lanka, which has remained heavily militarised since the end of the civil war in 2009. In Maruthankerny, security officials reportedly told workers they would lose pay and benefits if they did not report for work, despite safety fears related to the spread of COVID-19.¹⁵

Garment workers were also unable to collect the state distributed COVID-19 relief of Rs. 5,000 as workers were boarded close to the factory, and could only claim their due if they travelled to the local government offices in their hometowns. With lockdown in place this was not possible.

Eventually, due to the vaccination programme which was rolled out, some running for 24 hours, the outbreaks were contained across the island towards the latter part of the 2021. The garment industry bounced back with export earnings for garments going up by 22 percent to USD 524 million in January 2022.¹⁶

2.2 Outward migrant workers

According to research by the Sri Lanka Bureau of Foreign Employment (SLBFE), Sri Lanka’s outward migrant workers are

15. Ibid.

16. “Crisis after COVID-19 for Sri Lankan Women Who Dress the West,” *The Hindu*, May 9, 2022, <https://www.thehindu.com/news/international/crisis-after-COVID-19-for-sri-lankan-women-who-dress-the-west/article65397272.ece>

largely men. Women only outnumber men in domestic or care work within the scope of migrant labour.¹⁷ A collaborative report published by the Asian Development Bank, International Labour Organisation and the Organisation for Economic Co-operation Development, revealed that from 2015 to 2017 there was a decline in outward migration of domestic workers in Sri Lanka.¹⁸ This was followed by a sudden spike from 2017, to 2018, then a slow decline from 2018 to 2019, and finally an unprecedented rapid decline from 2019 to 2020. The latter years were when the Easter bombings occurred and the COVID-19 pandemic broke out.

This is likely due to the adversities faced by migrant workers during the pandemic. While both men and women workers faced difficulties during this time, women were disproportionately affected by the circumstances when given their gendered vulnerabilities.

Ground views reported:

There are numerous videos on social media of direct appeals to President Gotabaya Rajapaksa, highlighting the harsh conditions the women are facing, dependent on charity and the kindness of strangers. Some are sick but receive no treatment, others are stranded in embassies without adequate food while one woman even spoke of

17. Sri Lanka Bureau of Foreign Employment, Outward Labour Migration in Sri Lanka, 2020, SLBFE.

18. Asian Development Bank Institute, International Labour Organization, and Organisation for Economic Co-operation and Development, Labour Migration in Asia: COVID-19 Impacts, Challenges and Policy Responses, 2022, ADB, ILO & OECD, [chrome-extension://efaidnbmninnibpcjpcjclefindmkaj/https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_847008.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_847008.pdf)

resorting to prostitution to earn the Rs. 250,000 demanded for her airline ticket, PCR tests and to quarantine at home. Without salaries or savings how can they raise this money, they ask. Some showed burnt and swollen limbs from abuse at the hands of vicious employers. In Kuwait, women were brutally beaten by police when they tried to appeal for help at their own embassy.¹⁹

Many domestic workers in the Middle East were left stranded in makeshift camps as they waited to be repatriated to Sri Lanka. But with the outbreaks of COVID-19 the government temporarily halted the repatriation process, leaving them at greater risk of infection, no income and at risk for their safety.²⁰

Meenu Sethi, an activist who works closely with migrant workers in the Middle East, interviewed stranded migrant workers and shared their stories on social media platforms. One migrant worker related: “On the morning of 27 October, suddenly my sponsor told me that he will not renew my residence visa,” says Riya, a domestic worker who had worked for many years in Umm Al Quwain.

I wasn't given any notice or gratuity. I have 30 days to leave the country to avoid being fined but no one is listening to me in the consulate. They have too many people coming to them every day, they said.²¹

19. Minoli. De Soysa, “Bringing them Home - the Need of the Hour for Migrant Workers,” *Groundviews*, 29, January, 2021, <https://groundviews.org/2021/01/29/bringing-them-home-the-need-of-the-hour-for-migrant-workers/>

20. Shihara Maduwage, “The Disproportionate Impact of COVID-19 on Women in Sri Lanka,” *Daily FT*, November 5, 2020, <https://www.ft.lk/columns/The-disproportionate-impact-of-COVID-19-on-women-in-Sri-Lanka/4-708456>

21. M. Sethi, Homeless in the UAE, November 29, 2020, <https://www.migrant-rights.org/2020/11/homeless-in-the-uae>

Sethi goes on to observe:

For months, Sri Lankans in need of help and repatriation have slept in public parks near the consulate in Dubai. Many of them were initially provided accommodation by the Dubai government, a locally registered NGO, and volunteers. The treatment, however, by their home government and consulate has been callous and chaotic, according to those stranded. Though they picked up breakfast or lunch parcels from the consulate, they mostly relied on volunteers for food and other basic necessities and received no accommodation support. These workers included women who often had no access to toilets and showers. Many of them tried to go to nearby shops, restaurants and service stations but were turned away due to COVID restrictions.²²

Sethi noted that the Sri Lankan consulate staff were reluctant to answer questions about accommodation arrangements and repatriation flights. This may also be due to the lack of funding consulates have to board migrant workers. While President Gotabaya Rajapaksa's election promises included embassies in the Middle East in particular being made to bear greater responsibility in protecting Sri Lankan housemaids, one year later, in August 2020, the government planned to shut down labour and welfare units in Sri Lanka's foreign missions in 14 countries as a cost-cutting measure.²³

22. Ibid

23. Megara Tegal, "2021 Budget Proposal View Migrant Workers as Expendable," *Daily FT*, November 25, 2021, <https://www.ft.lk/columns/2021-Budget-proposal-views-migrant-workers-as-expendable/4-709348>

3. Women in Minority Communities

The years 2018 to 2020 have been particularly difficult for Muslim women. It was during this time the Justice Saleem Marsoof committee of 2009 finally submitted their report on the Muslim Marriage and Divorce Act (MMDA), but reforms to the MMDA were hampered due to disagreements among the committee members on the recommendations. In 2019, Easter bombings were carried out by Muslim extremists said to be linked to ISIS. The Muslim community faced a severe backlash and Muslim women were not spared. This section will explore events surrounding the MMDA and the Easter bombings, and how Muslim women were affected.

Other equally important events, albeit covered briefly, in this chapter, is the continued struggle by Tamil women in the north to reclaim their ancestral land which has been occupied by the military, their continued search for missing persons and the mass strike by plantations workers during the COVID-19 pandemic.

3.1 Muslim Marriage and Divorce Act

Calls for reforms to the Muslim Marriage and Divorce Act (MMDA) have been made repeatedly for over 50 years but little to no progress has been made in freeing Muslim women from the misogynistic marriage and divorce laws to which they are bound.

In recent years, starting around 2016, young Muslim women – lawyers and activists – breathed new life in to the campaign for reforms. Their strong demands mobilised the dormant Marsoof Commission that was established in 2009 to finally submit their

recommendations to the Ministry of Justice on 24th January 2018, just short of a decade since the committee came together. The Minister of Justice at the time, Thalatha Athukorala, remained tight-lipped with regards to the report. Several RTI applications were filed and parts of the report were even leaked in April 2018.²⁴ Finally on 18th July 2018 the Ministry of Justice released the report to the public. But the struggle for reforms was far from over.

The long-awaited report included two sets of recommendations. There was a split in recommendations among the committee members. While the initial recommendations submitted by one group, which consisted of nine²⁵ out of eighteen members, were dated 20th December 2017, the second set of recommendations by the other nine²⁶ members were included in the annexures dated 21st December 2017. The second set of recommendations were significantly contrary to the initial set of recommendations. The former group included six women and three men which included minority ethnic groups within the Muslim community, while the latter included nine men and one woman.

The latter group, henceforth referred to as 'group two', stated:

We are in substantial agreement with the recommendations made by our colleagues in their separate report only in

24. Megara Tegal, "2021 Budget Proposal View Migrant Workers as Expendable," *Daily FT*, November 25, 2021, <https://www.ft.lk/columns/2021-Budget-proposal-views-migrant-workers-as-expendable/4-709348>

25. Hon. Justice Saleem Marsoof (the Chairman), Ms. Dilhara Amarasinghe, Hon. Suhada Gamalath, Deshabandu Mrs. Jezima Ismail, Professor Sharya Scharenguvel, Mrs. Faleela Be Juranpathy, Mr Razmara Abdeen, Ms. Safana Gul Begum, and Mrs. Sharmeela Rassool.

26. Mufti M I M Rizwe, Ash-Shiekh M M A Mubarak, Hon. Justice A W A Salam, Hon. Justice Mohammed Mackie, Mr. Shibly Aziz, Mr. Faisz Musthapha, Dr. M A M Shukri, Mr. Nadvi Bahaudeen and Mrs. Fazlet Shahabdeen

regard to administrative reforms and the upgrading of the Quazi court system. We however regret our inability to agree with their recommendations in regard to the subjects referred to below and as such we have set out our recommendations in regard to same in the succeeding paragraphs.²⁷

Some of the contradicting recommendations of group two include their rejection in allowing women Quazis.²⁸ Muslim women activists have fought to include women Quazis as women experience a number of difficulties in communicating intimate partner abuse, marital rape, information about their menstruation cycle to male Quazis; some women are also subjected to abuse and misogyny by male Quazis, and finally a woman Quazi may find it easier to relate to and understand particular situations or circumstances described by women in the Quazi court better than a man.

Religious evidence provided by group two for rejecting women Quazis was dubious. Some claims made by the Muftis, Sheikhs and other men in group two were:

It was narrated that Abu Bakrah (RadhiAllahuAnhu) said: When the Messenger of Allah (peace be upon him) heard that the people of Persia had appointed the daughter of Chosroes as their ruler, he said: "No people will ever prosper who appoint a woman in charge of their affairs."²⁹

27. Justice Saleem Marsoof Committee Report, December 2017, Colombo.

28. Judges

29. Ibid p. 222.

This hadith, which is often brought up against women entering any form of leadership, is false. According to scholar Fatema Mernissi the hadith contradicts the Quran, cannot be corroborated, and Abu Bakrah, the narrator, had a history of lying and is therefore not a reliable source of hadith.³⁰

The group two recommendations further state:

*So, Islam tells women to stay in their homes and not go out except in cases of necessity. And it forbids them from mixing with men and being alone with them, because that poses a threat to women and their honour.*³¹

However, nothing is to be said about men having any control over their actions. As per this logic, one would believe that all men, or at least most, find it difficult to control themselves around women, and are inherently predisposed to harassing women.

O Prophet! Tell the believing men to lower their gaze and guard their chastity. That is purer for them. Surely Allah is All-Aware of what they do. And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments except what normally appears. Let them draw their veils over their chests, and not reveal their 'hidden' adornments ...

Therefore, it is unclear as to how women are “forbidden from mixing with men” and expected to stay in their homes, when the Quran has clearly laid out instructions on how men and women should conduct themselves in the presence of each other.

30. Fatema Mernissi, *The Veil and the Male Elite*, (New York: Basic Books, 1992).

31. Justice Saleem Marsoof Committee Report, December 2017, Colombo, p. 222.

If women were not to venture outdoors such instructions in the Quran would be redundant.

It is also pertinent to mention here that Muslim countries such as Egypt, Tunisia, Yemen, Malaysia, Pakistan and Indonesia have women Quazis. Therefore, the religious reasoning by group two to keep women from being Quazis is weak and highly contestable.

In the section on polygamy both groups allow for polygamy but include a set of rules to be followed before a man can marry a second, third or fourth woman. Group one recommendations are far more detailed and thorough, for example, it states the man is required to seek approval from the Quazi in the first wife's Quazi division – this is favourable to the first wife. Whereas the recommendations of group two state that the man must seek approval from his own Quazi division, which is favourable to the man. Group two also recommends that if a man marries and proceeds with the next marriage despite the Quazi's objection, the man will have to pay a fine of a mere Rs. 5000 and the Quazi must inform the man's other wives of his recent marriage. They make no attempt to invalidate the illicit marriage, whereas group one does. This means that as per the recommendations of group two, after paying the insignificant³² amount, the man's latest marriage is still valid and recognised, he cannot be taken to court and be held accountable.

⁴These are but two examples of the recommendations made by group two, that not only contradict group one but also the Quran and hadith, and fail to take into consideration Muslim women's lived experiences.

32. Insignificant in relation to the harm these marriages potentially cause all the wives involved and the children borne from each of these marriages.

A consensus among the Marsoof committee was necessary in order to implement the recommendations. The split in recommendations resulted in a deadlock and no further progress was made, apart from a few attempts by some parliamentarians that were scuttled almost as soon as they were made.

The lack of interest by Muslim parliamentarians in hearing Justice Saleem Marsoof's presentation of the report on 19th July 2018 may have been an augur of the prolonged and thorny process the MMDA was to follow. The Daily FT reported only 10 of the 22 Muslim parliamentarians attended the presentation and some objected to the recommendations.³³ The article further claims these MPs dissent was fuelled by gaining of political mileage among their voter base, and they had previously been approached by "radical intransigent theologians."³⁴

In April 2019, soon after the devastating Easter bombing, Muslims were once again subjected to physical and verbal abuse. The slogan "one country, one law" was sounded across the country with regard to the MMDA. Muslim Personal Law Reform Action Group (MPLRAG) released a statement in response asserting the need for reform and not abolition of the MMDA.

We note with trepidation, that the current heightened interest towards reforms to the MMDA is motivated by prejudice, majoritarian entitlement and crass opportunism to capitalise at a time when the community is feeling vulnerable. We therefore demand that any reform to MMDA should focus on addressing the long-term grievances clearly articulated by Muslim women

33. "Playing Politics with the MMDA," *Daily FT*, August 7, 2018, <https://www.ft.lk/Opinion-and-Issues/Playing-politics-with-the-MMDA/14-660404>

34. *Ibid*

*for over three decades. It should seriously consider what Muslim women have put forward as solutions based on their lived realities and their beliefs informed by faith, rights, and the constitution.*³⁵

With much focus on the MMDA, in July 2019 MP Faiszer Musthapha announced that Muslim parliamentarians had unanimously agreed to amend four aspects of the MMDA. These include increasing the age of marriage of both the bride and the groom to 18 years, making it mandatory for the bride to sign the marriage registry, necessitating all Quazis are qualified attorneys at law, and permitting female Quazis. While these amendments were much needed and welcomed by Muslim women activists, the latter feared piecemeal amendments to the MMDA, rather than complete amendment would further stall or even completely halt further amendments to other equally important sections of the MMDA, such as polygamy and divorce.

*We are cautiously encouraged by the unanimous agreement on these basic reforms to the MMDA reached by Muslim parliamentarians. We are also deeply disappointed and apprehensive that this selective approach towards reform overlooks many crucial concerns in the MMDA. Therefore, we strongly call for a comprehensive solution.*³⁶

Much to the chagrin of the Muslim activists, the proposed amendments that were ultimately presented to the Ministry of Justice in August 2019 by the Muslim MPs had changed

35. Muslim Personal Law Reform Action Group, The Antidote to Extremism Is Ensuring Equality, Rights And Freedoms for All, May 25, 2019, MPLRAG, <https://www.mmdasrilanka.org/the-antidote-to-extremism-is-equality/>

36. Muslim Personal Law Reform Action Group, Piecemeal Reform Will Perpetuate Discrimination and Hardship Under the MMDA, , MPLRAG, 2019 [2], 7 15, <https://www.mmdasrilanka.org/piecemeal-reform-will-perpetuate-discrimination>

significantly from what was released in July 2019.³⁷ According to a Daily News report the parliamentarians met with several groups, including the All Ceylon Jamithul Ulema (ACJU) who had presented their own set of recommendations for MMDA reforms. This clearly had an impact on the parliamentarians prompting them to change their initial progressive recommendations.³⁸

A few days later, on 22nd July 2019, the Cabinet approved the proposed amendments to the MMDA.³⁹ A full comparison of the demands by the MPLRAG against the amendments approved by Cabinet can be viewed on the MPLRAG website.⁴⁰

Nothing more was heard of reforms to the MMDA for the following five months, until in January 2020, when MP Ven. Athuraliye Rathana Thero tabled two private member bills in parliament, one to repeal the MMDA and the other to bring Muslims under the General Marriage Ordinance by deleting the words “other than the marriages of Muslims” from the document.⁴¹ The same report stated that the Chairperson of the Parliamentary Oversight Committee on Women and Gender, MP Dr. Thusitha Wijemanne also tabled two private member bills, one to introduce a minimum age of marriage of 18 for all communities in Sri Lanka and the other to bring Muslims under

37. Muslim Personal Law Reform Action Group, Update: Muslim MPs Change Their Progressive Position on MMDA Reform, MPLRAG, (2019 [3], 07 09), <https://www.mmdasrilanka.org/muslims-mps-change-their-positions-on-mmda-reform/>

38. Rukshana Rizwie, “MMDA Reforms before Cabinet,” *Daily News*, August 6, 2019, <https://www.dailynews.lk/2019/08/06/local/193227/mmda-reforms-cabinet>

39. “Cabinet Approves Amending MMDA,” *Daily FT*, August 22, 2019, <https://www.ft.lk/News/Cabinet-approves-amending-MMDA/56-684386>

40. Muslim Personal Law Reform Action Group, Cabinet Ministers Fail to Adequately Address MMDA Reform Concerns, MPLRAG, (2019 [4], 07 23).

41. “Rathana Thera Tables Private Member’s Bill to Repeal MMDA,” *Ada Derana*, January 8, 2020, <http://www.adaderana.lk/news/60099/rathana-thera-tables-private-members-bill-to-repeal-mmda>

the General Marriage Ordinance similar to Ven. Rathana Thero's bill. However, no decision was made with regards to the bills presented, and no amendments to the MMDA have been made at the time of writing this chapter.

3.2 Easter Bombings and racism against Muslim women

A series of bombings were carried out on Easter Sunday in packed Churches and hotels by Muslim extremists said to be linked to Islamic State (IS). The death toll in the Easter Bombings was a staggering 269 lives. The mastermind behind the attack was Islamist preacher Zahran Hashim, who blew himself up during the attack at a hotel that morning.⁴²

Unsurprisingly, but to the distress of the Muslim community in Sri Lanka, Muslims were looked on malevolently by the public and even the State soon after the series of attacks. Mosques were raided for weapons by security forces, Muslims were harassed at police check points and the public in general were hostile towards anyone who was visibly or in any way identifiably Muslim. Angry mobs taking matters into their own hands were also responsible for the murder of a Muslim man, torching of Muslim owned shops, and vandalising Muslim homes and mosques.⁴³

With regards to Muslim women specifically, the government banned the full-face coverings worn by Muslim women under

42. "Sri Lanka Attacks: Easter Sunday Bombings Marked One Year On," *BBC*, April 21, 2020, <https://www.bbc.com/news/world-asia-52357200>

43. "Sri Lanka Orders Nationwide Curfew Amid Anti-Muslim Riots," *Al-Jazeera*, May 14, 2019, <https://www.aljazeera.com/news/2019/5/14/sri-lanka-orders-nationwide-curfew-amid-anti-muslim-riots>

emergency regulations.⁴⁴ The President at the time, Maithripala Sirisena stated:

*The ban is to ensure national security... No one should obscure their faces to make identification difficult.*⁴⁵

The ACJU, a body of Islamic scholars in Sri Lanka, threw Muslim women under the bus by supporting the move to ban the women's face-coverings. The ACJU issued a media statement urging women to avoid wearing their face veils,⁴⁶ ironically after years of preaching that the face veil is mandatory and enforcing it on Muslim women.⁴⁷ It is important to note here that Sri Lanka is Signatory to the International Covenant on Civil and Political Rights (ICCPR) which codifies the right to freedom of thought, conscience, and religion in article 18, and further states in article 4 that any measures contrary to the obligations instilled by the ICCPR are only valid if they do not involve discrimination on the ground of race, colour, sex, language, religion, or social origin. The ban therefore contradicts the ICCPR.

44. International Commission of Jurists, Sri Lanka: Parliament Must Reject Proposed 'Burqa Ban,' ICJ, April 30, 2021, <https://www.icj.org/sri-lanka-parliament-must-reject-proposed-burqa-ban/#:~:text=The%20Government%20of%20Sri%20Lanka,at%20least%20500%20others%20injured>

45. M.Riza, "'Unacceptable': Sri Lankans Share their Views on Face Veil Ban," *Aljazeera*, April 29, 2019, <https://www.aljazeera.com/news/2019/4/29/unacceptable-sri-lankans-share-their-views-on-face-veil-ban>

46. MegaraTegal, "Sri Lanka's Face Cover Ban Has Nothing to Do with Protecting Citizens - It's Only Goal is to Punish Muslim Women," *Independent*, April 30, 2019, <https://www.independent.co.uk/voices/sri-lanka-burqa-ban-niqab-muslim-islamophobia-church-bombing-a8891656.html>

47. Hasanah Cegulsadeen, "In the Name of Security: How the Burqa/Niqab Ban is Impacting Muslim Women," *Groundviews*, May 22, 2019, <https://groundviews.org/2019/05/22/in-the-name-of-security-how-the-burqa-niqab-ban-is-impacting-muslim-women/>

An overnight ban of the face veil is deeply problematic because women who believe in and follow the practice found it difficult to reveal their faces in public, especially those who have been covering their faces for many years. The anxiety, mental anguish and humiliation felt by these women, led to their self-imposed house arrest. Amnesty International's Deputy South Asia Director, Dinushika Dissanayake stated:

At a time when many Muslims in Sri Lanka fear a backlash, imposing a ban that effectively targets women wearing a face veil for religious reasons risks stigmatizing them. They will be forced out of public spaces to stay at home and will be unable to work, study or access basic services. The ban violates their rights to non-discrimination, freedom of expression and religion.⁴⁸

In a news report by journalist Doulatramani it was revealed that a 27-year-old Muslim school teacher, who had been wearing the face veil since she was 11 years old had not left her home for almost two weeks since the ban on the veil was enforced.⁴⁹ The schoolteacher stated:

We have been advised to stay at home unless there is a dire need to go out. If I'm not allowed to cover my face, I will stop going out to teach because I prefer covering to teaching.⁵⁰

48. Amnesty International (2019)

49. Chandni Doulatramani, "Burqa Ban is Pushing Muslim Women out of Sri Lanka's Public Spaces", News18, <https://www.news18.com/news/buzz/burqa-ban-is-pushing-muslim-women-out-of-sri-lankas-public-spaces-2133933.html>

50. Ibid

The article also quotes an 18-year-old Muslim college student:

*The niqabis are still going to go through racial discrimination and will be asked to remove it in public places. Going out with the niqab after the ban being lifted will be equivalent to walking in hell because people will call you a terrorist. Staying indoors will be a better option than going out.*⁵¹

But, she says, wearing it has strengthened her connection with God; making her feel brave and confident, and it hasn't stopped her from achieving anything she has wanted to. Without her niqab, she says she feels 'naked'. One interview also noted that she stopped wearing the niqab after the ban but still felt unsafe in public as she would receive "suspicious glares" from people as she continues to cover her head.⁵² The last point is very important given that the ban on the face veil would only embolden the Islamophobic part of the population to not only physically and verbally attack face-covered women but also those wearing the hijab or loose shawl, indicating that they are Muslim women.

Another news report⁵³ revealed that a 47-year-old Muslim mother was blocked when she tried to enter the school her 5-year-old daughter was enrolled at, to attend a parent-teacher meeting. The mother was wearing a hijab and abaya, and was blocked by a group of parents and teachers. The deputy headmaster of the school accused her of potentially hiding a sword under her abaya. To avert their fears, she offered to be

51. Ibid

52. Ibid

53. Chandni Doularamani, "Sri Lanka's Veil Ban is Fueling Hate," *Foreign Policy*, <https://foreignpolicy.com/2019/05/23/sri-lankas-veil-ban-is-fueling-hate/>

frisked by a woman, but the headmaster was adamant that she remove her hijab. When she refused, she was accused of being an IS supporter and made a reference to her daughter's status at the school that she understood to be a threat. The aggrieved mother filed a police complaint but it was rejected by the police. The report also highlights Muslim women wearing the hijab being prevented from entering supermarkets and harassed on the road, with one woman, a 32-year-old lawyer stating she was accosted by an unknown person on the street who demanded of her to "take that filthy thing off your head [referring to her hijab], throw it, and get out of this country."⁵⁴

Five months later, in September 2019, the ban on the face veil was lifted.⁵⁵ However, the trauma experienced by women who cover their faces, as well as those who were identifiably Muslim did not dissipate. In fact, in April 2021, Muslim women were drawn back into the state of distress when the Cabinet approved a proposed ban on burqas yet again.⁵⁶

3.3 Tamil women in the north

Women in Keppapilavu continued their protest against military occupation of their ancestral land. The protest commenced in 2017, and the women have persisted for the past three years at the entrance of the army camp.

54. Ibid

55. "Ban On Niqab, Burqa and Face Covering Lifted," *Ada Derana*, September 21, 2019, <http://www.adaderana.lk/news/57872/ban-on-niqab-burqa-face-covering-lifted>

56. "Sri Lanka Cabinet Approves Proposed Ban on Burqas in Public," *Al Jazeera*, April 28, 2021, <https://www.aljazeera.com/news/2021/4/28/sri-lanka-cabinet-approves-proposed-ban-on-burqas-in-public>

*The men say they have to work, that they are afraid of the army. But for us women, this land is our security, our right - if we do not fight for it, who will?" said Jasinthan, 43. We lost everything in the war; why must we also lose the land we have lived on for generations? These are our homes, our livelihoods, she said.*⁵⁷

In October 2018, President Maithripala Sirisena had pledged to return all private land in the north and east by the end of the year, but it was not fulfilled. The army spokesperson asserted that:

*About 85% of the private lands in the north and east held by armed forces "have already been handed over to the legitimate owners."⁵⁸ The remaining land is of "tactical importance" and is vital for national security, he said. "Hence releasing the remaining lands will depend on the situation subsequent to the accessing of security parameters. Therefore, a timeline is not a matter that can be discussed at present.*⁵⁹

Land in the north and east of Sri Lanka has been a serious matter of contention since the war was brought to an end in 2019. So it is without surprise that the Millennium Challenge Corporation (MCC)— an international disbursement agency of the United States of America – grant stirred up much controversy. Several academics, civil society activists, and both government and opposition parties opposed the acceptance of the MCC grant

57. Rina Chandran, "FEATURE-Sri Lankan Tamil Women Fight for Land A Decade After War Ends," *Reuters*, 2020, <https://news.trust.org/item/20200303002333-461sw/>

58. *Ibid.*

59. *Ibid.*

as it was suspected the government would privatise land in the north and east by offering the land to corporate groups and private investors.⁶⁰ This was particularly problematic for women, as the MCC agreement specifically indicated that women would be beneficiaries of land, but provided no information as to the manner in which the tradability of land titles would affect women's 'secure tenure' or access to and control of land. This issue has not been adequately analysed either by the proponents or the critics of the MCC compact.⁶¹ It was clear that such vague outlines would only make it harder for vulnerable women; both those fighting to take back their land and those fighting to keep their land. Due to the controversy surrounding the MCC agreement the government of Sri Lanka did not respond, either accepting or declining, as the deadline passed. The MCC offer was therefore rescinded.

3.4 Mahalaya Women

In September 2020, scores of Malaiyaha Tamil workers went on strike against the pay-cuts they received in the wake of the COVID-19 pandemic. Hundreds of plantation workers at tea estates in "Hatton, Maskeliya and Nanuoaya in the Nuwara-Eliya district walked out on strike [in September 2020] in protest against wage and allowance cuts and increased production targets imposed by Regional Plantation Companies. The stoppages were in defiance of the plantation unions—the Ceylon Workers Congress (CWC), the National Union of Workers

60. ViyangaGunasekera, *Women and Land in Sri Lanka: A Literature Review* (Colombo: International Centre for Ethnic Studies, Sri Lanka, 2021) pp. 33 – 34

61. *Ibid.*

(NUW), the Upcountry People's Front (UPF), the Lanka Jathika Estate Workers Union (LJEWU) and the Democratic Workers Congress (DWC)—which have fully endorsed managements' attacks."⁶²

The hardest hit by these pay cuts are the women workers who receive less pay despite working the same hours as male workers.

4. Women in Leadership

Women's representation in a legislative body in Sri Lanka has always been exiguous. To date, Sri Lanka has had only one woman cabinet minister and two women state ministers. The highest representation of women in parliament as far as records show has been 5.7 percent, starting 1989.⁶³

On the surface, the insignificant number of women in parliament is appalling when considering women make up a little over half of the country's population at 52 percent, and that 56 percent of the registered voters in the country are women.⁶⁴ Of course, if one were to dig a little deeper, we would find several reasons as to why women are so poorly represented in parliament, not least being the deep-rooted patriarchy in politics.

In a move to rectify the issue, despite much opposition, a mandatory 25 percent quota for women in local government bodies was introduced. Section 27F of the Local Authorities

62. M.Thevarajah, "Sri Lanka: Hundreds of Tea Plantation Workers Protest against Wage and Allowance Cuts," 2020, Business-Human Rights Resource Centre, <https://www.business-humanrights.org/en/latest-news/sri-lanka-hundreds-of-tea-plantation-workers-protest-against-wage-and-allowance-cuts/>

63. "Lady Members", Parliament of Sri Lanka, <https://www.parliament.lk/lady-members?lang=en>

64. Bansari Kamdar, "Women in Sri Lanka Make Up 56 Percent of Voters, But Only 5 Percent of Legislators," *The Diplomat*, August 8, 2020, <https://thediplomat.com/2020/09/women-in-sri-lanka-make-up-56-of-voters-but-only-5-of-legislators/>

Election Act of 2016, states that 25 percent of the total number of members in each local authority must be women. Under this system, each political party is expected to submit two nomination papers – the first comprises members who have been assigned a ward in each local authority area; necessitating at least 10 percent of these members are women, while the second nomination paper, the additional persons list, must be 50 percent women.

If, after voting, the number of women voted into local government is less than 25 percent, then women local council members can be brought in through the PR seats of other political parties to meet the quota. Furthermore, if a political party or independent group receives less than 20 percent of the votes in local authority and are entitled to two or less members, they are exempted from appointing women from the additional persons list.

The quota did however force an impressive increase of women's participation in the 2018 local government elections. The number of women in local government authorities shot up from a meagre 89 to 2,300, and the first female mayor of the Colombo Municipal Council, Rosy Senanayake, was appointed.^{[65][66]} This number was however just short of the 25 percent quota, at 23.7 percent. It is nevertheless impressive that so many women were keen to get into local government and fought against the odds that were stacked against them despite the quota opening the doors for them.

65. Ashley Bruggemann, "Empowering Female Councilors in Sri Lanka," July 13, 2018, International Republican Institute, <https://www.iri.org/news/empowering-female-councilors-in-sri-lanka/>

66. This is particularly significant given that the Colombo Municipal Council was established in 1865 making it the oldest local authority in Sri Lanka. It is also the largest local authority and governs the financial centre of the country.

Before delving into the adversities women faced, the following is a quick look at the positive impacts of the quota. According to Kodikara and Samuel:

Women's mandatory quota offers a historic opportunity to bring women into the public domain of representative politics, increase women's participation in politics, change public perceptions about women's ability to do politics and break with the now entrenched political culture of big spending in politics, patronage, corruption and violence.⁶⁷

However, the authors also point out flaws in the system.

It does not materially challenge the status quo of male incumbency. While the bulk of the seats (60%) [sic] are contested at the ward level, only 10% [sic] of these seats or wards are available to women. Winning a ward is an assurance of a seat and the smaller constituency of the ward allows for easier and cheaper campaigning and familiarity with a vote base. The majority of women will be appointed from the list, and will not therefore have their own constituency and will also be robbed of the opportunity of building up a constituency and relationships with voters. They will be perceived as not being accountable to anyone and may not be taken seriously which will hinder their efficient and equal participation within local authorities.⁶⁸

67. Chulani. Kodikara & Kumudini Samuel, "The Significance of the 25 Percent Quota for Women in Local Government," *Groundviews*, February 7, 2018, <https://groundviews.org/2018/02/07/the-significance-of-the-25-quota-for-women-in-local-government/>

68. Ibid

The writers further opine that party organisers at local and district level are mostly male, and it is up to these men to name women to contest wards and select wards in the PR list held by the party to be given to these women.⁶⁹ So women interested in entering local government will be dependent on men who have political power within their parties. In addition to this, women appointed from the additional persons list will have no certainty of the basis on which they can secure a seat. Those on the additional list will have to campaign beyond the bounds of a wards in the entire Local Authority area and subsequently bring the bulk of the votes to the party. This means women will have to do more campaigning but will not be guaranteed a seat. Finally, Kodikara and Samuel also highlight how the safety of these women candidates can be threatened.

Continuing misogyny within political parties has also meant that men perceive women as interlopers and the 25% [sic] an undue advantage, which has resulted in women on the campaign trail receiving threats and being intimidated by fellow male candidates competing for seats on the PR list.⁷⁰

IFES notes that the Election Commission of Sri Lanka lacks an enforcement mandate that extends beyond the mere candidate nomination process, and mentions several barriers to women's political participation.⁷¹ These include, political party frameworks that lack transparency in the candidate nomination

69. Ibid

70. Ibid

71. International Foundation for Electoral Systems, Women's Political Representation in Sri Lanka: Electoral Systems Analysis and Recommendations, April 8, 2022, IFES, <https://www.ifes.org/publications/womens-political-representation-sri-lanka-electoral-system-analysis-and-recommendations>

process and lack enforceable gender-sensitive regulations; have weak political finance regulations; lack regulations against discrimination against female candidates in the media, and the lack of violence against women in election assessments given that surveys have revealed incidents of physical attacks against women by rival candidates; party leaders soliciting sexual bribes for nominations; and online violence against women as well. The 2000 plus female candidates who fought against these odds and managed to secure places in local government for themselves in 2018 are testament to the will and passion women possess in entering politics. It is paramount that the political environment is made conducive for women, so it is not twice as hard for women to enter politics, even with a 25 percent quota when compared to men.

5. Women and Health

Women's health issues are very broad, taking into account sexual harassment and abuse, sexual reproductive health, nutrition and mental health, among others. This chapter however will focus specifically on women's wellbeing in terms of sexual harassment and abuse, mental health and sexual reproductive health relating specifically to what spiralled from the false accusations against gynaecologist, Dr. Shafi Shihabdeen, following the Easter bombings in 2019.

The years of 2018 to 2020 saw a series of firsts in Sri Lankan history in terms of research into women's health and wellbeing, and revealed how women are affected physically and mentally due to culturally entrenched patriarchy and misogyny. Therefore, this section will focus on these two aspects of women's health.

In 2018, the first ever national survey on sexual harassment women face in public transport was published. Conducted by the United Nations Population Fund (UNFPA) the research revealed 90 percent of women and girls have been sexually harassed at least once in their lifetime on public transport such as buses and trains. Only 4 percent of those harassed reported the incident to the police.⁷² The following year, on Women's Day, the Ministry of Transport and Civil Aviation launched its women only compartments service to curb harassment of women in trains. A trial run was carried out on office trains departing from Colombo, Rambukkana, Maho, Mount Lavana, Matara and the entire route of the Samdura Devi train.⁷³ A similar initiative was attempted a few years earlier but was discontinued due to operation limitations.⁷⁴

However, it must be noted that segregation of the sexes will not help abate sexual harassment of women. Not all women will be able to use the women only compartments, especially when the compartments are full and women and girls are forced to use general compartments during the rush hour. Stepping out of the train women are still unsafe walking through train stations and the street. The same would apply to buses if a similar scheme were to be implemented. A long-term, dedicated programme is required to educate men and boys that sexual harassment is unacceptable. Furthermore stronger action must be taken by the police and authorities against sexual harassment of women, and women should be encouraged to report incidents of harassment.

72. UNFPA, Sexual Harassment in Public Transport: Speak Up, Intervene and Be The Change, March 1, 2018, Sri Lanka: UNFPA, <https://srilanka.unfpa.org/en/news/sexual-harassment-public-transport-speak-intervene-and-be-change>

73. "Women only Train in Service from Today," *Onlanka*, March 8, 2019, <https://www.onlanka.com/news/women-only-train-in-service-from-today.html>

74. Sri Lanka Railway Forum, Separate Train Compartments for Women, February 23, 2019, SLRF, <https://slrailwayforum.com/separate-train-compartments-for-women/>

Another survey conducted for the first time in Sri Lanka was the national prevalence survey on violence against women by the Department of Census and Statistics, using the World Health Organisation (WHO) methodology. The Women's wellbeing survey research revealed that 25 percent of women have experienced physical and or sexual intimate partner violence or non-partner sexual violence.⁷⁵ Almost half of female respondents agreed with the statement that "a man should show he is boss", and again almost half agreed that "a good wife obeys her husband even if she disagrees". Two in five women disagreed that women have sexual autonomy thereby supporting the statement that women are obliged to have sex with their husbands even when women do not want to.⁷⁶

Just over one third of the women agreed a man could hit his wife "if he finds out she has been unfaithful," and 18 percent agreed that hitting a wife is justified if "she disobeys him". Women with a higher education (19 percent of respondents) were less likely to agree with the justifications of a man hitting his wife than women with no education (44 percent of respondents), or those with only a primary education (42 percent respondents).⁷⁷ This is indicative of the role education can possibly play in eliminating violence against women.

Highlighting external factors, the report revealed, when women who experienced physical violence by a husband or partner were asked if there were situations that led to or triggered violent

75. Sri Lanka Department of Census and Statistics, Women's Wellbeing Survey, 2019, DCS, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.statistics.gov.lk/Resource/reference/WWS_2019_Final_Report

76. Ibid

77. Ibid

behaviour, 52 percent mentioned the trigger was when their partner was drunk.⁷⁸ Finally, investigating the mental health impact of physical violence the survey reported that the mental health of the respondents was severely affected. Thirty-six percent of the respondents who experienced physical and/or sexual violence by a partner have considered committing suicide.⁷⁹

Taking the alarming degree of women who experience domestic violence and the serious impacts it has on their health into consideration, it is disturbing to note that during the multiple COVID-19 lockdowns from 2020 to 2021 an increase in domestic violence was reported as highlighted in news articles.⁸⁰

A study was also conducted for the first time by Women in Need (WIN) on cyber violence against women and girls. The Executive Director of WIN, stated:

*it's important to strengthen the response mechanism and address the lacunae and gaps revealed in the study. The report concludes that tech-facilitated abuse against women and girls is wide spread [sic] and growing. Our existing legal framework is not sufficient for complex cases or rapid legal responses. Therefore, tech-facilitated violence against women and girls should be extended to the Penal Code offenses.*⁸¹

78. Ibid

79. Ibid

80. W. Minoan Gamage & Rochelle Tummodara, "A Study on the Rise of Domestic Violence against Women in Sri Lanka during the Lockdown," *Colombo Telegraph*, March 12, 2021, <https://www.colombotelegraph.com/index.php/a-study-on-the-rise-of-domestic-violence-against-women-in-sri-lanka-during-the-lockdown>; M. Phakathi, "Report Shows Sri Lanka has Escalation of Violence during COVID-19 Lockdown," *Inter Press Service*, August 19, 2020, <http://www.ipsnews.net/2020/08/report-shows-sri-lanka-escalation-violence-COVID-19-lockdown/>

81. "Women in Need Launches an Anti-Cyber Violence Initiative Combating Technology-Facilitated," *Daily Mirror*, 2019, <https://www.dailymirror.lk/print/life/women-in-need-launches-an-anti-cyber-violence-initiative-combating-technology-facilitated/243-233491#:~:text=as%20people%20move%20into%20the,form%20of%20gender%2Dbased%20violence>

The study had both quantitative and qualitative components. The latter was carried out in Colombo, Matara, Anuradhapura, Batticaloa and Jaffna. The quantitative survey was carried out among 1533 participants across the country, which included 733 men and 761 women.⁸²

With regards to women's sexual and reproductive health, several aspects remain unchanged for years, such as low to no sexual and reproductive health education in public schools, and the lack of safe mechanisms for reporting rape and sexual abuse, among others. However, 2019 saw an added mental burden on women, when gynaecologist, Dr.Shafi, was falsely accused of sterilising Sinhalese women without their consent.⁸³ A Sinhala language newspaper carried a headline story stating that Dr.Shibabdeen had illegally sterilised 4000 Sinhalese women.

*After his arrest, the Police recorded complaints from over 1,000 women who claimed that the doctor had performed a procedure that made them infertile. Prof. Channa Jayasumana, a professor of pharmacology and a current Member of Parliament of the Government, then attached to the University of Rajarata, offered his 'expert' medical opinion and confirmed that such an illegal procedure has been carried out by Dr. Shafi.*⁸⁴

Prof. Jayasumana's confirmation caused fear among the Sinhalese community that such a highly improbable act was possible. The allegation was unlikely given that a tubal ligation procedure

82. Women in Need, Research on Technology Facilitated *Violence against Women and Girls* in Sri Lanka, WIN, 2021, <https://wincyberviolence.lk/research/>. Accessed 9 20 2022

83. "Dr.Shafi, a Symbol of Systemic Racism," *Daily FT*, June 16, 2022, https://www.ft.lk/ft_view_editorial/Dr-Shafi-a-symbol-of-systemic-racism/58-736212

84. Ibid

would require a good deal of time to execute and would not have gone unnoticed by others, such as nurses present during the caesarean section. Despite the dubious claims, 615 women filed complaints against Dr. Shafi Shihabdeen. Out of the 615 only 11 required further investigation.⁸⁵

6. Conclusion

As one of the most vulnerable groups in Sri Lanka, women are affected in ways that are not often recognised during a national crisis. And those from minority communities and class divisions are affected in more complex ways that are hardly ever acknowledged. Given these intersections, much more could have been included in this chapter. However, the contents have been narrowed to four major areas of interest on women's rights that were particularly significant during the years 2018 to 2020.

In the section on women and labour, we see that women's participation in the workforce has been very low for the past 20 years. However, this is not surprising seeing as little opportunities are available for women in preparing them for the workforce. Neither have any significant measures been taken for the diversification of skills of women, and very little has been done to facilitate women's access to the labour market. Some matters that have not been addressed are an education system that is intrinsically misogynistic, lack of crèches, lack of paternity leave, and dismal safety in public transport to name a few. This has also created a space for exploitation of working women. Women are paid less and made to work longer hours, as seen in

85. Aanya Wipulasena & Maneska Borham, "DrShafi Case: CID Reveals Hospital Director Falsified Complaints," *Sunday Observer*, <https://www.sundayobserver.lk/2019/07/14/news-features/dr-shafi-case-cid-reveals-hospital-director-falsified-complaints>. Accessed 11 10 2022

the data collected on the impact of the COVID-19 pandemic on the apparel industry. Similarly, women are seen as expendable when considering little has been done to protect women migrant workers over several decades. The COVID-19 pandemic laid bare many of the issues faced by migrant workers, especially those who work as domestics and care-givers in the Middle-East.

While the issues faced by women in various minority communities are vast, I have only touched on the struggles by Tamil women in the north and Mahalaya women in the plantations. I have focused more on Muslim women and the MMDA given that major events occurred during the period from 2018 to 2020 for Muslim women fighting for reforms to the MMDA and it was a very significant time for the community. It was during this time the Marsoof committee finally released their recommendation to the amendment of the MMDA. Nine years since the committee was established.

Following the release of the recommendations, several events took place that stalled the amendment to the MMDA. The anti-Muslim riots in the Kandy district and the Easter bombings also adversely impacted Muslim women, given the ban on the burqa imposed by the state, and the fear and harassment Muslim women had to endure in the following months.

Perhaps, some of these issues concerning women could have been overcome if there was better representation of women in government. Women's representation in representative bodies has been fairly meagre throughout Sri Lankan history. A move to remedy this was made with the introduction of the 25 percent quota for women in local government institutions. It was seen

that these women would later be elected to parliament and thereby increase women's representation. However, even with the quota system, women contesting in the local government elections reported that they were intimidated and harassed.

In the final section of this chapter, I have highlighted groundbreaking new research concerning women's health that was conducted between 2018 to 2020. The research included UNFPA's harassment of women in public transport, the Department of Census and Statistic's Women's Wellbeing Survey and finally WIN's report on cyber violence against women and girls. Overall, the research revealed disturbing data, and will no doubt be of great value in countering misogyny in society. Some of the research revealed women in Sri Lanka are far from safe in public transport, in cyberspace, and even in their homes. Hopefully, the data collected will help in making these spaces safe for women in the years to come.

It is clear that much needs to be done to ensure women in Sri Lanka have a better way of life - from something as basic as safety, to better representation in parliament. However, the next few years are fraught with new challenges given the severe economic crisis, which can result in women's issues being pushed to the back burner, despite women being made even more vulnerable in the crisis. Women's issues will need to be highlighted and brought to the attention of policy makers to ensure their needs are taken into consideration as we navigate the devastating economic crisis.

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FREEDOM OF RELIGION OR BELIEF IN SRI LANKA BETWEEN 2018 – 2020

*Mark Schubert**

1. Introduction

This chapter documents key developments affecting the Freedom of Religion or Belief (FORB) in Sri Lanka between 2018-2020. The chapter argues that these developments must be firmly situated within the larger post-war political-economic context, which witnessed a further entrenching of Sinhala Buddhist nationalism, the rise of extremist religious groups, and the politicization of religion. Thus, the developments in the FORB discussed in this chapter speak both to the status of human rights between 2018-2020, and Sri Lankan politics at the time.

While FORB violations were rooted in the politics of the time, the shape such violations took for various religious group between 2018-2020 were very dissimilar. The Muslim community were once again victims of large-scale mob violence, hate speech

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campaigns and discriminatory government decisions primarily at the national level, but also at sub-national levels. Hindus, particularly in the Northern and Eastern Provinces, continued to experience FORB violations through the “Buddhistization” of traditionally Hindu locales. For their part, Christian groups continued to be victims of discriminatory government action and/or inaction at the local level, while also being victims of local level threats, intimidation and violence.

The chapter examines the state of the FORB in Sri Lanka between 2018-2020 through a) introducing the “normative core” of the FORB as a framework for evaluating the state of this right in Sri Lanka; and discussing b) incidents of religious violence; c) anti-minority hate campaigns; d) discriminatory government actions affecting religious groups; and finally, will conclude with a brief evaluation of the status of the FORB in Sri Lanka between 2018-2020.

2. “Normative Core” of Freedom of Religion or Belief

The “normative core”¹ proposed by Ghanea et al., distinguishes the constituent components of the FORB. The separate elements of the FORB so identified facilitates a productive evaluation of the status of the right in Sri Lanka between 2018-2020.

Firstly, the internal freedom of the FORB² is enshrined in the right to freedom of thought, conscience and religion, which is

1. N. Ghanea et al., “Introduction” in *Facilitating the Freedom of Religion or Belief: A Deskbook*, ed. T. Lindholm, J. C. W. Durham & B. G. Tahzib-Lie ((Leiden: MartinusNijhoff Publishers, 2004) pp. xxvii-lxxii.

2. N. Ghanea et al., “Introduction” pp. xxvii-lxxii.

recognized internationally and locally.³ It is often considered an innerright or forum internum,⁴ since it pertains to an individual's internal thoughts, convictions and beliefs, whether theistic, atheistic or non-theistic. In Sri Lanka, this most fundamental aspect of the FORB is guaranteed to “all persons,” and cannot be curtailed under any circumstance.⁵

Secondly, the external freedom of the FORB,⁶ considered the forum externum, recognizes the right to externally manifest one's religion or belief, individually or in association with others, in public or private,⁷ through observing, teaching, practicing, and worshipping. While the Sri Lankan Constitution permits the curtailment of this right in certain instances and limits its application to “citizens,”⁸ the Supreme Court has narrowly interpreted this aspect of the FORB to exclude the propagation of one's religion.⁹

General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (20 July 1993) [hereinafter General Comment No. 22]

3. Article 18 of the Universal Declaration of Human Rights (UDHR); Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR); Article 1(1) of Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief; Article 9(1) of European Covenant of Human Rights (ECHR); Article 12(1) of the American Convention on Human Rights (ACHR) and Article 10 of the Constitution of Sri Lanka

4. Katherine Cash, *What Freedom of Religion or Belief Involves and When it May be Limited* (Skilltryck: SMC Faith in Development, 2021)

5. Article 10 of the Constitution.

6. N. Ghanea et al., “Introduction” pp. xxvii-lxxii.

7. Article 18 of the UDHR; Article 18(1) of ICCPR; Article 1(1) Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief; Article 9(1) of (ECHR); Article 12(1) of (ACHR) and Article 14(1)(e) of the Constitution of Sri Lanka.

8. Art. 14(1)(e) Constitution of Sri Lanka

9. *Manjula v OIC Kekirawa* SC (FR) 241/2014, SC Minutes 18 July 2018.

Thirdly, non-coercion¹⁰ requires that all persons should be protected against coercion which would restrict his/her freedom to have or adopt a religion or belief of his/her choice.¹¹ This could include the use of the threat of physical force, penal sanctions compelling the adherence to specific beliefs, and policies or practices which have the same effect.¹² In Sri Lanka, non-Christians accuse Christians of violating this aspect of the FORB through “unethical conversions.¹³ Conversely, there are documented incidents of non-Christians coercing local Christian groups to abandon their worship activities.¹⁴

Fourthly, non-discrimination¹⁵ guarantees that no person should be discriminated against based on his/her religion.¹⁶ However, some commentators in Sri Lanka have raised concerns that judicial interpretation of Article 9 of the Constitution,¹⁷ leaves space for Buddhism to be given the foremost place, while failing to uphold the rights of other religions.¹⁸ Thus, there is debate as

10. N. Ghanea et al., “Introduction” pp. xxvii-lxxii.

11. Article 18(2) of ICCPR; Article 1(2) Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief.

12. United Nations Human Rights Committee (HRC), “CCPR General Comment No. 22: (Article 18) Freedom of Thought, Conscience or Religion”, U.N. Doc. CCPR/C/21/Rev.1/Add.4, July 30, 1993 <https://www.refworld.org/docid/453883fb22.html> [Accessed 19 November 2021].

13. In fact, Prohibition of Forcible Conversion of Religion, Bill No. 7 of 2004 noted in its preamble that, “the Buddhist and the non- Buddhist are now under serious threat of forcible conversions and proselytizing by coercion or by allurements or by fraudulent means.”

14. Silent Suppression: Restrictions on Religious Freedoms of Christians 1994-2014. (Colombo: National Christian Evangelical Alliance of Sri Lanka, Verite Research. 2015)

15. N. Ghanea et al., “Introduction” pp. xxvii-lxxii.

16. Article 7 of UDHR; Article 26 of ICCPR; Article 2(1) of Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief; Article 14 of ECHR; Article 1(1) of ACHR and Article 12(2) of the Constitution of Sri Lanka.

17. The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

18. Deepika Udagama, “The Democratic State and Religious Pluralism: Comparative Constitutionalism and Constitutional Experiences of Sri Lanka,” in *Comparative Constitutionalism in South Asia*, eds. S. Khilnani, V. Raghavan & A. Thiruvengadam (Oxford: Oxford University Press, 2012) pp. 145-179.

to whether the interpretation of the Sri Lankan Constitution has failed to uphold the aspect of non-discrimination in the context the FORB.

Fifthly, corporate freedom and legal status is vital for the unfettered enjoyment of the FORB.¹⁹ Religious groups have the right to register themselves to be legally recognized entities, and to represent their rights and interests as a community. Unfortunately, minority religious bodies find it difficult to register themselves as legal entities, as highlighted in the three Supreme Court judgements on Bills seeking to incorporate Christian organisations in the early 2000's.²⁰

To summarize, this chapter understands the normative core of the FORB to include a) the *internal freedom* to hold, adopt, or change one's religion, belief or conviction, whether they are theistic, atheistic or non-theistic; b) the *external freedom* to manifest such religion, belief or conviction; c) and the right of all persons to enjoy such freedoms based on the principles of *non-discrimination, non-coercion* and *corporate freedom*.

It is with this understanding of the FORB that this chapter will evaluate the state of FORB in Sri Lanka between 2018-2020 within this framework

3. Religious Violence in Sri Lanka between 2018-2020

3.1 Violence against Muslims

The Muslim community were victims of organized, mob violence on three occasions between 2018-2020. The violence in Ampara

19. N. Ghanae et al., "Introduction" pp. xxvii-lxxii.

20. B. Matthews, "Christian Evangelical Conversions and the Politics of Sri Lanka," *Pacific Affairs*, 80, no. 3(2007): 455-472.

and Digana in 2018, and in the Western and North-Western Province in 2019 extended Sri Lanka's dismal post-war record of unleashing violent mobs against the sections of the Muslim community. The violence killed several persons, injured many more, and partially or wholly destroyed scores of Muslim owned houses, places of businesses and worship. These incidents, the State's feeble response to them, and the apparent lack of remorse on the part of those who engaged in or encouraged the violence is a scathing indictment of the failure to safeguard the freedom of religion or belief in Sri Lanka between 2018-2020.

The violence in all three incidents between 2018-2020 followed a similar trajectory as the religious violence in Aluthgama in 2014. In the weeks and months leading up to the violence, a sustained Islamophobic hate campaign constructed Muslims as a threat to the Sinhala Buddhist nation. In this context, an everyday disagreement or confrontation between a Sinhalese and a Muslim could subsequently be represented as a Muslim attack against Sinhala Buddhists. This "trigger event" was made a rallying call for Sinhala Buddhists to defend their nation and punish the recalcitrant minority. Thus, armed with a perceived moral legitimacy to use violence, organized mobs roamed through the streets identifying and torching Muslim houses, businesses and mosques with impunity, often as law enforcement and military looked on.

3.2 Ethno-religious violence in February 2018 - Ampara

The violence in Ampara and Digana in the first quarter of 2018, must be understood in its context. Firstly, the violence followed hot on the heels of the comprehensive electoral defeat of the

Yahapalanaya government at the local government elections in January 2018. At this election the newly established Sri Lanka Podujana Peramuna, led by former President Mahinda Rajapaksa, secured a majority of seats in an unprecedented 231 of the 341 local government authorities.²¹ Secondly, the violence followed a spike in anti-Muslim rhetoric, particularly on social media. These narratives fueled Sinhala-Buddhist suspicions and fear of Muslims, and created a climate in which violence against the Muslim community was legitimized. Thus, the violence of February 2018, which violated the fundamental human rights of the Muslim community, came at a time of political uncertainty for the government in power at the time, and amidst an atmosphere of heightened tensions between Sinhala-Buddhists and Muslims.

Religious violence broke out between Buddhists and Muslims in Ampara town on the evening of 26th February 2018. The incident was “triggered” when a Buddhist customer accused the Muslim owner of a recently opened eatery in Ampara town, of adding “sterilization pills” to the food served to him²² (which was later found to be a clump of flour!²³). The owner was then forced to confess before a camera that he in fact added “sterilization pills”

21. “Local Authorities Election Results – 2018,” *Ada Derana*, <http://www.adaderana.lk/local-authorities-election-2018/> [Accessed February 20, 2022].

22. The idea of sterilization (*wandawenawa*) had captured the popular imagination of Sinhalese at the time. It was trope which kindled a deep-rooted fear among Sinhala Buddhists that their numbers were rapidly declining relative to the Muslim population. Despite the lack of any medical evidence whatsoever, many Sinhala Buddhists strongly believed that certain medication caused infertility. Furthermore, many were convinced that Muslims were adding chemicals that induced infertility in the food that they served Sinhala Buddhists, and also the clothes that Muslims sold to the Sinhala Buddhists.

23. Rukshana Rizwie, “Ampara: Flour Clumps; No Chemical – Govt. Analyst,” March 9, 2018, *Daily News*, <http://www.dailynews.lk/2018/03/09/local/145068/ampara-flour-clumps-no-chemical-govt-analyst> [Accessed 15 February 2022].

to the food he served.²⁴ That same night a group of around 40 men attacked the recently opened restaurant setting it ablaze.²⁵ The violence spilled over to other parts of Ampara town that night, with a mosque, four Muslim-owned shops and several vehicles being vandalized.²⁶ Fortunately, the speedy deployment of law enforcement personnel to Ampara town prevented the violence from escalating further.

3.3 Ethno-religious violence in March 2018 – Digana²⁷

Before the violence in Ampara, tensions between Sinhala-Buddhists and Muslims in Theldeniya in the Kandy district were already running high. Relations between the communities were extremely fraught following a quarrel on 23rd February 2018, between four drunk Muslim youth and a Sinhalese man, Kumarasinghe, who was hospitalized after the incident. Sadly, Kumarasinghe succumbed to his injuries on 3rd March 2018. Between the time of Kumarasinghe's assault and his untimely death, local groups and individuals worked to de-escalate tensions, even as some nationalist forces were active, online and offline, stirring up anti-Muslim sentiment and focusing Sinhala-Buddhist outrage at the recalcitrant Muslim minority.

24. Maneshka Borham & Dimuthu Attanayake, "Tension in Ampara after Fake 'sterilization pills' Controversy," *Sunday Observer*, March 4, 2018, <http://www.sundayobserver.lk/2018/03/04/news/tension-ampara-after-fake-%E2%80%98sterilization-pills%E2%80%99-controversy> [Accessed February 15, 2022].

25. Maneshka Borham Dimuth Attanayake, "Tension in Ampara after Fake 'Sterilization Pills' Controversy," *Sunday Observer*, March 4, 2018.

26. Amnesty International, *From Burning Houses to Burning Bodies: Anti-Muslim Violence, Discrimination and Harassment in Sri Lanka*, (London: Amnesty International Ltd, 2021).

27. For a detailed account of the violence in Digana please refer: Farzana Haniffa, *Fact-finding Report on the Anti-Muslim Violence in the Kandy District* March 2018, (Colombo: Law and Society Trust, 2021)

Unfortunately, local efforts at mediating the situation and preventing violence failed. Nationalists, including the Ven. Galabodaththe Gnanasara Thero of the Bodu Bala Sena, Amith Weerasinghe of the Mahason Balakaya and Dan Priyasad, seized this moment to instigate mob violence targeting the Muslim community in and around Digana and Theldeniya. The violence began on 3rd February and continued for an entire week, till 9th February 2018. During this time, mobs, of predominantly young Sinhala-Buddhist men, marched through the streets ejecting Muslims from their homes, and vandalizing and looting Muslim owned houses, businesses, and places of worship.

The consequences of the religious violence in the Kandy district that week were dire. It claimed the life of one individual and injured many more. Furthermore, the Rehabilitation of Affected Property and Industries Authority estimated that 335 houses, 233 shops, 83 vehicles, 20 mosques and 2 temples were damaged during the violence.²⁸ However, as at the end of 2019, victims had received only Rs. 19 million as compensation, despite assurances by then Prime Minister Ranil Wickramasinghe that a sum of Rs. 250 million would be allocated as compensation.

The government's response to the violence was both heavy-handed and ineffective. Firstly, despite deploying the Police, STF and military to control the violence, they were often indifferent to, or even complicit in perpetrating, violence. Secondly, a State of Emergency declared between 6th and 17th March 2018, did little to deter mobs or mitigate violence. Thirdly, an attempted social media black-out failed miserably as many accessed social

28. Amnesty International, *Anti-Muslim Violence, Discrimination and Harassment in Sri Lanka*, Oct 18, 2021

media through VPNs. Fourthly, despite arresting 280 individuals in connection with the violence, including Amith Weerasinghe, even at the end of 2020, not a single conviction had been made.

3.4 Ethno-religious violence in May 2019 – North-Western Province

In the aftermath of the Easter Sunday attacks in April 2019, there was a surge in anti-Muslim sentiment across the country. The attacks legitimated many Sri Lankans' anti-Muslim sentiments, and in the atmosphere of mistrust, suspicion and anger following the attacks many were emboldened to voice these sentiments, both online and offline. Many took to social media to post and share false, derogatory and demeaning content vilifying the entire Muslim community. Amidst sweeping arrests of Muslims, raids on mosques, a campaign to boycott Muslim owned businesses, and Muslim women being forced to remove their head-coverings in public places, large-scale anti-Muslim violence threatened to erupt at any moment, on any pretext.

In the insecure context mentioned above, Sinhalese interpreted the most trivial of incidents involving Muslims as threats or acts of aggression. For example, on 05th May 2019, a traffic accident in Negombo was sufficient excuse for armed mobs to attack Muslim houses in Negombo.²⁹ Similarly, on 12th May 2019 Sinhalese chose to interpret a comment by a Muslim youth from Chilaw on Facebook, “Don’t laugh more, 1 day u will cry” as a threat. Following this post, mobs attacked mosques and Muslim owned shops in Chilaw.³⁰ In both instances, curfew was declared, and law enforcement was able to contain the spread of violence.

29. Amnesty International, *Anti-Muslim Violence, Discrimination and Harassment in Sri Lanka*. 2021

30. Amnesty International, *Anti-Muslim Violence, Discrimination and Harassment in Sri Lanka*. 2021

However, organized mob violence targeting the Muslim community broke out on 12th and 13th May 2019, and spread to at least 24 towns across the Puttalam, Gampaha and Kurunegala districts.³¹ The widespread violence reported across these districts followed a similar pattern, giving credence to the claim that the violence was meticulously organized. These violent elements moved through towns and villages causing destruction to many Muslim owned vehicles, houses, places of businesses and mosques, killing at least one and injuring many more Muslims. Furthermore, the response of law enforcement during the violence failed to safeguard Muslim persons or property in any meaningful way, as they were usually deployed in remarkably few numbers to deter, let alone, disperse the large armed mobs.³²

3.5 Violence against Christians

Christian communities have long been victims of violence. Unlike the violence against the Muslim community which involved large scale mob violence, often with the involvement of prominent national level figures, violence against Christians have often been perpetrated by local religious and lay leaders. Such violence is generally accompanied by low level tensions between Christian and non-Christian communities in the area. This too is in sharp contrast to the apparently sporadic burst of intense violence which target Muslim communities.

31. These towns include Chilaw, Bingiriya, Hettipola, Kinyama, Kotampitiya, Nikaweratiya, Thunmodara, Kottaramulla, Minuwangoda, Puwakgahakadawala, Madige Anukkana, MadigeMeediyawala, BandaraKoswatta.

32. Amnesty International, *Anti-Muslim Violence, Discrimination and Harassment in Sri Lanka*, 2021

Furthermore, violence against Christians is not a new phenomenon. There is documented evidence tracking incidents of violence against Christians at least since 1994. This data demonstrates the persistent violence that Christians have undergone in Sri Lanka for nearly three decades. Thus, even as we discuss the violence against Christians between 2018-2020, it is important to bear in mind that it is a continuation of a longer history of violence against religious minorities in Sri Lanka.

3.6 The Easter Sunday Attacks

Notwithstanding the trends noted above, the Easter Sunday attacks of 2019 mark the bloodiest attack against Christians, and the worst terror attack in Sri Lanka since the armed conflict ended in 2009. The attacks were meticulously organized and clinically executed by a hitherto unknown group with links to ISIS, the National Towheeth Jamath. They were also Sri Lanka's first experience of large scale violence motivated by apparent Muslim extremism. Six coordinated attacks took place between 8:30am and 9:30 am on 21st April 2019 targeting three churches and three five-star hotels in Colombo (refer table below).³³ The attacks killed 269 individuals and injured more than 500.³⁴ Many of those killed were Christian devotees who were participating at the Easter Sunday Mass.

33. "Easter Sunday Massacres: Grand Conspiracy and Questions as to Who the Mastermind Is," *Sunday Times*, May 23, 2021, <https://www.sundaytimes.lk/210523/columns/easter-sunday-massacres-grand-conspiracy-and-questions-as-to-who-the-mastermind-is-444679.html> [Accessed February 22, 2020].

34. "Sunday, bloody Sunday: On Sri Lanka Easter blasts", *Hindu*. April 23, 2019, <https://www.thehindu.com/opinion/editorial/sunday-bloody-sunday/article26914670> [Accessed February 24, 2022].

Time of attack ³⁵	Place of attack
8.25am	St. Sebastian Church, Katuwapitiya (near Negombo)
8.45am	St Anthony’s Church, Kochchikade
9.05am	Zion Church, Batticaloa
Between 9.15 and 9.20am	Cinnamon Grand Hotel, Colombo
Between 9.15 and 9.20am	Shangri La Hotel, Colombo
Between 9.15 and 9.20am	Kingsbury Hotel, Colombo

It was also reported that one of the bombers attempted to detonate a bomb at the Taj Samudra Hotel, Colombo. After three failed attempts to detonate the bomb at 8:49am in the hotel, CCTV footage shows him leaving the hotel.³⁶ Subsequently, he detonated the bomb at 2:00pm at New Tropical Inn, Dehiwala, killing himself and two others at the hotel.

There was yet another explosion around the same time at a housing scheme in Dematagoda.³⁷ In this instance the Police were conducting a search operation at one of the houses of the bombers when his pregnant wife detonated a bomb, killing herself, her three children, and three police officers.

35. “Easter Sunday Massacres: Grand Conspiracy and Questions as To Who the Mastermind Is,” *Sunday Times*. May 23, 2019.

36. “Nervous’ bomber at lodge in Dehiwala captured on CCTV,” *Ada Derana*, April 30, 2019, <http://www.adaderana.lk/news/54750/nervous-bomber-at-lodge-in-dehiwala-captured-on-cctv>[Accessed February 18, 2022].

37. Political Editor, “Easter Sunday massacres: Where do we go from here?” *Sunday Times*, April 28, 2019, <https://www.sundaytimes.lk/190428/columns/easter-sunday-massacres-where-do-we-go-from-here-347090.html>[Accessed February 25, 2022].

The coalition government's responses to the attacks were contradictory and confusing. The President claimed to be ignorant of the possibility of such an attack.³⁸ However, it soon became apparent that the President had been informed of the attack, as intelligence officers had been notified through diplomatic channels about it previously.³⁹ As the President looked for officials to take the fall for lapses leading to the attacks, he demanded resignations from the Secretary of Defense, who acceded to his request,⁴⁰ and the Inspector General of Police, who refused to resign and was placed on compulsory leave.⁴¹

Immediately after the attacks, the President also announced a State of Emergency on 22nd April 2019, which remained in force till 21st August 2019. During this period law enforcement raided hundreds of mosques across the country and arrested thousands of individuals suspected to be involved in the attacks. Furthermore, a ban on face coverings was announced during this time.

The attacks had significant social and political consequences. They exacerbated the fractured relationship between the President and the Prime Minister. Additionally, a few weeks

38. Meera Srinivasan, "I wasn't aware of threat, says Sri Lankan President Maithripala Sirisena," *The Hindu*, April 24, 2019, <https://www.thehindu.com/news/international/i-wasnt-aware-of-threat-says-sri-lankan-president-maithripala-sirisena/article26929025.ece> [Accessed February 16, 2022].

39. "Exclusive: Sirisena Briefed About Easter Sunday Attacks 10 Days Before: Protects SIS Chief, Lies About IGP And Defence Secretary," *Colombo Telegraph*, April 28, 2019, <https://www.columbotelegraph.com/index.php/exclusive-srisena-briefed-about-easter-sunday-attacks-10-days-before-protects-sis-chief-lies-about-igp-and-defence-secretary/> [Accessed February 20, 2022].

40. "Sri Lankan Defence Secretary Resigns over Easter Sunday Bombings," *Arab News*, April 25, 2019, <https://www.arabnews.com/node/1487796/world> [Accessed February 18, 2022].

41. "IGP Sent on Compulsory Leave Pujith Jayasundera," *News First*, 25 Sep, 2019 <https://www.newsfirst.lk/tag/igp-sent-on-compulsory-leave-pujith-jayasundera/> [Accessed February 20, 2022].

after the attacks, Gotabaya Rajapaksa, the previous Secretary of Defense, announced his intention to contest the Presidential election promising to strengthen national security. Furthermore, Sinhala Buddhist nationalists, who believed that their previous racist claims about Islamic terror were justified, were emboldened to engage more vociferously and violently in their anti-Muslim campaigns. The attacks fueled anti-Muslim sentiments and further sowed mistrust and discord between non-Muslim and Muslim communities. Thus, the attacks marked not only one of the bloodiest incidents in Sri Lanka's post-war history, but also a turning point in Sri Lankan politics and social relations.

3.7 Other incidents of violence and discrimination against Christians

Incidents of violence, intimidation and discrimination targeting Christians are not new to Sri Lanka.⁴² This trend continued throughout 2018-2020. According to data gathered by the National Christian Evangelical Alliance of Sri Lanka (NCEASL), there were 88 discriminatory incidents targeting Christians in 2018, 94 in 2019, and 50 in 2020.

Two reports published by the NCEASL analyse incidents targeting Christians covering a period 25 months between January-December 2018 and September 2019- September 2020.⁴³ Together they provide a sense of the trends in violence and

42. Verite Research, *Silent Suppression: Restrictions on Religious Freedoms of Christians 1994-2014* (Colombo: National Christian Evangelical Alliance of Sri Lanka, 2015.)

43. Mark Schubert, *Restriction and Violence against Religious Minorities: An Incident Analysis* (Colombo: *MinorMatters*, 2019), <https://www.minormatters.org/storage/app/uploads/public/5d377fb10c5d37fb10ce12e404095654.pdf>. Verite Research, *Prejudice and Patronage: An Analysis of Incidents of Violence against Christians, Muslims, and Hindus in Sri Lanka* (September 2019 - September 2020), Verite Research, n.d., <https://www.minormatters.org/storage/app/uploads/public/60701e/fc8/60701efc8a925043964741.pdf>.

discrimination targeting Christians communities in Sri Lanka. An analysis of the types of discrimination Christians experienced in this 25- month period reveals 91 incidents involving threats, intimidation or coercion, 70 incidents involving discriminatory actions or practices, 20 incidents involving property damage or destruction and 19 incidents involving physical violence. The data also reveals that government officials (70 instances) and religious leaders (26 instances) were involved in such incidents targeting Christians. Furthermore, clergy (90 instances) and places of worship (45) are targeted in most instances of discrimination against Christians.

Although there are exceptions, State officials are often key stakeholders in many incidents of discrimination against Christians.⁴⁴ In fact, the numbers above suggest that discriminatory actions of State officials account for a larger percentage of FORB violations of Christians, than incidents of outright violence. The data shows that when State officials were present during incidents of discrimination, they exacerbated the situation 67.5% of the time. Similarly, the 2019 report highlights that of the 63 instances in which Police intervened in instances of FORB violations of Christians, they positively intervened in just one instance, compared 34 instances in which they acted to commit or further the commission of a violation of a Christian's FORB.⁴⁵ Thus, local State officials' discriminatory practices permitted and perpetuated the continued violation of FORB of Christians between 2018-2020.

44. Verite Research, *Prejudice and Patronage: An Analysis of Incidents of Violence against Christians, Muslims, and Hindus*

45. Mario Gomez, *Hate Speech in Sri Lanka During the Pandemic*, Research Report (Colombo: MinorMatters, 2020)

Therefore, local Christian communities continued to experience discrimination and violence between 2018-2020. The numbers above indicate that the State failed not only to prevent such violations of FORB of Christians, but may have even further exacerbated incidents of discrimination and violence targeting Christians.

4. Anti-minority hate campaigns

Apart from the physical violence outlined above, the minority communities were targeted in a series of hate campaigns between 2018-2020. Throughout this period, systematic campaigns across social media and offline platforms touted the ideas that,

- A) Muslims were intentionally causing infertility among non-Muslims through “sterilization pills” and various medical surgeries,
- B) all Muslims were responsible for the Easter Sunday attacks,
- C) Muslims and Christians were to blame for the spread of the COVID-19 virus.

These campaigns constructed minority religious communities as threats to other communities, and created a tense atmosphere in which the violence discussed above became possible, if not justified.

4.1 Sterilization

Both before and during the period under review, Sinhala-Buddhists were deeply fearful that the Muslim community would soon outnumber them and become the numerical majority in the country.⁴⁶ The narrative of “sterilization,” which

46. Farzana Haniffa. “Fecund Mullas and Goni Billas : The Gendered Nature of Anti-Muslim Rhetoric in Post War Sri Lanka,” *The South Asianist*, 4 no.1 (2015): 1-24.

emerged before 2018,⁴⁷ was founded on such demographic fears among Sinhala-Buddhists. According to this narrative, Muslims allegedly administered medication to Sinhala-Buddhist women, which caused infertility. Many Sinhala-Buddhists feared that this strategy would expedite Muslims overtaking the Sinhalese as the ethnic majority in the country.

Against the backdrop of these fears, allegations of sterilization against Muslims captured national attention on two notable occasions between 2018-2020. The first occasion was, as discussed already, in the lead up to the violence in Ampara, when the allegation of sterilization was used to justify the subsequent violence.

The second was in the aftermath of the Easter Sunday attacks. In this instance, a Muslim doctor attached to the Kurunegala hospital, Dr. Segu Shihabdeen Mohamed Shafi, was accused of sterilizing 4,000 Sinhala-Buddhist women after caesarian deliveries. These allegations first surfaced in the Divaina newspaper on 23rd May 2019, on the heels of the anti-Muslim violence in the North Western Province less than two weeks previously.⁴⁸ Dr. Shafi was sent on compulsory leave on 24th May 2019,⁴⁹ and was arrested on the same day under the Prevention of Terrorism Act.⁵⁰ While still in custody, on 15th June 2019 the Chief Prelate of the Asgriya

47. In 2012, Sinhala-Buddhist nationalist groups accused a leading Muslim owned clothing chain, No Limit, of distributing toffees to Sinhalese women which caused infertility. Around the same time, there were rumours that Muslim owned establishments were lacing women's underwear with chemicals which would make women infertile

48. Alexandra Ulmer & Omar Rajarathnam, "Unsubstantiated Claims Muslim Doctor Sterilized Women Raise Tensions in Sri Lanka," *Reuters*, 2019, <https://www.reuters.com/article/us-sri-lanka-doctor-insight-idUSKCN1T71HS> [Accessed February 17, 2022].

49. Dilshan Tharaka, "Dr. Shafi Will Be Paid Salary, Arrears For Compulsory Leave – AG," *Daily News*, March 24, 2022, Accessed May 20, 2022, <https://www.dailynews.lk/2022/03/24/law-order/275589/dr-shafi-will-be-paid-salary-arrears-compulsory-leave-ag>

50. Human Rights Watch, *Sri Lanka: Muslims Face Threats, Attacks*, 2019, <https://www.hrw.org/node/331785/printable/print> [Accessed February 17, 2022].

Chapter Warakagoda Sri Gnanarathana Thero endorsed stoning Dr. Shafi to death.⁵¹ On 30th July, after Dr. Shafi's was released on bail, Ven. Athureliye Rathana also publicly accused Dr. Shafi of sterilizing Sinhala Buddhist women, and protested his release outside the Kurunegala hospital.⁵² Furthermore, Dr. Shafi was not compensated for the period he was sent on compulsory leave, and had to go before the Court of Appeal as late as February 2022 to compel the government to pay his salary in arrears.⁵³

However, the baseless nature of the accusations against Dr. Shafi were confirmed on 25th July 2019 when he was released on bail after the Criminal Investigation Division informed court that there was no evidence whatsoever to prove the allegations against Dr. Shafi.⁵⁴ Investigations revealed that of the more than 600 complaints lodged against Dr. Shafi, not one was proved.⁵⁵ In fact, it was found that the Director of the Kurunegala Teaching Hospital, and two doctors who had made complaints against Dr. Shafi, had willfully misrepresented facts to investigators and the court.⁵⁶

51. "Asgiri Prelate Calls For Stoning Of Muslims – But Remains Immune To ICCPR Act Violations," *Colombo Telegraph*, June 19, 2019, Available at: <https://www.colombotelegraph.com/index.php/asgiri-prelate-calls-for-stoning-of-muslims-but-remains-immune-to-iccpr-act-violations/> [Accessed February 17, 2022].

52. "Protest March Against Dr. Shafi Creates Traffic Jam in Kurunegala", *Ada Derana*, 2019 Available at: <http://www.adaderana.lk/news/56743/protest-march-against-dr-shafi-creates-traffic-jam-in-kurunegala> [Accessed February 17, 2022].

53. Dilshan Tharaka, "Dr. Shafi Will Be Paid Salary For Compulsory Leave – AG," *Daily News*, March 14, 2022.

54. AanyaWipulasena, "No Proof To Link Dr. Shafi To Criminal Activities: Allegations Based On Speculation Fuelled By Media – CID," *Sunday Observer*, June 30 2019, <https://www.sundayobserver.lk/2019/06/30/no-proof-link-dr-shafi-criminal-activities-allegations-based-speculation-fuelled-media> [Accessed February 17, 2022].

55. "Sri Lanka Police Uncover Criminal Conspiracy Over Sterilization Claims," *Economy Next*, August 10, 2019, <https://economynext.com/sri-lanka-police-uncover-criminal-conspiracy-over-sterilization-claims-15068/> [Accessed February 20, 2022].

56. "Sri Lanka Police Uncover Criminal Conspiracy Over Sterilization Claims" *Economy Next*, August 10, 2019, <https://economynext.com/sri-lanka-police-uncover-criminal-conspiracy-over-sterilization-claims-15068/> [Accessed February 20, 2022]

Dr. Shafi's story is a clear instance of an individual being discriminated against based on his religious beliefs. It was no coincidence that a Muslim doctor was accused of and arrested for sterilizing Sinhala-Buddhist women. It demonstrates the intractable consequences racist ideologies and narratives have on the individual lives of ordinary citizens. Therefore, in arresting Dr. Shafi, and failing to take action against those who irresponsibly peddled unfounded allegations against him, the government further violated Dr. Shafi's right to be free from discrimination based on his religion.

4.2 Boycott Muslim Businesses

In addition to fears of demographic shifts in the population, Sinhala Buddhists feared the perceived ascendancy of Muslims in the economic sphere.⁵⁷ The call to boycott Muslim owned businesses for several years was partially grounded in this fear.⁵⁸ These demands resurfaced again between 2018-2020.

After the terrorist attacks in April 2019, many Sinhala-Buddhist nationalists at both the national and local levels, raucously called for a boycott of Muslim business establishments. At the national level, on 15th June 2019, the Chief Prelate of the Asgiriya Chapter, Warakagoda Sri Gnanarathna Thero asked Sinhalese to boycott Muslim businesses.⁵⁹ Similarly, on 20th July 2020, Athureliye Rathana Thero threatened to launch an island-wide campaign

57. Haniffa, *Fecund Mullas and GoniBillas*.

58. Since at least 2013 there had been requests made to Sinhala-Buddhists not to purchase items from Muslim owned shops.

59. "Fear In Sri Lanka As Monk Calls For Stoning Of Muslims," *Al Jazeera*, May 22, 2019, <https://www.aljazeera.com/news/2019/6/22/fear-in-sri-lanka-as-monk-calls-for-stoning-of-muslims> [Accessed February 18,2022].

to boycott Muslim goods.⁶⁰ Furthermore, the call to boycott Muslim businesses was furthered by local level actors. In one instance, on 16th May 2019 CCTV cameras recorded a Buddhist monk chasing Sinhalese customers out of a Muslim owned clothing shop.⁶¹ Similarly, on 24th June 2019, the Chairman of the WennapuwaPradeshiyaSabha, sought to prohibit Muslim vendors from engaging in business at the local market.⁶² The campaign to boycott Muslim businesses was not limited only to offline actions, but racist posts were circulating widely on social media platforms as well.

This campaign openly advocated discriminating against Muslims. Rather than any economic or financial consideration, Sinhala-Buddhists were exhorted to refrain from visiting business establishment simply on account of the owner's religion. Therefore, this campaign clearly violated the Muslim community's FORB to be free from discrimination on the basis of their religion.

4.3 Resignation of Muslim MPs

Following the Easter Sunday attacks, Ven. Athureliye Rathana led a national campaign, demanding the resignation of certain Muslim politicians from their positions. The campaign accused Muslim politicians of having links to the terrorists, and sought to hold them responsible for the Easter Sunday attacks.

60. Voice Tube, “යළිත් බෝම්බ පිපිරීමේ සැලසුමක්” - රනන හිමි අවධාරණය කරයි. “අවිනිසාවාදයේ අවිය මසවන්න සුදානම්ලු”. [Online], 2020. Available at: <https://www.youtube.com/watch?v=ZZmxbXqRBps> [Accessed February 18, 2022].

61. “Anti-Muslim Violence: Buddhist Monk Chases out Sinhala Customers In Muslim-Owned Shop – Video” *Colombo Telegraph*, May 16, 2019 <https://www.colombotelegraph.com/index.php/anti-muslim-violence-buddhist-monk-chases-out-sinhala-customers-in-muslim-owned-shop-video/> [Accessed February 19, 2022].

62. “Wennapuwa – A Land of Its Own? Pradeshiya Sabha Bans Muslim Vendors,” *Colombo Telegraph*, June 25, 2019 <https://www.colombotelegraph.com/index.php/wennapuwa-a-land-of-its-own-pradeshiya-sabha-bans-muslim-vendors/>, [Accessed 2022 February 2022].

On 31st May 2019, amidst much media hype, Ven. Athureliye Rathana launched a fast unto death outside the Temple of the Tooth Relic. He demanded the immediate resignation, or removal from office, of Cabinet Minister Rishaard Bathiudeen, Eastern Province Governor M. L. A. M. Hizbullah and Western Province Governor Azath Salley.⁶³ Ven. Galaboda Aththe Gnanasara gave greater publicity to these demands by leading a protest march from Kandy to Colombo on 03rd June 2019 demanding the resignation of the above-mentioned politicians.⁶⁴

As the procession left Kandy on 03rd June 2019, Muslim leaders feared further violence against their community. In an effort to defuse the situation, the Governors of the Eastern and Western Provinces resigned from their posts on the morning of 03rd June 2019, and nine other Muslim politicians, including four Cabinet Ministers, followed suit later in the day.⁶⁵ However, in an unexpected turn of events, the national leadership asked the Muslim Ministers to reassume duties. By July 2019, all the Muslims ministers had assumed duties in their previous offices.⁶⁶

This unreasonable campaign was a violation of the principle of non-discrimination on the grounds of religion or belief. Muslim politicians were called on to resign immediately following the Easter Sunday attacks, despite there being no evidence linking them to the bombers, nor any of them being the Minister

63. "AthuraliyeRathanaThero Goes On Hunger Strike," *Ada Derana*, May 31, 2019. <http://www.adaderana.lk/news/55462/athuraliye-rathana-thero-goes-on-hunger-strike> [Accessed February 18, 2022].

64. Meera Srinivasan, "Nine Muslim Ministers And Two Governors Step Down In Sri Lanka," *The Hindu*, June 3, 2019, <https://www.thehindu.com/news/international/nine-muslim-ministers-and-two-governors-step-down-in-sri-lanka/article27412798.ece> [Accessed February 18, 2022].

65. International Crisis Group, *After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence* (Brussels: International Crisis Group, 2019)

66. International Crisis Group, *After Sri Lanka's Easter Bombings*. 2019

responsible for law and order or defense. In fact, there was hardly a campaign calling for the resignation of the Minister of Defense who was a Sinhala Buddhist.⁶⁷ Thus, the call for the resignation of Muslim Members of Parliament following the Easter Sunday attacks appears to have been motivated simply on account of their religious identity and consequently was a violation of the principle of non-discrimination on the grounds of religion.

4.4 Holding Muslims and Christians responsible for the spread of COVID-19

Shortly after the country went in to its first lockdown due to the spread of the COVID—19 virus, a vicious campaign was launched asserting that Muslims were to blame for the spread of the virus. Appearing on a media talk-show, on 31st March 2020, Minister Mahindananda Aluthgamage asserted that the Muslims in his electorate were not complying with lockdown regulations, and that they accounted for 19 out of 20 identified cases in his locality.⁶⁸ On 04th April 2020, the Government Medical Officers Association identified the “Muslim population” in a locality as one of the risk factors likely to increase the spread of COVID-19.⁶⁹ Similarly, speaking to Derana TV on 09th April 2020 the president of the Public Health Inspectors trade union alleged that Sinhala and Tamil New year could have been celebrated normally had it not been for the irresponsible behaviour

67. President Maithripala Sirisena was Minister of Defence at the time of the attacks.

68. “Derana TV Chathura’s Double Standards Exposed: Citizens Enraged Over Racist Slurs Of Derana TV Anchor,” *Colombo Telegraph*, April 2, 2020, <https://www.colombotelegraph.com/index.php/derana-tv-chathuras-double-standards-exposed-citizens-enraged-over-racist-slurs-of-derana-tv-anchor/> [Accessed 20 November 2021].

69. “Sri Lanka’s GMOA Hastily Amends Draft ‘COVID19 Exit Strategy’ Document After Condemnation,” *MD live net*, April 18, 2020, <https://mdwlive.net/2020/04/18/srilankas-gmoa-amends-draft-COVID19-exit-strategy-document-after-condemnation-lka/> [Accessed February 19, 2022]

of three COVID-19 patients living in Akurana, Beruwala and Naththandiya;⁷⁰ three predominantly Muslim locations. Unfortunately, this racist narrative was amplified on social media platforms,⁷¹ further marginalizing the Muslim community in Sri Lanka, and positioning them as a threat to the rest of the country.

This campaign blaming the Muslim community for the spread of the COVID-19 virus was constructed on and deepened several stereotypical perceptions of the Muslim community. Firstly, it drew on stereotypes of Muslims having large families, living in very close proximity to one another with little space for social distancing. Secondly, it perpetuated the notion that the Muslim community posed a threat to all other religious groups in Sri Lanka. Thirdly, this campaign relied on the perception of Muslims being irresponsible, selfish and thinking only of themselves, their community and their religion. Thus, this campaign was undoubtedly discriminatory in nature, as it sought to suggest that a religious community and their practices were the primary reason for the spread of the virus.

Similarly, the Christian community was blamed for spreading the virus in the Northern Province, after a Swiss Pastor who participated in a church service in Jaffna tested positive for COVID-19. Newspapers accused the pastor of bringing COVID-19 to Jaffna.⁷² Furthermore, several Tamil posts attacking the pastor, the church he visited, and Christians for spreading the COVID-19 virus were widely shared on social media.⁷³ Thus,

70. PRG Sri Lanka, "Racism on Derana TV - 10-04-2020," YouTube, April 12, 2020, <https://www.youtube.com/watch?v=mBZtn-NiJdE>

71. Gomez, *Hate Speech in Sri Lanka During the Pandemic*. minor matters, 2020

72. SandranathanRubatheesan, "Jaffna's COVID-19 Pastor, His Religion "Criticized" Even After His Death," CIR.LK, January 19, 2021, <https://cir.lk/featured/jaffnas-COVID-19-pastor-his-religion-criticized-even-after-his-death/>

73. Gomez, *Hate Speech in Sri Lanka During the Pandemic*. minor matters, 2020

during the pandemic, hate speech targeting minority religious groups sought to blame them for spreading the virus.

5. Discriminatory Government Actions between 2018-2020

Minority religious communities were victims of discriminatory government actions between 2018-2020. These signified the not only government acceptance of Sinhala-Buddhist and nationalist fears, but also their willingness to pander to nationalist fears at the cost of the religious minorities. Once again, some of these actions were rooted in fears that existed prior to 2018. The discriminatory government actions discussed in some detail here are:

- (A) The burqa ban,
- (B) Arrests under the PTA,
- (C) Mandatory cremation of COVID-19 victims,
- (D) Declaration of places of Hindu worship as archaeological sites.

5.1 Burqa ban

Eight days after the Easter Sunday attacks, President Maithripala Sirisena restricted Muslim women's right to manifest their religion. On 29th April 2019, acting under Emergency Regulations of the Public Security Ordinance, the President issued a gazette which stated, "No person shall wear in any public place any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person."⁷⁴ The ban remained in place until the state of emergency lapsed on 22nd August 2019.

74. Gazette Extraordinary 29 April, 2019.

The ban on face coverings must be understood in the context of vociferous Sinhala-Buddhist nationalist demands to ban the niqab and the burqa after the Easter Sunday attacks, because it allegedly posed a risk to national security. Nationalists asserted that Muslim women's attire provided the perfect cover for future suicide attacks, despite all of the Easter Sunday bombers being dressed in jeans and t-shirt or shirts.⁷⁵ Thus, the face covering ban may also be understood as an extremely unpopular President's weak effort to enhance his image among the Sinhala-Buddhist voter base.

Unfortunately, such efforts came at the expense of Muslim women's FORB and other human rights.⁷⁶ Muslim women could no longer step out of their house dressed as they wished. Those who were brave enough to travel in public wearing a burqa or niqab were subject to discrimination at business establishments, banks, public places, and public transport. It also emboldened ordinary citizens to take the law into their own hands and force Muslim women to remove their niqab or burqa, even after the Emergency Regulations lapsed.⁷⁷ In one incident, on 2nd July 2020, almost a year since the ban ceased to be in operation, a Muslim woman was denied entry into Sampath Bank because she was covering her face.⁷⁸ Thus, it may be noted that intentional targeting of Muslim women through the face covering ban, was discriminatory, curtailed their FORB, and emboldened other citizens to violate the rights of Muslim women.

75. Ambika Sathkunanathan, "Sri Lanka: Minority Rights within Shrinking Civic Space" in *South Asia State of Minorities Report, 2020* (Colombo: Law and Society Trust & South Asia Collective, 2020)

76. For a further discussion on the ban on face covering please refer to the chapter on women's rights in this publication

77. Sathkunanathan, Sri Lanka: Minority Rights within Shrinking Civic Space.

78. PRG Sri Lanka. "A Muslim Woman Has Been Asked to Remove the Head Scarf at Sampath Bank Dehiwala Sri Lanka", *PRG Sri Lanka*, July 2, 2020, https://www.youtube.com/watch?v=RZd2Rh_GOj8&feature=emb_logo [Accessed February 22, 2022].

5.2 Arrests under the PTA

In the weeks following the Easter Sunday attacks, the Muslim community not only contended with the possibility of being victims of communal violence, and Muslim women being harassed in public places. They also had to contend with the fear of being arrested at any moment for alleged links to the bombings. Law enforcement raided mosques, madrasas and Muslim owned houses and business establishments across the country, often with media personnel in tow. The media coverage of such raids reinforced Sinhala-Buddhist fears of future Muslim attacks, and created fear in the minds of many Muslims for theirs, and their loved ones' safety.

Acting under the power of the Prevention of Terrorism Act, law enforcement authorities arrested hundreds of Muslims in the weeks and months following the attacks. It is estimated that as many as 1,820 Muslims were arrested for allegedly having connections to the bombers or the bombings.⁷⁹ Most arrests were made with little or no evidence, and sometimes on fabricated charges. Among the frivolous justifications law enforcement gave for depriving individuals of one of their most basic rights, the right to personal liberty, were, “Keeping money at home”; “Talking in playground (Breaking emergency law)”; “A post [he] had shared on social media 5 years back”; “Having English lecturer docs”; “Arabic song in Laptop”; “Traveling to Jaffna for job”; and “no reason.”⁸⁰

79. Lisa Fuller & Rukshana Rizwie, 2019, “Muslims ‘Targeted With Arbitrary Arrests’ After Easter Massacre,” *Al Jazeera*, June 16, 2019, <https://www.aljazeera.com/features/2019/6/16/muslims-targeted-with-arbitrary-arrests-after-easter-massacre>, [Accessed February 22, 2022].

80. Human Rights Watch, *Sri Lanka: Muslims Face Threats, Attacks*, 2020

The number of arrests, and the frivolous grounds for arrest are indicative of a clear bias in law enforcement, which perceived all Muslims as terrorists. Many of the Muslims detained under the PTA were denied their personal liberty with little, or no, reason, other than belonging to the Muslim faith. These discriminatory practices on the part of the State, not only denied many individuals from a specific religious group their basic freedom of movement and personal liberty, but also violated the right not to be discriminated against on the grounds of religious belief.

5.3 Mandatory cremation of COVID-19 victims

During the COVID-19 pandemic the government restricted the Muslim and Christian community's freedom to manifest their religion, specifically the practice of their funeral rites. Even as Sinhala-Buddhist nationalists fueled Islamophobia by blaming Muslims for the spread of the COVID-19 virus, the government arbitrarily decided that all COVID-19 victims must mandatorily be cremated. On 31st March 2020, the Provisional Clinical Practice Guidelines on COVID-19 Suspected and Confirmed Persons made cremation mandatory for all COVID-19 victims.⁸¹ In defending its position, authorities made absurd claims, with no scientific evidence whatsoever. For instance, one forensic pathologist attached to the Ministry of Health worried, "Maybe an unwanted person could get access to a body and it could be used as a biological weapon."⁸² In another instance it was alleged that burying COVID-19 victims could contaminate ground

81. Althaf Marsoof, "The Disposal of COVID-19 Dead Bodies: Impact of Sri Lanka's Response on Fundamental Rights" *J Hum Rights Pract* 13, no. 3 (2022)

82. "Small fear whether the dead bodies with the virus can be used as biological weapons - Dr. Channa Perera tells BBC," *The Leader*, April 16, 2020. <https://english.theleader.lk/news/690-small-fear-whether-the-dead-bodies-with-the-virus-can-be-used-as-biological-weapons-dr-channa-perera-tells-bbc>. [Accessed February 17, 2022].

water.⁸³ Despite there not being any scientific proof to validate such claims,⁸⁴ and the WHO guidelines itself recognizing that burying COVID-19 victims was safe⁸⁵ the government had not reversed this decision even at the end of 2020. It was only in February 2021, that the government finally permitted the burial of COVID-19 victims in Iranathivu, in the Mannar districts.⁸⁶

The government's arbitrary decision curtailed the Muslim and Christian communities' freedom to perform final rites as prescribed by their religion. Muslims and some Christians generally do not cremate their deceased loved ones, and believe that their dead should be buried as per the instructions in their scriptures. However, the government's decision compelled Muslims and some Christians to conduct the final rites for their loved ones who died with the virus, in complete contradiction to their faith. Their right to manifest their religion through performing the final rites on their deceased loved ones was denied without a reasonable basis.

Beyond the violation of the Freedom of Religion or Belief, the decision of the government to mandatorily cremate all COVID-19 victims caused immense anguish and grief, particularly among the Muslim community. They were denied the opportunity to complete one of their most fundamental duties to their loved

83. "Sri Lanka Muslims Leave Bodies Of Relatives Unclaimed In Protest Of Cremation Rule For COVID-19 Deaths," *Strait Times*, Dec 9, 2020, <https://www.straitstimes.com/asia/south-asia/sri-lanka-muslims-leave-bodies-of-relatives-unclaimed-in-protest-of-cremation-rule>

84. Althaf Marsoof, "The Disposal of COVID-19 Dead Bodies." Impact of Sri Lanka's Response on Fundamental Rights *J Hum Rights Pract* 13, no. 3 (2022)

85. "Infection Prevention And Control for the Safe Management of a Dead Body in The Context Of COVID 19, Interim Guidance", WHO, 24 March, 2020, https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf

86. "COVID-19: Sri Lanka Chooses Remote Island For Burials," *BBC*, March 2, 2021, <https://www.bbc.com/news/world-asia-56249805>, Accessed [April 22, 2022].

ones: providing a dignified burial as commanded by their religious teachings. Faced with the unthinkable thought of cremating their loved ones, some Muslim families chose to leave the body of their deceased loved ones at the mortuary.⁸⁷

Thus, the unreasonable decision to mandatorily cremate all COVID-19 victims, with no scientific basis, and in contradiction to the guidelines of the WHO was an unnecessary and painful violation of the FORB for Muslims and some Christian groups. The government's obstinate refusal to reverse the decision for almost a year caused unnecessary grief among Muslims and Christians, and heightened suspicion of Muslims and Christians among other religious groups.

5.4 Declaring Hindu sites of worship as archaeological sites

The term “Buddhistization” refers to the process whereby Sinhala-Buddhist nationalists identify specific locations in the North and East as Buddhist sites, claim such places as sacred sites to Buddhists, and proceed to construct temples and Buddha statues on such locations while not permitting other religious groups to engage in their religious rituals in the area.⁸⁸ Such incidents began after the conclusion of the war in 2009, with the active intervention of the Department of Archaeology, the military and/or Buddhist clergy. Local communities, Tamil politicians, human rights activists and the international community have consistently challenged these intentional moves on the part of

87. Human Rights Watch, *Sri Lanka: COVID-19 Forced Cremation of Muslims Discriminatory*, January 18, 2021 <https://www.hrw.org/news/2021/01/18/sri-lanka-COVID-19-forced-cremation-muslims-discriminatory> [Accessed May 22, 2022].

88. Adayaalam Centre for Policy and Research, *Normalising the Abnormal: The Militarization of Mullaitivu*, s.l.: Adayaalama Centre for Policy and Research and People for Equality and Relief in Lanka, 2017

the State. These groups see these moves as inscribing Sinhala-Buddhist supremacy in the Northern and Eastern provinces.⁸⁹ This section will highlight several incidents which took place in the process of Buddhistization between 2018-2020.

While not describing all the relevant incidents, this section will briefly present three incidents which exemplify how locations in the North and East are claimed as sites sacred to Buddhists, and its consequences. On 12th August 2018 the Police requested locals to attend a meeting at the Nedunkerny Police Station, Vavuniya. During the meeting, four officials attached to the Department of Archaeology informed the villagers that a large tract of land, including the ancient temple AathiAiyanar temple in VedukkunaariMalai, had now come under their control. The Department of Archaeology informed locals that they were prohibited from even entering the area.⁹⁰ However, the Police informed villagers the following day that they would be permitted to enter the land for worship activities only, and that no constructions or refurbishments may be done without the prior approval of the Archaeology Department.⁹¹

Since 2013, locals had repeatedly thwarted efforts to construct a temple in Neeraviyadi, Mullaitivu. However, in December 2018, amidst the constitutional crisis, steps were taken to hurriedly construct a Buddha statue, encroaching on a local Pillaiyar

89. Adayaalam Centre for Policy and Research, *Normalising the Abnormal: The Militarization of Mullaitivu*, 2017

90. "Sri Lanka's Archaeology Department Takes Over Tamil Temple Lands In Vavuniya," *Tamil Guardian*, August 12, 2018, <https://www.tamilguardian.com/content/sri-lanka%E2%80%99s-archaeology-department-takes-over-tamil-temple-lands-vavuniya> [Accessed January 20, 2022].

91. "Ancient Tamil Temple Not Off-Limits But Under Archaeology Dept. Control," *Tamil Guardian*, August 13, 2018, <https://www.tamilguardian.com/content/ancient-tamil-temple-not-limits-under-archaeology-dept-control> [Accessed February 20, 2022].

kovil.⁹² Thereafter, when locals attempted celebrate Thai Pongal at the Pillaiyar kovil in January 2019, a group of about 40 persons entered the Pillaiyar temple premises and ordered the celebrations to be stopped.⁹³ The Buddha statue was then hurriedly declared open on 24th January 2019, amidst vociferous local opposition.⁹⁴ It was reported that police officers, army personnel and members of the Department of Archaeology were present at the opening ceremony. Thus, the local Tamil communities could not prevent the Buddhization of their village, while also being denied the right to celebrate Thai Pongal at the Hindu temple.

In September 2019, with the presidential election two months away, tensions flared in Mullaitivu district once again at the Gurukanda Raja MahaViharaya. The temple had been constructed within the precincts of the Neeraviyadi Pillayar Hindu Temple in Chemmalai, Mullaitivu. When the Chief Incumbent of the temple passed away in September 2019, Sinhala Buddhist nationalists attempted to cremate the remains of the monk at the temple premises. Despite the Mullaitivu Magistrates Court issuing an injunction preventing the cremation of the monk within the premises of the Hindu kovil, a group of around 200 Buddhists, led by Ven. Galaboda Aththe Gnanasara, cremated

92. "Large Buddha Statue Built at Mullaitivu Hindu Temple Site Despite Local Opposition," *Tamil Guardian*, December 17, 2018 <https://www.tamilguardian.com/content/large-buddha-statue-built-mullaitivu-hindu-temple-site-despite-local-opposition>. [Accessed February 19, 2022].

93. "Tensions Flare in Mullaitivu as Buddhist Monk Storms Tamil Pongal Festival," *Tamil Guardian*, January 20, 2019 <https://www.tamilguardian.com/content/tensions-flare-mullaitivu-buddhist-monk-storms-tamil-pongala-festival>. [Accessed February 20, 2022].

94. "More Tensions As Opening Of Illegal Buddha Statue In Mullaitivu Rushed Through," *Tamil Guardian*, January 24, 2019 <https://www.tamilguardian.com/content/more-tensions-opening-illegal-buddha-statue-mullaitivu-rushed-through>. [Accessed February 20, 2022].

the remains of the monk within the temple premises.⁹⁵ Locals gathered round the temple in protest, and were further incensed when the Police intervened to protect the monks defying the court order, rather than enforcing it.⁹⁶ In this volatile situation, the actions of the Police demonstrated that ensuring the FORB of Hindu minorities was not a priority for the State.

While these are some of the more prominent incidents to take place in the North and East, other similar incidents were also reported in and around the Kurunthur Mountain in Kumulamunai, Mullaitivu,⁹⁷ Kanniya hot springs,⁹⁸ Kilinochchi university,⁹⁹ Vedi Arasan fortress in Neduntheevu, Jaffna,¹⁰⁰ Kallady,¹⁰¹ Illankaithurai,¹⁰² and Seruwila-Verugal.¹⁰³

95. Meera Srinivasan, "COVID-19-| Sri Lankan Military Is Helping The Country Fight The Pandemic," *The Hindu*, April 15, 2020, <https://www.thehindu.com/news/international/COVID-19-sri-lankan-military-is-helping-the-country-fight-the-pandemic/article31350778.ece>. Accessed December 4, 2021. [Accessed February 21, 2022].

96. Ibid

97. "Tensions In Mullaitivu: Locals Angered By Attempts to Build Buddhist Vihara," *Tamil Guardian*, September 4, 2018 <https://www.tamilguardian.com/content/tensions-mullaitivu-locals-angered-attempts-build-buddhist-vihara> [Accessed February 17, 2022].

98. "Archaeology Dept Dumping Temple Ruins In Well Say Trinco Residents," *Tamil Guardian*, May 29, 2019 <https://www.tamilguardian.com/content/archaeology-dept-dumping-temple-ruins-well-say-trinco-residents>[Accessed February 19, 2022].

99. "Buddhist Vihara And Monks' Residences Under Construction At Kilinochchi University Campus," *Tamil Guardian*, January 10, 2020 <https://www.tamilguardian.com/content/buddhist-vihara-and-monks-residences-under-construction-kilinochchi-university-campus>[Accessed February 21, 2022].

100. "Tamil Locals Slam The 'Increased Sinhalisation' Efforts In Neduntheevu," *Tamil Guardian*, November 2, 2020, <https://www.tamilguardian.com/content/tamil-locals-slam-increased-sinhalisation-efforts-neduntheevu>[Accessed February 20, 2022].

101. "Sinhalisation in the East – Kallady," *Tamil Guardian*, June 26, 2020, <https://www.tamilguardian.com/content/sinhalisation-east-kallady-0>[Accessed February 21, 2022].

102. "Sinhalisation in the East – Ilankaithurai," *Tamil Guardian*, June 18, 2020, <https://www.tamilguardian.com/content/sinhalisation-east-ilankaithurai>[Accessed February 20, 2022].

103. "Sinhalisation of the North-East: Seruwila-Verugal," *Tamil Guardian*, March 16, 2020 <https://www.tamilguardian.com/content/sinhalisation-north-east-seruwila-verugal>[Accessed February 19, 2022].

5.5 The Presidential Task Force for Archaeological Heritage Management in the Eastern Province

The process of Buddhistization in the Eastern Province was provided further impetus, on 02nd June 2020, with the appointment of the “Presidential Task Force for Archaeological Heritage Management in the Eastern Province”. Initially comprising only of Sinhalese, the Presidential Task Force included some questionable appointments, such as, the Secretary of Defence, the Senior Deputy Inspector General of Police for the Western Province and the Chairman of Derana Media Network.¹⁰⁴ Among the responsibilities assigned to the Task Force was to identify sites of archaeological importance in the Eastern Province, managing such sites, identifying the extent of land to be allocated to such sites and preserving the cultural value of such sites.¹⁰⁵ All of which could very well be fulfilled through existing laws.¹⁰⁶ With this broad mandate the task force identified up to 2,000 sites in the Eastern province to be subject to ‘archaeological’ examination.¹⁰⁷ The powers vested in the PTF, and the nature of its composition further heightened concerns that it would expedite Buddhistization and militarization in the Eastern Province.

104. Chandani Kirinde “President appoints Task Force for Archaeological Heritage Management in East,” *Daily FT*, June 04 2020, <https://www.ft.lk/News/President-appoints-Task-Force-for-Archaeological-Heritage-Management-in-East/56-701114>. [Accessed February 20, 2022].

105. Ibid

106. Centre for Policy Alternatives. “The Appointment of the Two Presidential Task Forces, Discussion Paper,” June 2020, <https://www.cpalanka.org/wp-content/uploads/2020/06/Commentary-Two-Task-Forces-CPA-Final.pdf>[Accessed February 20, 2022].

107. U. S. Embassy in Sri Lanka. “Sri Lanka 2020 International Religious Freedom Report,” 2020, <https://lk.usembassy.gov/wp-content/uploads/sites/149/2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT-SRI-LANKA.pdf>

The competing claims to land surrounding the Muhudu Maha Viharaya by Muslims and the Chief prelate of the temple appeared to have led to the establishment of the PTF.¹⁰⁸ On 14th May 2020, the Secretary of Defence visited the Muhudu Maha Viharaya on the instructions of the President and Prime Minister. During his visit, the Secretary of Defence promised the Chief Prelate of the temple that the government would “protect and preserve archaeological and historic sites from vandalism and encroachments by individuals and organised groups.” This statement articulated a widely accepted belief among Sinhala-Buddhists nationalists at the time, that Muslims were destroying archaeologically sensitive areas. Two weeks after this “fact finding mission” the PTF was established. In June 2020, it was reported that the PTF surveyed around 40 acres of land surrounding the temple and evicted approximately 400 Muslim families.¹⁰⁹ Thus, the PTF decisively intervened in the land issue surrounding the Muhudu Maha Viharaya, reiterating that the Buddhistization of the North and East affected not only Hindu communities, but also Muslims.

The Chief Incumbent of the Arisimalai Buddhist Temple, who was a member of the PTF intervened on two occasions to restrict the rights of Hindu minorities in the Eastern Province. In one instance, in August 2020, the monk had threatened a group of farmers in Thiriyai, Trincomalee, and insisted that they not

108. “The Appointment Of The Two Presidential Task Forces, Discussion Paper,” Centre for Policy Alternatives, June 2020, <https://www.cpalanka.org/wp-content/uploads/2020/06/Commentary-Two-Task-Forces-CPA-Final.pdf>, <https://www.cpalanka.org/wp-content/uploads/2020/06/Commentary-Two-Task-Forces-CPA-Final.pdf>. [Accessed February 20, 2022].

109. “Sri Lanka 2020 International Religious Freedom Report,” U. S. Embassy in Sri Lanka, 2020, <https://lk.usembassy.gov/wp-content/uploads/sites/149/2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT-SRI-LANKA.pdf>

engage in farming activities on around 1,000 acres of land.¹¹⁰ On 20th August 2020, the monk had complained to the police against a farmer who was driving a tractor in his paddy field, and had the farmer arrested.¹¹¹ Thereafter, on 23rd August 2020 the monk had interrupted a festival at a Pillaiyar-Ganapathikovil, and threatened those gathered there with arrest if they cultivated the lands in question.¹¹² In this instance the member of the Presidential Task Force appears to have arbitrarily intervened to prevent local farmers from legitimately engaging in their livelihoods and religious practices.

On 24th September 2020, the Department of Archaeology confiscated 358 acres of land, including land cultivated by local communities, from Panikkanvayal to Thennamaravadi. The Department of Archaeology was accused of acquiring these lands at the request of a Buddhist monk at the Arisimalai Buddhist temple.¹¹³ Even as a Buddhist shrine was in the process of being constructed in this reservation area, Tamil farmers were prevented from engaging in any agricultural activities in the lands so confiscated. A case was filed regarding the illegal acquisition before the High Court of Trincomalee, which issued a temporary injunction on 20th November 2020 permitting locals to engage in agricultural lands demarcated by the Department of Archaeology.¹¹⁴

110. "TNA Leader Alleges Presidential Task Force For EP Archaeology Member Threatened Kuchchaveli Area Farmers," *Daily FT*, September 8, 2020. <https://www.ft.lk/news/TNA-leader-alleges-Presidential-Task-Force-for-EP-Archaeology-member-threatened-Kuchchaveli-area-farmers/56-705768>[Accessed February 19, 2022].

111. Ibid

112. Ibid

113. "Sinhalisation Of North-East: 358 Acres of Land from Panikkanvayal to Thennamaravadi Confiscated," *Tamil Guardian*, October 14, 2020 <https://www.tamilguardian.com/content/sinhalisation-north-east-358-acres-land-panikkanvayal-thennamaravadi-confiscated>[Accessed February 18, 2022].

114. "Protests against Land Grabbing in the Guise of Archaeology in N&E of Sri Lanka," *Sri Lanka Brief*, Nov. 11, 2020, <https://srilankabrief.org/protests-against-land-grabbing-in-the-guise-of-archaeology-in-ne-of-sri-lanka/>[Accessed February 18, 2022].

6. Conclusion

It has been the position of this chapter that fundamental rights are just as much about politics as they are about legal instruments and international treaties. The incidents detailed in this chapter are indicative of a worrying trend in Sri Lankan politics between 2018-2020. The violations of the FORB in Sri Lanka during this period must be located within the context of a growing Sinhala-Buddhist nationalist ideology and the attendant blurring of the line between Buddhism and the State. At the local level, violations of human rights are also shaped by local concerns and grievances. Thus, while the discriminatory and violent experiences of minority religious groups in Sri Lanka may be understood as violations of human rights, they must also be understood as manifestations of the larger political condition in the country during the time.

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RIGHT TO HOUSING

Iromi Perera* & Meghal Perera**

1. Introduction

The right to housing chapter of this report looks at key housing related incidents, policies and other significant developments that took place across the country from 2018 – 2020. This chapter will discuss housing issues and developments in the plantation sector, the urban sector and the rural sector. The section on COVID-19 and housing goes beyond the traditional scope of ‘housing’ and includes other issues which we believe intersects with the right to housing and must be included in any discussion on housing. This includes the right to adequate space and privacy within ones home, as well as issues around the digital divide in schooling.

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The People's Land Commission report section includes incidents prior to the review period as well. However, this report has been included as it is a significant contribution to the land rights and housing rights space.

2. Plantation Sector

Sri Lanka's estate sector comprises 4.4% of the population, an ethno-linguistic minority of Malaiyaha Tamils who were brought to Sri Lanka during the 1860s by British colonial rulers to work in plantations. Women account for the majority of the workforce. Malaiyaha Tamils have been largely isolated from the rest of the country, with lagging social and welfare indicators.

The Malaiyaha community continues to reside in "line rooms" established during British colonial rule. These line rooms are small, with 47% and 82% of line rooms having a floor area of less than 250 and 500 square feet respectively.¹ A single barrack accommodates between 6 and 12 or 24 line rooms, which are usually dark without windows and ventilation. Extended families of 6 - 11 persons often reside in a single room.² The lack of space and privacy presents an increased risk for sexual harassment against women and girls.

As of 2018, it was estimated that 55% of estate households still resided in line rooms,³ and that these living conditions fall below what is considered safe and adequate housing. In addition, over

1. Manoj Thibbotuwawa et al., Living Wage Report - Sri Lanka Estate Sector (Global Living Wage Coalition, 2019), <https://globallivingwage.org/wp-content/uploads/2019/07/Sri-Lanka-Living-Wage-report.pdf>

2. Amnesty International, Measuring the Devastating Impact of COVID-19 on the Education of Children in Tea Plantation Communities, (Amnesty International, 2020), <https://www.amnesty.org/en/latest/news/2020/06/sri-lanka-it-is-time-to-change-the-narrative/>

3. Thibbotuwawa et al., Living Wage Report - Sri Lanka Estate Sector

14,000 families in the estate sector live in what is referred to as temporary housing.⁴ In terms of housing amenities and facilities, the estate sector continues to lag behind rural and urban sectors, with houses lacking space, permanent roofs and safe drinking water.⁵ In addition to low quality housing, vulnerability to environmental risks such as landslides, insecure land ownership and tenure and lack of space for increasing family sizes are other issues that affect estate sector housing.

Estate housing is tied to employment within the estate. This means that estate households have no tenure security or ownership of their houses. However, despite not being able to sell them to others, they can pass their houses on from generation to generation, provided a family member works in the estate. In addition, tea workers often make improvements to their houses, behaviour that is typical of homeowners.⁶ Overcrowded housing caused more problems during the pandemic in 2020, where social distancing was impossible due to families sharing line-rooms and communal toilet facilities.⁷

Unsafe housing has also resulted in fire hazards, as firewood which is the predominant cooking fuel is stored inside the house, and many houses have outdated and improvised electrical wiring, which increases the likelihood of electrical leakages. The adjoining nature of the line rooms means that a single outbreak of fire results in many houses being destroyed, and several families

4. State Ministry of Estate Housing and Community Infrastructure, Annual Performance Report 2020, at http://www.smehci.gov.lk/web/wp-content/uploads/final_Book.pdf

5. CBSL, Sri Lanka Socioeconomic Data 2020.

6. Thibbotuwawa et al., Living Wage Report - Sri Lanka Estate Sector

7. Yasmin Gunaratnam, 'Soap and Solace Scarce as Sri Lanka's Tea pickers Toil amid Lockdown,' *The Guardian*, April 24, 2020, <https://www.theguardian.com/global-development/2020/apr/24/soap-and-solace-scarce-as-sri-lankas-tea-pickers-toil-on-amid-lockdown>

being rendered homeless. Estate workers and their families have lost belongings, documentation, and homes due to fires with many being forced to move in with relatives.⁸

Key incidents during this review time period include:

- a) Seven families in the Menikwatta Estate near Dickoya rendered homeless after their line room homes were destroyed in a fire on May 9th, 2020.⁹
- b) On May 2nd, 2020, 14 line rooms were destroyed by a fire at Abbotsleigh Estate in Hatton.¹⁰
- c) On January 29th, 2019, a fire destroyed 12 line rooms rendering 66 people homeless in the Vanakadu Division of the Robgill Estate near Bogawantalawa.¹¹
- d) On December 29th, 2018, 20 homes were destroyed by a fire at Fordyce Estate in Dickoya and it was over a year before plantation management provided the workers with homes.¹²
- e) In February 2020, six houses were completely destroyed by a fire in DayagamaAgarapathana and 37 residents were displaced and sent to the local school.¹³

8. M. Thevarajah, "Seven Families Homeless after Plantation Fire," *World Socialist Website*, May 20, 2020, <https://www.wsws.org/en/articles/2020/05/20/plan-m20.html>

9. Ibid

10. "Fire in Hatton, 14 Houses Damaged", *Hiru News*, May 2, 2020, <https://www.hirunews.lk/english/239934/fire-in-hatton-14-houses-damaged-photos>

11. TharindiPabasara, "Twelve line Houses Guttred in Fire at Bogawantalawa," *Ada Derana*, January 29, 2019, <http://www.adaderana.lk/news/52950/twelve-line-houses-guttred-in-fire-at-bogawantalawa>

12. Suresh, A and M. Thevarajah, "Sri Lanka: 16 Families Homeless after Fire at Bogawantalawa Tea Plantation," *World Socialist Website*, Feb 4, 2019, <https://www.wsws.org/en/articles/2019/02/04/fire-f04.html>

13. "Fire Breaks Out at Plantation Houses", *Hiru News*, 20 Feb, 2020 <https://www.hirunews.lk/goldfmnews/234866/fire-breaks-out-at-plantation-houses-photos>

f) 24 plantation estate houses were destroyed by a fire in Holyrood Estate in Talawakelle on May 29th 2019.¹⁴

The National Housing Policy which was revised in 2017 aimed to tackle estate sector housing issues, recommending the mainstreaming of estate housing, which had earlier been dictated by estate management; and the provision of detached houses spanning 7 perches and offering adequate amenities. It identified a housing backlog of 135,000 units in the estate sector that needed to be provided.¹⁵

The National Housing Policy also sought to improve the housing conditions by extending the small loan programme for families (Rs. 494,000/52% as a loan to be recovered in 19 years with an interest rate of 4% and a monthly instalment payment of Rs. 3,800, and allocating Rs. 1 billion to provide for the housing needs of 1,250 families in estate sector housing.

Numerous schemes have emerged to fill the housing need in the estate sector, driven by the government, private sector and other donors. However, some government schemes offer new houses on a part grant part loan basis, with monthly loan instalments being as high as Rs.3,800. a month, which is difficult for estate workers to pay.¹⁶

In December 2018, the Indian Government agreed to provide grant assistance to construct 10,000 houses, with each house to

14. "24 Plantation Estate Houses in Talawakelle Gutted in Fire," *Ada Derana*, May 30, 2019, <http://www.adaderana.lk/news/55448/24-plantation-estate-houses-in-talawakelle-gutted-in-fire>

15. GoSL, National Housing Policy - 2017

16. S. P. Hapuarachchi and S. S. Kariyawasam, "An Evaluation of National Housing Policy Related to Plantation Housing in Sri Lanka," *Cities People Places : An International Journal on Urban Environments* 5 no.1(2021): pp.94–105. DOI: <http://doi.org/10.4038/cpp.v5i1.55>

be built at the value of Rs. 1 million from 2019-2024. In 2018, the Plantations Human Development Trust, a tripartite coalition of Regional Plantation Companies, Plantation Trade Unions and the GoSL completed housing and infrastructure development projects of an estimated value of Rs. 2 billion. These included the construction of 1,200 houses, reroofing 600 units and the replacement of public toilets with 300 individual toilets.¹⁷

In 2018, the New Villages Development Authority for the Plantation Region Act No.32 of 2018 was passed with the aim of fast-tracking attempts to rectify the inequalities in housing and amenities that the plantation sector faces. The authority was established with the objective of integrating the plantation community with the rest of the country by developing new villages in the estate sector. The authority also facilitates the issuing of title deeds for the new houses and ensures that the legal occupants of the houses, as well as their descendants, are provided with these facilities. This is potentially a way of solving tenure and ownership issues that have plagued the estate sector.

It has been observed that while new housing projects have been carried out in the past 3 years, despite interruptions caused by the pandemic, there have been no reduction in the number of line rooms as they have not been removed. The State Ministry of Estate Housing and Community Infrastructure has committed to reducing the number of line rooms by 30% by 2030.¹⁸ Furthermore, these schemes target members of the Malaiyaha

17. "Estate Sector Housing and Infrastructure Development Reaches Rs.2 billion" *Daily Mirror*, February 11, 2019 <https://www.dailymirror.lk/article/Estate-sector-housing-and-infrastructure-development-reaches-Rs-bn-in--162195.html>

18. State Ministry of Estate Housing and Community Infrastructure, Annual Performance Report 2020, at http://www.smehci.gov.lk/web/wp-content/uploads/final_Book.pdf

community who work in plantations, but there is a growing population of younger Malaiyaha Tamils who are employed outside plantations, whose housing issues require long-term solutions.

3. Urban Housing and Development Projects

The Urban Regeneration Project (URP), one of the key post-war infrastructure projects in Colombo, continued to relocate working class poor communities to high-rise complexes throughout the review period of this report. The motivation behind the URP is to free up potentially lucrative land occupied by the working-class poor for commercial purposes. This is described as ‘liberating underutilised land.’ the alleged underutilisation being that the communities living on the land generate no income for the State. The vision of the URP as stated on the Urban Development Authority (UDA) website is *“To eliminate slums, shanties and other dilapidated housing from the city of Colombo by relocating dwellers in modern houses and liberated lands to be utilized for commercial and mix development.”*

The URP was launched under the Rajapaksa government after the end of the war and continued throughout the Yahapalanaya period. By the end of Phase 2 of the project, over 15,000 families had been relocated to these complexes built by the UDA.¹⁹ Each complex size varies based on the land available, but all complexes span 12 - 14 floors, with some complexes having 200 flats to some having over 1500 flats.²⁰ Flats built prior to 2015 were 400 square

19. Iromi Perera, “The Urban Regeneration Project Report,” Bank Information Center, n.d.https://bankinformationcenter.cdn.prismic.io/bankinformationcenter/67926323-8ad0-44ac-8707-c87634ded7ab_Urban+Regeneration+Project+Report.pdf

20. Urban Regeneration Programme, Urban Development Authority Website - <https://www.uda.gov.lk/urban-regeneration-programme.html>

feet in size while those built after were 550 square feet.²¹ Civil society organisations and academia have written extensively on what the impact of relocations to these high-rise complexes have meant for communities, including loss of income and livelihood, longer commutes to work and schools, income mismatch and debt, security issues for women and children etc.²² The future of the project, however, was in question as the financing model had not been successful as envisioned by Gotabhaya Rajapaksa when he was Defence Secretary.

However, in 2018 the Government was able to continue with the project, with the Asian Infrastructure Investment Bank (AIIB) financing Phase 3 of the URP. The AIIB approved financing for the Colombo URP in April 2019. AIIB provided \$200 million in financing for the project; the Government of Sri Lanka will provide \$82 million; and a “private partner” will provide \$5 million. The project’s objective for Phase 3 is “to improve housing conditions of low-income communities and increase land use efficiency in Colombo through investments in the construction of affordable housing and redevelopment of land, with associated policy and system enhancements.” AIIB documents state that the project “will support the continued implementation of URP Phase 3 but with significant improvements – such as the improvements in technical design, resettlement and post-resettlement policy, housing maintenance arrangements, innovation in redevelopment approach, and review of longer-term sustainability of public intervention in housing.”²³

21. Iromi Perera, “The Urban Regeneration Project Report”, Bank Information Center, n.d.https://bankinformationcenter.cdn.prismic.io/bankinformationcenter/67926323-8ad0-44ac-8707-c87634ded7ab_Urban+Regeneration+Project+Report.pdf

22. Iromi Perera, ‘We Can’t Feel the Earth Beneath Our Feet Anymore’, Polity, May 2020, Social Scientists Association - https://drive.google.com/file/d/1DdlnXQg1H_KOKq53ANrXoxjA-ISzNNiM/view?usp=sharing

23. AIIB Project Document, https://www.aiib.org/en/projects/approved/2019/_download/sri-lanka/pd-colombo-urban-regen.pdf

Development finance monitoring groups, such as the Bank Information Centre, in their report on the AIIB financing for the Colombo URP noted that there had been several improvements in the Phase 3 policies that were put in place by the AIIB safeguard documents.²⁴ This included resettlement action plans, consultations, title for those who owned their houses previously, joint ownership and many other positive developments. Most of these changes align with the changes that Sri Lankan civil society had been advocating for a long time.

However, even for the AIIB funded project, the militarisation of the UDA and the erosion of due process, as noted by civil society groups previously, surfaced. As the Bank Information Centre noted:

For example, in April 2019 the residents in the Madampitiya Road community were sent official letters signed by the military brigadier heading the URP stating that they had one month to move to their new apartments and if they did not do so, legal action would be taken against them, and they would no longer be eligible for an apartment. This was officially brought to AIIB's notice by the Bank Information Centre and the letter was rescinded by the UDA as one sent in error, and a clarification letter in Sinhala, Tamil and English, ensuring residents that legal action would not be taken was sent by the Director General of the UDA.

Such processes were commonplace at the UDA, who used military personnel up until 2015 to evict communities

24. Iromi Perera, "The Urban Regeneration Project", Bank Information Center, 2020 - https://bankinformationcenter.cdn.prismic.io/bankinformationcenter/67926323-8ad0-44ac-8707-c87634ded7ab_Urban+Regeneration+Project+Report.pdf

from their homes when they resisted relocation. During the yahapalanya (good governance regime) government, the use of the military ceased, and so did the forcible evictions. However communities continued to be relocated involuntarily with very little consultation or choice in the matter.

4. Rural Housing

In 2016, Minister for Housing, Construction and Cultural Affairs, Sajith Premadasa initiated a housing programme named ‘Semata Sevana Yali Pibidena Uda Gammana’ or ‘New Model Village Programme’, which involved the construction of houses for those without appropriate shelter. It was part of the Government’s overall housing plan, which was to ensure housing for all by 2025, and which also sought to achieve a target of 20,000 newly reawakened villages in the country. The goal of the programme was to complete 2,500 model villages by 2020, but was discontinued with Premadasa leaving his ministerial position in 2019. By January 2019, construction of 1,577 villages had commenced.²⁵

5. COVID-19 and Housing Issues

The right to housing goes beyond the supply of physical shelter, particularly as housing arrangements determine many other elements of wellbeing. These range from access to resources, food and education, to physical safety and privacy. When housing conditions lead to the curtailment of freedoms or housing tenure determines access to welfare and relief, it is clear that the right to housing encompasses a wider set of issues than the provision of shelter alone.

25. “Promise of Housing for All By 2025,” *LMD* January 16, 2019 - <https://lmd.lk/promise-of-housing-for-all-by-2025/>

COVID-19 had a disproportionate impact on low-income communities, whose precarious housing situation was exposed during a time that required people to maintain distance, isolate, and stay home during lockdown.²⁶ Early outbreaks of COVID-19 in early 2020 emerged from some low-income settlements and high-rise schemes in Colombo to which residents of working-class poor settlements had been relocated. When 24 residents of Bandaranayake Mawatha in Colombo 12 tested positive for COVID-19 in April 2020, over 1,000 residents were sent to quarantine.²⁷ In May 2020, Block 'B' of MethsandaSevana in Modara was declared an isolated area by the Colombo Chief Medical Officer and over 1,200 individuals from 239 housing units in the multi-storey housing scheme were ordered to self-quarantine, after a 62-year-old woman resident tested positive for COVID-19.²⁸

Early clusters of COVID-19 cases further stigmatised low-income settlements, which were portrayed as hotbeds of disease. Low-income housing schemes were placed under isolation for longer periods of time. During the October 2020 lockdown, police areas of Modara, Bloemendhal, Kotahena, Grandpass, Aduruppu Street, Dam Street, Keselwatta, Maligawatta, Dematagoda, and Maradana and GramaNiladari Divisions of Wekanda, and Wanathamulla continued to be in isolation after curfew was lifted for the rest of the Western Province. Low-income high-rise

26. Iromi Perera, 'We Can't Feel The Earth Beneath Our Feet Anymore', *Polity*, May 2020, Social Scientists Association - https://drive.google.com/file/d/1DdlXQg1H_KOkq53ANrXoxjA-ISzNNiM/view?usp=sharing

27. "More than 1000 Residents of BandaranaiyakeMawatha Sent for Quarantine," *Newsfirst* April 21, 2020, <https://www.newsfirst.lk/2020/04/21/more-than-1000-residents-of-bandaranaiyake-mawatha-to-be-sent-for-quarantine/>

28. "Two Locations Isolated, 138 Moved to Quarantine As COVID-19 Claims Another Victim," *Daily FT*, May 6, 2020, <https://www.ft.lk/Front-Page/Two-locations-isolated-138-moved-to-quarantine-as-COVID-19-claims-another-victim/44-699810>

buildings were particularly isolated with residents in Methsanda Sevana, Mihijaya Sevana, Ranmini Sevana, Mutwal, Sirisanda Uyana, Dematagoda, NHS complex, Maligawatta not being allowed to move out, or even go from one building to another.²⁹ Health officials justified this by referring to the lifestyle of the residents in these high-rise buildings stating that they continued to congregate and not adhere to mask wearing.³⁰ Associations with drugs and crime in these settlements also meant that they were strictly policed during lockdowns, with armed force personnel stationed around high-rise complexes. Drones were also used to detect those not adhering to isolation guidelines and operations were also conducted to check the essential services entering and exiting the buildings. Notably, these measures were not applied to middle income and luxury apartments in Colombo.

Residents of high-rises in North Colombo were confined to their apartments from 22nd October 2020, to 12th December 2020, despite the Western Province curfew being lifted on 9th November.³¹ Unlike in other neighbourhoods and suburbs, residents were not allowed to leave the apartment buildings to get exercise or fresh air. The apartments have a floorspace of 450 square feet and many are shared by 7-8 persons.³² These cramped and isolating conditions have had a negative impact on the mental health of apartment residents and has caused frustration

29. Dinithi Gunasekera, "Life in High-rise Buildings Amidst Isolation," *The Morning*, December 06, 2020 <https://www.themorning.lk/life-in-high-rise-buildings-amidst-isolation>

30. "Congested Watters and Highrise Apartments Worry CMC Health Officials," *The Sunday Times*, Dec 6, 2020, <https://www.sundaytimes.lk/201206/news/congested-watters-and-high-rise-apartments-worry-cmc-health-officials-424625.html>

31. "Apartment Complex Lockdown Lifted" *The Sunday Times*, Dec. 13, 2020, <https://www.sundaytimes.lk/201213/news/apartment-complexes-lockdown-lifted-425276.html>

32. Dinithi Gunasekera "Life in High-rise Buildings Amidst Isolation," *The Morning*, December 6, 2020, <https://www.themorning.lk/life-in-high-rise-buildings-amidst-isolation>

and conflict between neighbours.³³ In addition, elevators were shut down to prevent mixing between floors.

On the 6th December 2020, residents of Methsanda Sevana housing scheme and the Sathhiru Sevana housing scheme in Modara launched a protest due to the prolonged isolation,³⁴ with some residents claiming they had not been provided with adequate food rations and were unable to purchase essential items.

The pandemic exposed the digital divide,³⁵ particularly in light of school closures and a shift to online learning. Children in low-income communities faced worsening learning outcomes due to the pandemic as they were unable to access remote online learning due to a lack of devices such as smartphones, laptops and tablets. In addition, the cost of mobile data, internet connections and electricity bills could not always be met by the parents with intermittent and precarious wages. Crowded housing with extended families living in one apartment unit or house, also resulted in environments that were not conducive to learning. It is expected that these learning losses due to the pandemic will compound over time. Households also faced challenges in paying utility bills and making online payments and purchases as many transactions shifted online during lockdowns.

Working class and poor communities were also disproportionately affected by earnings shocks caused by

33. Dinithi Gunasekera, "Life in High-rise Buildings amidst Isolation," *The Morning*, December 6, 2020. <https://www.themorning.lk/life-in-high-rise-buildings-amidst-isolation>

34. "MethsandaSevana Residents Protest Isolation Orders," *Ada Derana*, December 6, 2020 <http://www.adaderana.lk/news/69732/methsanda-sevana-residents-protest-against-isolation-orders>

35. World Bank, *Sri Lanka Development Update - Economic and Poverty Impact of COVID-19*, 2020

the pandemic. The majority of urban poor are employed in the informal sector and without traditional safeguards and protection. They also have little by way of assets or savings and were more susceptible to the earnings shocks caused by the pandemic.

Lockdowns did not take into consideration the precarious and diverse nature of livelihood strategies employed by low-income communities, particularly the fact that they receive income in the form of daily wages rather than a predictable monthly salary. Unable to travel to their place of work, many daily wage earners such as three-wheeler drivers, housemaids, and labourers lost income.

These households coped with the loss of income by cutting down on food expenditure, which often meant they consumed less nutritious food.³⁶ In addition, lockdowns were implemented without consideration of migrant workers, renters and the homeless who do not have access to kitchens in their accommodation and rely on eateries and canteens for food.³⁷ These groups were also unable to financially cope with rent payments, utility bills and loan repayments.

During the April 2020 lockdown, apart from assistance to Samurdhi recipients, Rs.5,000 was allocated to families who had lost their livelihoods and had no access to formal or informal

36. UNICEF, "Tackling the COVID-19 Economic Crisis in Sri Lanka: Providing Universal, Lifecycle Social Protection Transfers to Protect Lives and Bolster Economic Recovery"- Working Paper (UNICEF, Sri Lanka, 2020).

37. Women and Media Collective, "Relief Efforts in Colombo District to Low-Income Families, Daily Waged Workers and Vulnerable Communities in Response to COVID-19 Pandemic in Sri Lanka. (Colombo: Women & Media Collective, June 2020),<https://womenandmedia.org/wp-content/uploads/2021/09/Policy-Recommendations-for-Post-COVID-19-Lockdown-Relief-English.pdf>

employment, with an estimated 2 million families eligible for assistance.³⁸ While the payment was supposed to be a monthly stipend given to each household in need of assistance, in most instances it was given only once. Those who were eligible, were required to obtain a recommendation from a village society, which was in turn verified by the relevant Divisional Secretary, and then presented to a committee of five members formed under the GramaNiladari.³⁹

However, several families and individuals in need of this assistance were unable to obtain it. While the conditions for eligibility were unclear and not easily available, access to relief was dependent on home ownership, which excluded renters from receiving the payment.⁴⁰ Those without a permanent address and who did not have their names in the electoral register were also unable to access this payment.⁴¹ Despite the tendency for those living in temporary or irregular housing to be most vulnerable to the economic impacts of the pandemic, they were left out of available social protection schemes. Even those eligible for the relief payment sometimes lacked the documentation to prove it, and were only able to access it after repeated appeals.⁴²

38. "One Time Rs. 5000 Allowance Mired in Controversy" *The Sunday Times*, April 26, 2020 <https://www.sundaytimes.lk/200426/news/one-time-rs-5000-allowance-mired-in-controversy-400964.html>
39. Ibid

40. Women and Media Collective, "Relief Efforts in Colombo District to Low-Income Families, Daily Waged Workers and Vulnerable Communities in Response to COVID-19 Pandemic in Sri Lanka." (Colombo: Women & Media Collective, June 2020), <https://womenandmedia.org/wp-content/uploads/2021/09/Policy-Recommendations-for-Post-COVID-19-Lockdown-Relief-English.pdf>

41. "Sri Lanka's Sex Workers Struggle to Get by as COVID-19 Brings Industry to A Halt," *Economynext*, 2020, <https://economynext.com/sri-lankas-sex-workers-struggle-to-get-by-as-covid-19-brings-industry-to-a-halt-70850>

42. Women and Media Collective, "Relief Efforts in Colombo District to Low-Income Families, Daily Waged Workers and Vulnerable Communities in Response to COVID-19 Pandemic in Sri Lanka." (Colombo: Women and Media Collective, June 2020), <https://womenandmedia.org/wp-content/uploads/2021/09/Policy-Recommendations-for-Post-COVID-19-Lockdown-Relief-English.pdf>

While low-income households often house extended families, they were still entitled to only one payment of Rs.5, 000 which was inadequate to meet expenses during a lockdown that lasted over 50 days in many parts of Colombo.

Living in close proximity during lockdown negatively affected the psycho-social wellbeing of families. Lockdowns reportedly resulted in a rise in domestic abuse around the country.⁴³ Women in low-income communities lived in dense settlements, with the lack of privacy and overcrowding putting them at greater risk of gender-based violence and domestic abuse. In addition, they were unable to access helplines and often did not want to report perpetrators who were the sole income earners, and thereby put children or elders at risk.⁴⁴

Marginalized groups such as the LGBTQI community and sex workers were severely affected by lockdowns and the pandemic. Many live in rented accommodation and could not afford rent during lockdowns. The lack of a permanent address and not being on the electoral register also meant that sex workers were unable to access government relief.⁴⁵ Similarly, many LGBTQI persons also could not register for government relief or appeal due to fear of prosecution on the basis of their identity.⁴⁶ As a result, many were forced to return to abusive and unsupportive families.

43. UNICEF, “Tackling the COVID-19 Economic Crisis in Sri Lanka: Providing Universal, Lifecycle Social Protection Transfers to Protect Lives and Bolster Economic Recovery”- Working Paper (UNICEF, Sri Lanka, 2020).

44. Women and Media Collective, “Relief Efforts in Colombo District to Low-Income Families, Daily Waged Workers and Vulnerable Communities in Response to COVID-19 Pandemic in Sri Lanka.”(Colombo: Women and Media Collective, June 2020, <https://womenandmedia.org/wp-content/uploads/2021/09/Policy-Recommendations-for-Post-COVID-19-Lockdown-Relief-English.pdf>)

45. “Sex Workers Struggle to Get By,” *Economynext*, 2020, <https://economynext.com/sri-lankas-sex-workers-struggle-to-get-by-as-COVID-19-brings-industry-to-a-halt-70850/>

46. Ibid

6. People's Land Commission Report⁴⁷

Initiated by the People's Alliance for Right to Land (PARL), the People's Land Commission (PLC) report contains extensive case studies of land struggles across the country, along with recommendations for a national land policy. These recommendations have been formulated based on discussions with those engaged in the land rights movement and struggles. The discussions took place in 2019 across 18 districts, interviewing over 800 men and women. While the report speaks of land and housing issues beyond the scoping period for this report, it is nevertheless included here as it contains up-to-date information as well as recommendations that are relevant.

The report was divided thematically and addresses people's relationship with land through the prism of – dispossession, deprivation of livelihoods and social security, environment degradation, diminished identity and women's struggles. This section looks at housing issues included in the PLC report as well as relevant recommendations.

- In the North and East, increasing dispossession issues were observed in relation to militarization and ethnic discrimination. Lands that were acquired during the civil war remain under military and police control. The occupied lands were owned by Tamil and Muslim families who have not been allowed to return to their original lands, and as such the right to land and housing is affected by discrimination based on ethnicity. A community in Sampur West was displaced from their

47. The Report is available at: <https://drive.google.com/drive/folders/19CGinDt1mr21sBWSooouJTQhxPGKw3-Yw>

lands during the war. Upon returning in 2015, they found that the military had acquired their lands. Although they were promised alternative agricultural lands and a house through a housing scheme, this failed to materialize. The neoliberal economic strategy employed by the State has also enabled the dispossession and landlessness, as land is acquired for large infrastructure and mega development projects. In urban areas this has resulted in the urban poor being forced out of their lands into suburbs and housing complexes due to increasing land prices and rent hikes.

- Plantation communities have been systematically disenfranchised and continue to be one of the poorest segments of society. Plantation workers' access to housing is linked to their employment on plantations. This creates a system of dependence on companies who run the estates. Communities do not own their houses or land and often have strict restrictions on land use, for example restrictions on cultivating crops for their own consumption.
- Women's land rights are often connected to practices of marriage and dowry. In the North and East, women often inherit land as dowry, which meant that those who were displaced or dispossessed felt they were unable to provide security for their female children. The small size of plots that were given to some displaced communities meant that the land could only be provided to one child. State land given under Land Development Ordinance only recognized male heads of households. As such, women being unable to inherit land development permits was a frequent complaint.

- Families from the Keppapulavu, Mullaitivu District were evicted from their lands during the last stages of the war in 2009. Some of these families were considered “Maaveerar” families and were relocated onto this land by the LTTE when their family members were killed during combat. The extent of this land was around 520 acres. In 2010, President Mahinda Rajapaksa decided that the land would remain with the people. They submitted 60 deeds and 20 permits to prove their claim to the land. While they received a letter from the secretariat stating that they would receive the land, no further progress was made. In 2012, 150 families were relocated to the Keppapulavu Model Village, where they had to construct shelters out of scrap metal salvaged from the Menik Farm. In 2013, 16 families were allowed to return to their original lands in Seeniyamottai. In January 2017, the State announced that the remaining land would be released but this did not take place, prompting a sit-in protest outside the entrance of the Security Force Headquarters. In August 2017, the military released 243 acres of land in Keppapulavu to their original owners but many others are still protesting that there are lands yet to be released. According to the then Resettlement Minister, Cabinet approved Rs.148 million to be given to the Army commander to relocate buildings and equipment on that land.

In 2018, a meeting was held at the Karaithuraipattu Divisional Secretariat, with the 55 persons who owned lands within the occupied area, amounting to a total of approximately 60 acres in Keppapulavu, to discuss the possibility of legally acquiring and paying compensation

for their lands. Five families agreed to receive monetary compensation and the rest refused on the basis of wanting to return to their lands. Those who refused the compensation continue to protest for the return of their lands. On 26th January 2019 villagers of Keppapulavu, mostly women, marched 2 kilometres towards their military occupied lands as part of their protest. Close to the main entrance of the army camp, they were met by approximately 45 police officers and at least five police vehicles parked outside the camp gates. The protestors had intended to sit opposite the camp gate until such time that they received a written assurance from the State on the release of their lands. On the next day, the protestors were informed that a court order dated 27th January 2019 ordered them to maintain a distance of 75 metres from the army camp. As of April 2020, 104 families continue to protest for lands they lost 10 years ago.

- The Uma Oya multi-development project was proposed to enhance the irrigation capacity of the dry zone. The project faced opposition from its inception, with the Environmental Impact Assessment recording the highest number of public submissions as various environmental organisations and farmers associations lodged complaints. It was approved by the Central Environmental Authority in 2012. Leaks in the tank have been a significant problem, and in April 2019 leaks amounted to a loss of 800 litres of water per minute. This has led to water sources and wells drying up and a subsequent shortage of water for agricultural lands and domestic use. Drilling has also damaged thousands of buildings and 7,100 houses have become uninhabitable.

Forty-two houses in the Bandarawela Divisional Secretariat and 15 houses in the Ella Divisional Secretariat have been destroyed. While those houses received financial compensation, thousands of other houses have not been compensated for the damage caused.

- In the 1980s, 84,000 acres of land in Pelwatte was leased to the Pelwatte Sugar Company. The farmers who accepted the conditions of cultivating sugar cane and selling it to the company were able to stay on the land. Farmers from other parts of the country were also relocated to Pelwatte to cultivate sugar cane. Each cultivator was given an area of roughly 4.5 acres, of which half an acre was reserved for their residential use. While they were permitted to build a house on that plot, they had no title or ownership to the land or property. 2,700 families live on the plantation and have little or no access to local administrative services. Despite some cultivators living on the land for over 30 years, they still do not have ownership of the land and cannot pass their land on to their children. As their home ownership is tied to sugar cultivation, it is precarious. If they are unable to work, they would lose their home and their entire family displaced. In 2017, the cultivators began to campaign for ownership of the half acre residential plots, after they realized the lease agreement between the State and company had come to an end. In 2017, 90 applications for land were sent by families and in 2019, 84 of the applicants received deeds. However, some residents claimed that there was a lack of clarity in the document they received. Women headed families stated

that their claims were not given due consideration. Joint ownership which would ensure that a surviving spouse would own the land was also not considered. Some settlements were informed that their land belonged to the Kataragama temple. In one colony, 67 families received permits (not deeds of ownership) to their land, which meant that the State could take back the land if it was not being developed.

The company continues to dictate the quality of life of cultivators in the plantation. They cannot obtain a bank loan without a letter of approval from the company, and they are not permitted to grow any other crop on the land. They have received warning letters if they grow coconut trees or vegetables for their own subsistence which further stated that they would lose their homes if they did not comply. The company's maintenance of water, electricity and transport facilities has also worsened over time, and water scarcity has affected the health of families.

- The Tsunami Housing Scheme was launched in the Norochcholai area under the Akkaraipattu Divisional Secretariat in the Ampara District with the financial aid of Rs. 552 million from Saudi Arabia. The contract for the housing scheme was signed on 2nd May, 2006 and the responsibility of constructing the houses was given to the Ministry of Housing and Construction. According to the Akkaraipattu Divisional Secretariat (18/2019) a multi-purpose building, a market building, a boys' school, a girls' school, a mosque, a hospital, a bus stop and a playground have been set up in 40 acres of land, including 500 houses.

Towards the completion of the housing scheme, a case was filed in the Supreme Court by the Jathika HelaU rumaya against the provision of houses in the Norochcholai housing scheme only to Muslims. The then Chief Justice, Sarath N. Silva, ruled on 2nd December , 2009 that the Norochcholai houses should not be given to a specific ethnic group and that the houses should be distributed to all ethnic groups in the country. A meeting was held in February 2019 at the Sainthamaruthu Divisional Secretariat to distribute these 500 houses to the people of Ampara District and 660 applicants attended the meeting. So far 303 Muslim beneficiaries have been selected, but no action has been taken to hand over the houses. Out of 500 houses in Norochcholai, 303 houses will be allotted to Muslims and 197 houses will be given to Tamil and Sinhalese people. The houses are in a dilapidated condition making it impossible for the beneficiaries to settle immediately. The scheme is now overgrown with weeds and trees and is not fit for human habitation. There have also been cracks in the houses.

7. Recommendations from the PARL People's Land Commission Report

Recommendations from consultations with dispossessed communities across the country include; recognizing that the right to possess and use land can be established in different ways and that legal documentation is not the sole method of claiming a right when people derive legitimacy through other means; recognizing that land is tied to livelihood, prioritizing communities who are landless and marginalized due to discriminatory practices related to caste, ethnicity and

gender. The report also recommends that the State eradicate discriminatory practices in the distribution of land, particularly in the Land Development Ordinance.

It also recommends that relocation be used as a last resort and that it must respect people's relationship to livelihoods, access to schools, services and community. Relocation should also be based on an understanding of the formal and informal livelihoods practised by communities. Communities should also give input into the design and their layout needs when it comes to relocation to high rise apartments.

With regards to communities on plantation lands, the report identifies that the historic injustices experienced by Malaiyaha Tamils needs immediate and specific attention. It recommends that 20 perches of land, along with a house should be granted to resident families of plantations with a proper deed. It also recommends the removal of livelihood controls on lands, enabling plantation workers to grow their own food for consumption on the lands on which they live and work. In addition, plantation companies should not control the human rights of workers by limiting their access to water, electricity, and other facilities.

8. Conclusion

The right to housing does not encompass shelter alone, but is an intersectional issue connected to socio-economic wellbeing, education, privacy and community. There is a need to consider not just the supply or physical condition of housing for marginalised communities, but how housing affects other aspects of their wellbeing and rights. COVID-19 has shown

how housing arrangements of low-income communities have increased their vulnerability, affecting livelihoods, education and health. Substandard housing and tenure insecurity continue to severely impact the Malaiyaha Tamil community in the estate sector of Sri Lanka. Furthermore, there is a need to consider the dispossession that has taken place at the hands of the state. People have been subjected to military-directed land grabs and ethnicised land grabs in the North and East. They have also been subjected to the State's desire to 'liberate' land for commercial use and development by evicting the working-class poor in Colombo.

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EDUCATION AND HUMAN RIGHTS

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1. Introduction

This chapter examines several key events related to education that took place during the period of 2018-2020 when viewed from a human rights lens. The period under discussion was a turbulent time in modern Sri Lankan history. 2018 marked what has been called the first constitutional coup experienced by Sri Lanka, indicating a weakened state of the government⁴⁸.¹ On the heels of this political crisis and with a presidential election looming at the end of the year, 2019 saw the spectacularly coordinated and unprecedented Easter-Attacks, where eight suicide bombings rocked the nation in four locations: the St. Anthony's Church of Kochchikade, Kotahena, the St. Sebastian's Church of

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1. For a discussion of how the Easter Attacks can be understood as a weakened form of the state as well as the ways in which invisible violent structures that operate within the state came to the fore, see Hoole (Hoole 2019).

Katuwapitiya, Negombo, the Zionist Church of Batticaloa, and three tourist hotels in Colombo—the Shangri La, the Kingsbury, and Cinnamon Grand. In November, 2019, Gotabhaya Rajapakse won a landslide victory on a Sinhalese-Buddhist majoritarianist platform. His much-promised success, however, was stalled when the COVID-19 pandemic hit Sri Lanka by March, 2020, and the whole country was subjected to prolonged lockdowns beginning mid-March that year. A general election was held in the midst of the pandemic in August, 2020. While I will not link all of these events to the discussion on education in this chapter, I note them here as the political backdrop against which the events discussed in this chapter took place. As is to be expected, the field of education was deeply affected by these events, and they brought out the very fragile nature of the educational sector and how it cannot bear such prolonged and sustained shocks.

This chapter will examine a few key debates on education that were dominant during the period. The basic question driving this report is, what events spurred debates about the right to education during the period under discussion? This chapter is not exhaustive, but it will highlight a few illustrative events around which some of the foundational premises and key aspects of the education sector in Sri Lanka are discussed. 2018 witnessed the tail-end of the controversies surrounding the South Asian Institute for Technology and Medicine (SAITM) and the proposed Kotelawala National Defense University Bill. They brought to the fore the question of access and equity, leading us to pay attention to many unresolved contradictions within the Sri Lankan education system.

In 2020, the pandemic brought home the divide that exists within the Sri Lankan education system in terms of access to resources available to affluent students and affluent schools who were able to recalibrate their access to online education during the pandemic. It also highlighted the challenges faced by the less affluent, and the unpreparedness of the education sector to deal with these deep shocks.

In this context, two seemingly marginal, but culturally crucial events are also discussed. The first is the problem of corporal punishment that exists within the Sri Lankan education system and has not been seriously challenged. In 2018, renewed interest in the issue emerged when a local group called Stop Child Cruelty partnered with UNICEF to intensify measures to end corporal punishment and cruelty towards children within the Sri Lankan education system. In the same year, student groups that opposed ragging came forward to discuss the problem when a student of the Diyagama Campus of the University of Moratuwa committed suicide after severe ragging.

The other culturally crucial event that occurred in 2019, was when a student of the Colombo International School (CIS) defied the school's policies in order to assert her sexual identity. This led to a public outcry and the question of holistic and inclusive education received considerable social media attention. This issue brought home the inadequacy and limitations of Sri Lanka's policies determining the question of inclusivity and the extent to which young people may feel the deep need to challenge the school system and assert their sexual identity.

The discussion of the above events and the debates surrounding them draw on the sociology of human rights that intersect between the disciplines of sociology and human rights, and examine how various actors and social agents negotiate what human rights means through the prism of their praxis. There are many possible articulations of this approach, one of which is Kiran Grewal's described as follows by her:

I seek to avoid studying the origins and trajectories of any pre-existing concept of 'human rights', in favour of asking: what might we learn about human rights by not treating them as something already constructed and then circulating but as something constantly being made and remade in particular locations through actors, exchanges, and processes of domination and resistance?²

Although this brief chapter does not allow the space to carry out the kind of extensive empirical analysis that Grewal suggests, this chapter will draw on the general idea that human rights must be conceptualized and thought through within the realities of the social location from which they are articulated. As Grewal points out, attention to the way local actors interpret and act upon human rights are framed through the social and political realities within which such rights are articulated and understood. To put it in another way, any claim to a human right is a claim to a moral right, at a fundamental level:

To claim a right is to make a moral claim: when a person has rights, they should be treated more fairly, more kindly, with more respect. It is the universality of rights - the

2. Kiran K. Grewal, *The Socio-Political Practice of Human Rights: Between the Universal and the Particular* (London and New York: Routledge, 2017)

*moral conviction that just because we are human beings you and I have certain rights - that enables them to be claimed in such a wide range of ways by different actors, and in different parts of the world.*³

This focus on the way human rights must be understood through the way different social groups and actors claim human rights is only one aspect of the sociology of human rights. The sociology of human rights has been defined as “a properly *sociological excavation* of the *social* underpinnings and implications of human rights.”⁴ As outlined by Frezzo, “rights conditions, rights claims, rights effects, and rights bundles”⁵ are the building blocks of the sociology of human rights. As pointed out by several commentators, there is a fundamental contradiction at the heart of the sociology of human rights: while sociology is concerned with rooted, empirical realities, human rights presume a set of global and abstracted notion of rights that are generally understood as being “universal.” Its basis is not, as is presupposed in sociology, the concrete realities within which claims to rights are made. While the rich tradition of sociological thought engages with this contradiction and has, in recent years, worked out productive ways to engage sociologically with human rights,⁶ the writer’s own engagement with the concept is both brief and limited. My interest is in the “rights claims” as identified by Frezzo who pointed to three angles that can be taken when considering the sociology of human rights: “political economy/sociology of development, social movement research,

3. Kate Nash, *A Political Sociology of Human Rights* (Cambridge: Cambridge UP, 2015).

4. Mark Frezzo, *The Sociology of Human Rights* (Cambridge: Polity Press, 2015): 39emphasis in the original

5. *Ibid*, 43

6. For a review of the existing literature on the topic, see Deflem (“Mathieu Deflem: The Sociological Discourse on Human Rights: Lessons from the Sociology of Law” n.d.)

and political sociology.⁷” My own approach is similar in that attention is paid to the way education as a human right is tied to the various social movements and their situated demands and definitions of human rights come to shape debates about education rights; The writer also take into brief consideration how the political economy of education becomes a human rights issue. In this approach, the writer’s emphasis is on the situatedness of human rights that can be studied from a sociological angle. As Brunnsma, Smith, and Gran point out “sociological studies have shown how different social groups work to construct human rights as well as the efforts that others engage in to deny such rights to others. The work of sociologists has demonstrated that the design of some human rights has intended to exclude some groups while empowering others.”⁸ Such social constructions of human rights take place in concrete situations that are always determined by the interaction between different groups making different types of claims in the field of human rights. Rather than seeing these as different opinions about human rights, the discipline of the sociology of human rights pushes us to consider how the interaction between these ideas produce, not only new or different understandings of human rights, but also help see the grounded context in which claims to human rights are made.

Thus, for the purposes of this chapter, the sociology of human rights is defined as suggesting the way that human rights is understood within a social context and the way the various actors involved in any particular situation of engaging with defining rights, demanding rights, or even violating rights or resisting the violation of rights. All these actions are part of the sociology

7. Mark Frezzo, *The Sociology of Human Rights* (Cambridge: Polity Press, 2015): 37

8. David L. Brunma, Keri E. Iyall Smith, and Brian K. Gran, *Expanding the Human in Human Rights: Toward a Sociology of Human Rights* (Boulder, London: Pradigm Publishers, 2015).

of human rights. This approach allows the writer to engage in debates surrounding education from a human rights angle without compromising the way such debates are circumscribed by the social realities and negotiations within which they are situated. The overarching discussion of human rights in this chapter is framed through this necessity to think of education rights in tandem with the socio-political and economic realities within which this right can be claimed and practiced.

As such, the events and/or debates discussed in this chapter cite the right to education, right to sexual identity, and the right to be free from torture through various national and international human rights commitments. Rather than examining the manner in which educational policies meet these requirements, the writer links them to local struggles and realities and discusses how these have been (or have failed to be) adopted as human rights issues. Thus, the main argument of this chapter is that the right to education is articulated and understood within the very specific realities of the Sri Lankan education system as well as interventions by different social agents when negotiating these rights. The access to facilities, teachers, educational opportunities, and class intersects with the right to education; moreover, dominant cultural tropes and traditions also determine how far those seeking rights within the education system must navigate complex systems of socio-cultural being in order to intervene in attaining those rights.

Before outlining the debate on education as a right and an issue of equity, it might be worth briefly mentioning the way the dialogue on equity in education in Sri Lanka has been comprehended in the past. Perhaps the most important point of departure for a

discussion of equity in education is the 1943 Report of the Special Commission on Education. This document sees free education as a tool that produces equity within the field of education. For example, the development of the Central College system, the shift to education in the vernacular medium, and the establishment of non-fee-levying schools that were slated to be developed to the standard of urban elite schools, at the time tellingly courted a paradigm of equity.⁹ Since this early intervention into ensuring equity in education, several trends can be traced in the history of education in Sri Lanka. In terms of expansion, the expansion of education during the 1950s and 1960s was followed by a relative decline during the 1980s.¹⁰ The persistent disparities between rural and urban schools have been discussed particularly in relation to the differences in quality. A related theme that is not mentioned often, but is important to mention when referring to educational equity is the case of plantation schools.¹¹ More recent commentaries on educational equity in Sri Lanka has moved away from thinking about equity in isolation, and has focused on problems such as Grade I admission that is symptomatic of the problem of equitable access.¹² The pressure to perform particularly at the Grade 5 Scholarship exam is indirectly linked to how this examination is the only option for children who wish to study at regional or urban schools with greater facilities; Amal Siriwardena points to the way some reforms oriented towards equity that were progressive in a particular context can become

9. Mohottige Upali Sedere, "Educational Reforms Beyond Kannangara for the 21st Century," 2016, NIE. https://ia600801.us.archive.org/2/items/ERIC_ED569342/ERIC_ED569342.pdf.

10. Swarna Jayaweera, *Equity and Excellence in Education: J. E. Jayasuriya Memorial Lecture*, 1991.

11. Anushaya Collure, 'Left Out and Left Behind': Education of the Children of the Plantation Community,' *LST Review* 23, no. 299 (2012): .22-39

12. Amal Siriwardena, "Right to Education." In *Sri Lanka; State of Human Rights* (Colombo: Law and Society Trust, 2008), 297-338

regressive in another context, emphasizing the way education policy must evolve with the changing needs of the community.¹³ A useful early document regarding equity within the higher education sector is Indraratne's work on educational planning in higher education. More recent studies that reference equity in education see them within the framework of Sustainable Development Goals.¹⁴ While this short report does not permit the writer to engage in a detailed review of the literature on the history of equity in education in Sri Lanka, the above is a brief description of the themes touched on by various writers and speakers on the topic.

2. The Structure of the School System and Educational Equity

Sri Lanka's school education system is structured around the concepts of merit and rights. Primary and secondary education are constitutionally guaranteed rights and Sri Lanka's free education system is the mechanism in place to ensure that all children have access to primary and secondary education. Proposed under the 1943 Report of the Special Committee on Education, Ceylon,¹⁵ the Central College system was, for a very long time, the backbone of Sri Lanka's admirable gains in the field of education. Boasting of a very high literacy rate of 92%,¹⁶ Sri Lanka's free education system has often been seen as one that guarantees social equity and ensures the rights of those who wish

13. *Ibid.* 336–37.

14. "Karunaratne - Dr. C. W. W. Kannangara Memorial Lecture - 29.Pdf." n.d. Accessed November 19, 2022. <http://nie.lk/pdffiles/art/eOM%20KannangaraLec29.pdf>.

15. "Report of the Special Committee on Education, Ceylon" (Colombo: Ceylon government Press, 1943)

16. World Bank. n.d. "Literacy Rate, Adult Total (% of People Ages 15 and above) Sri Lanka Data." Accessed July 2022. <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=LK&view=chart>.

to access education. Yet, the actual structure of the education system seems to tell a very different story. The school system is organized around the categorization of schools along the lines of privilege and access, as described in below:

- 1AB -** Schools having Advanced Level Science (Bio Science and/or Physical Science stream classes.
- 1C -** Schools having Advanced Level classes other than Science (Arts and/or Commerce and/or Technology streams) stream
- Type 2 -** Schools having classes only up to grade 11 (Grade 1-11 or grade 6-11)
- Type 3 -** Schools having classes from grade 1-5 or grade 1-8

*Source : Annual School Census of Sri Lanka. Final Report
2018, Ministry of Education.*

While the guarantee of universal education continues to remain a real possibility within this system, increasing social aspirations tied to education have met with much disillusionment. In a country where education is one of the few avenues for upward social mobility for the vast majority of people, the real inequalities that exist within the system has led to the formation of a shadow economy tied to private tuition classes that are all-pervasive and international schools that are registered with the BOI rather than the Ministry of Education.

The basic trends that are noted for the given time period in terms of the number schools by type, number of teachers by the type of school, and the number of students by the type of school are shown below. The data for each year is from the Annual School Census Reports issued by the Ministry of Education for the years 2018, 2019, and 2020.

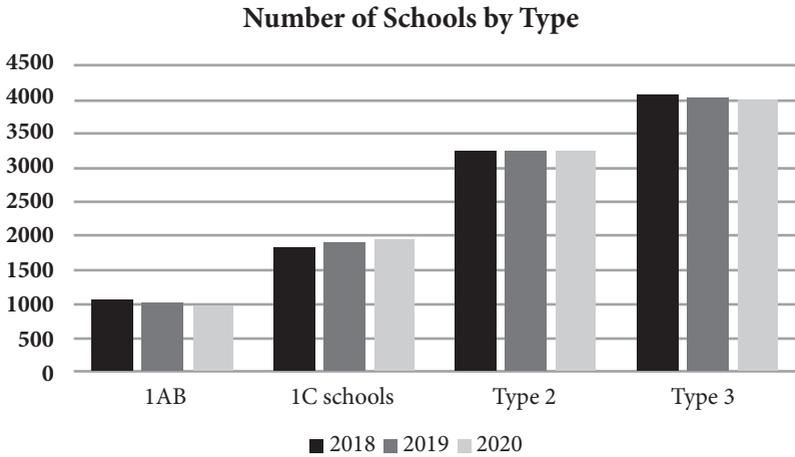


Figure 1: Number of schools by type of school

Source: Annual School Census of Sri Lanka. Final Report-2018, Final Report 2019, Final Report 2020, Ministry of Education.

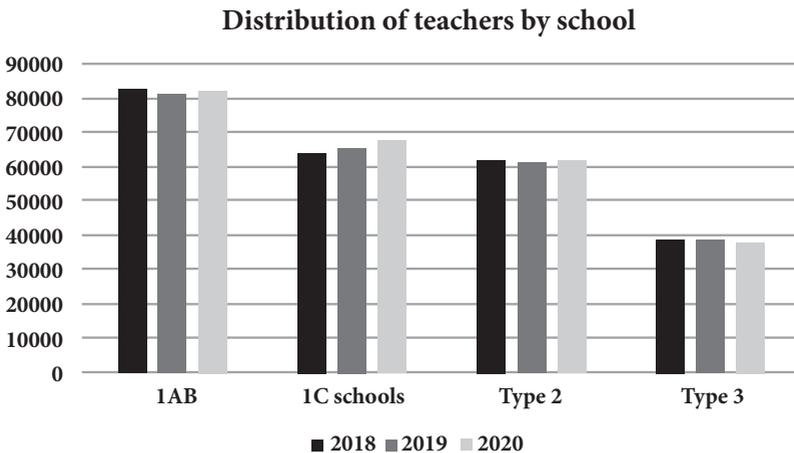


Figure 2: Distribution of teachers by type of school

Source: Annual School Census of Sri Lanka. Final Report-2018, Final Report 2019, Final Report 2020, Ministry of Education.

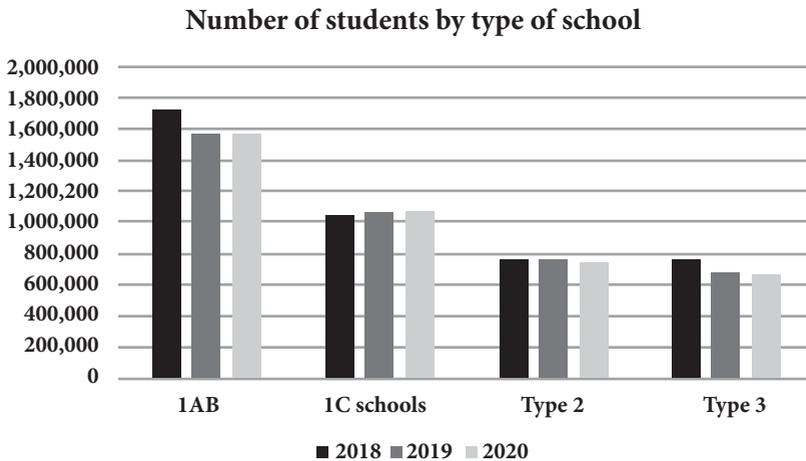


Figure 3: Distribution of students by type of school

Source: Annual School Census of Sri Lanka. Final Report-2018, Final Report 2019, Final Report 2020, Ministry of Education.

As this data indicates, the largest number of students and teachers are concentrated in 1AB schools that are also only slightly over a 1000 in number for the given period. In other words, a large number of students and teachers are concentrated in a small number of schools that have A/L Science stream. There is a slight decline in the number of students over the three-year period for 1AB schools and a slight increase of the number of students in 1C schools. There are less than 2000 1C schools that offer other streams of study for A/Ls, i.e., Arts, Commerce, Technology, and Vocational education. Meanwhile secondary and primary schools tend to have both a significantly lesser number of teachers as well as students for the given period. Although there were no statistics available for the types of infrastructural or other facilities available in these schools, it is clear that there is a large concentration of

both teachers and students in the more privileged 1AB schools. This is part of the bottleneck that is creating an imbalance in the number of students selecting science A/L subjects and the access they have to higher education. This creates a problem of access, as those who have the means or the ability to enter into the A/L science and mathematics streams become concentrated within a few schools creating a competition between those students for privileged courses in State universities such as medicine and engineering. The other students are compelled to be satisfied with studying whatever subjects that are available to them through other schools.

Although the 1943 education reforms targeted achieving educational equity within the school system, in reality it created a hierarchy, not only between schools, but also between disciplines. Because the Central College system was based on a strict meritocracy, where those who performed best at national examinations would have access to higher education (and, higher quality education), these examinations became sites of intense competition, particularly for disciplines considered to be prestigious such as medicine, science, and engineering. Meanwhile, students who completed their education from 1C schools were inevitably concentrated in the streams of Arts, Commerce, Technology, and Vocational Training. This creates a bottle-neck effect on the entire education system, where the majority of students aspire to enter 1AB schools, but are unable to do so.

The two most controversial issues related to the privatization of higher education that emerged during the 2018-2020 period were centered around higher education in medicine. While

some segments involved in these campaigns, particularly the Inter University Students' Federation (IUSF) were opposed to privatizing higher education, others, such as the Government Medical Officers' Association (GMOA) were much more narrowly focused on medical higher education. Either way, what the debates surrounding these two issues seemed less concerned about is the bottleneck effect created at the school level discussed above, where, roughly, less than 10% of Sri Lankan schools offered the AL science stream. This deep imbalance in access to educational opportunities that are considered to be more prestigious with guaranteed employability, are at the core of the right to access to higher education discussed in the next section.

As can be surmised (and this is discussed below) the shift to online teaching during the pandemic in 2020, would have a devastating impact on this existing, vast imbalance within the education system. Particularly in primary schools, where there are fewer teachers and lesser access to facilities, the systemic imbalances of the education system shifted to the home, where, now, students have to simulate the learning environment of these already deprived schools in the home. As will be discussed later in this chapter, the education system that was already sharply divided along the lines of merit and class, became even deeper during the pandemic. Here, the kind of facilities that were developed in 1552 primary schools that were developed as "child-friendly" schools, as recorded in a 2016 report of the Ministry of Education are noted below:

- Electricity facilities
- Water facilities
- Latrine and Sanitary Facilities

- Fence and Gates
- Repairs to buildings and painting
- Converting the school premises to a model home garden
- Preparation of school name board
- Activity room for grade one students
- Preparation of children's play area
- Repairs to teachers already occupied quarters if necessary¹⁷

It is evident that in most of these schools the requirements are so basic that online education facilitated through the school would be far from actuality. The Annual School Census Report does not disclose the type of facilities available within the school system other than the number of teachers. It seems that for policymakers, the situated ways in which the right to education is shaped by broader sociological factors remain of lesser interest, except in situations where they highlight achievements, particularly of specific governments.

3. Privatizing Medical Higher Education

The South Asia Institute of Technology and Medicine (SAITM), which was originally named the South Asia Institute of Technology and Management was the centre of a lingering controversy regarding access to higher education during the last two decades. It brought forth how the Sri Lankan education system bears deep contradictions regarding the purpose and values that shape the country's policy regarding education. In this case, the right to education and the problem of equal access took centre-stage as access to education began to be increasingly

17. "A-Transformation-in-Sri-Lankan-Education." n.d. p.11, <https://moe.gov.lk/wp-content/uploads/2020/06/A-Transformation-in-Sri-Lankan-Education.pdf>. [Accessed July 28, 2022.]

represented as a problem of rights. Particularly telling were the slogans that were selected for the campaign carried out by the Inter-University Students' Federation (IUSF), which often resorted to a language of rights when it came to its political position regarding SAIMT. Several students who graduated from SAIMT were not allowed to register with the Sri Lanka Medical Council sparking a controversy. In 2018, the Supreme Court accepted the plea of Malshani Sooriyarachchi, granting her permission to register with the Sri Lanka Medical Council. She had submitted her application in 2016, and was requested by the SLMC to reapply, following the court ruling.¹⁸ The whole incident marks the way social aspirations about education come into conflict with ideas of entitlement to education, and this is discussed briefly to examine how the right to education has become a central discourse to how education and the purpose of education is regarded.

SAITM, like its predecessor North Colombo Private Medical College of the 1980s, was an attempt to privatize medical higher education in the country. Despite repeated claims that free education prevails in the higher education sector in Sri Lanka, most study streams have been privatized by the higher education sector by now.¹⁹ Medical education remains the exception. In part, privatizing medical higher education has been linked to employment, as all medical interns must register with the SLMC and even those who study abroad must pass an additional examination in order to qualify to practice in Sri Lanka. When SAIMT was first established in 2008, it was registered as a

18. "SAITM Students Back In the Race: Court Orders SLMC to Pay Compensation to Petitioners." 2019. *Colombo Telegraph* (blog). July 31, 2019

19. See Degrees of Institutes Recognized under Section 25 A of the Universities Act No. 16 of 1978 by the University Grants Commission ("Other Recognized Degrees" n.d.)

university for technology and management. Yet, uproars against the university rose when it began to offer medical degrees. Protests were staged by both the IUSF as well as the Government Medical Officers' Association (GMOA). Repeated student agitation, opposition from the GMOA as well as SLMC's refusal to recognize medical degrees offered by SAIMT pressurized the government to abolish the medical degree offered by SAIMT in 2017, absorbing some of its facilities as well as its students into the Kotalawala Defence University.²⁰

The 2018 decision of the Supreme Court was a culmination of a distinction made between two aspects of a slogan popularized by the anti-SAIMT front: free education and the freedom to education. Often articulated by those who opposed SAIMT, this slogan carries both the social justice aspect as well as the rights aspect. The 2018 court case shows that free education is integral to ensuring the right to education as it was conceptualized by the anti-SAIMT front. But it also points to a deep contradiction that is prevalent in the education system in Sri Lanka: the emphasis on educational quality and merit as the basis for entitlement versus the conceptualization of education as a right. For example, those who oppose the privatization of medical higher education do so on two grounds: the first is that it will then shift the selection process from merit to economic capacity; and the second is that this will lead to the production of low-quality doctors in the country. The first emerges from the understanding that merit is the sole basis on which students are selected to pursue a degree in State universities, and so far, the only basis on which a medical degree can be obtained locally. Yet, seeing economic ability as the sole deterrent to medical education, and the argument that

20. "SAITM Issue Gets Even More Complicated," Sri Lanka News - *Newsfirst*. May 27, 2018. <https://www.newsfirst.lk/2018/05/28/saitm-issue-gets-even-more-complicated/>.

free education is the way to ensure equity has been significantly complicated by the fact that this then deprives others who may not gain access to higher education based on other grounds including gender, disability, sexual identity. Article 27 of the Universal Declaration of Human Rights itself recognizes that the right to access to higher education can be based on merit: “Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”²¹ More marketizing elements, however, have long argued that education must no longer be seen only as a public good. In a context where the medical profession is not only prestigious but also lucrative, education itself becomes a form of social capital that enables the educated to accrue more wealth. Thus, while, in principle, the right to higher education is framed through the aspect of rights and social equity, in reality, this right is not thought in the abstract. Instead, the right to education itself is framed as a merit-based entitlement that is limited to a very small number of students who can pass the impossibly competitive GCE Advanced Level examination to enter medical faculties in State universities. In this discourse, the right to higher education is the right of a small minority of students to access higher education. The rest are left in a limbo and must choose either other science and engineering streams, shift fields, or be absorbed into the workforce. As already shown, the bottleneck effect in the school education system is intensified in post-A/L higher educational field.

In the aftermath of the SAITM issue, the government attempted to introduce a new bill titled the General Sir John Kotelawala

21. United Nations, n.d. “Universal Declaration of Human Rights.” United Nations. United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. [Accessed August 12, 2022]

National Defense University Bill, which was introduced on 6th April, 2018.²² The bill was met with heavy opposition as it was seen as an attempt to militarize higher education and create a university that falls outside the purview of the University Grants Commission. Some academics opposed the bill, seeing it as an attempt to privatize higher education. Moreover, a statement issued during the controversy surrounding the KNDU Bill claimed that it was an assault on “academic freedom” where universities falling under the purview of this bill would have the power to curb any potential opposition or dissent.²³ Thus, as with the anti-SAITM campaign, it is clear that those fighting against the KNDU Bill also framed their opposition in terms of educational rights and academic freedom and not simply as a social justice issue. These debates made it increasingly clear that education rights guaranteed through the mechanism of free education cannot be separated from the larger discourses on social justice and equity and the realities of the school education system and limited higher educational opportunities in the country. Thus, the right to access to higher education remains a conflicted issue, situated at the nexus between discourses on social equity, individual rights, and the actually existing structure of the education system.

4. The Education Sector’s Response to the Easter Attack, COVID-19 and Online Education

Access to education remained one of the most important and controversial issues during the period under discussion. The Easter attack caused a school closure of nearly two months.

22. “Academics, Professionals and Activists Want KNDU Bill Withdrawn” *Colombo Telegraph*, n.d. <https://www.colombotelegraph.com/index.php/academics-> [Accessed July 28, 2022].

23 . Ibid

Although the COVID-19 pandemic was an unprecedented event and most States were taken by surprise and they had to make contingency plans for alternative ways of carrying on with children's education, but the method used by the Sri Lankan State to provide education did not take into consideration the existing inequalities that would continue to perpetuate disparities when delivering education online.

Sri Lanka is a party to the United Nations Convention on the Rights of the Child which ensures the child's right to education. Despite this commitment, during the period under review several incidents made access to education a challenge for most children in Sri Lanka. The Easter Sunday bombings that occurred in April, 2019 pushed school authorities to close the schools for nearly two months and subjected children to stringent checking. The children experienced fear and tension and Muslim children were subjected to harassment in the aftermath of the Easter Attack. During this period, several incidents that violated the cultural and political rights of Muslim communities were reported. There were reports of Muslim teachers being harassed for wearing hijabs to school.²⁴ The niqab ban that was imposed immediately after the attack also affected female students and teachers. Muslims, particularly, were afraid to send their children to schools fearing retaliatory attacks. Several anti-Muslim riots occurred a few weeks after the Easter Sunday bombings, aggravating the situation further. Although no official study has been conducted on the way the Easter attacks affected school children, it is clear that there was an impact, particularly on Muslim children and teachers during this tense period.

24. "Twelve Muslim Teachers Reassigned over Wearing Hijabs," *Ada Derana*, n.d.<http://www.adaderana.lk/news.php?nid=55024>[Accessed August 12, 2022].

By 2020, the pandemic highlighted the deep inequalities that exist within the Sri Lankan education system. The lack of infrastructural facilities that plague the Sri Lankan education system came into sharp relief as teachers had to shift to online teaching almost overnight. According to a LIRNEAsia report,

... 48% of households with children owning a smartphone or other device for accessing the Internet, but only 34% could access the internet. Those who access the Internet do so largely through their smartphones... Additionally, of mobile owners who do not own a smartphone in the population aged 15-65 (i.e., those that own either a basic or feature phone), when asked why they don't buy a smartphone, 60% said they don't need it. (Other responses : 23%-Can not afford it; 10%- Too complicated; 2% - Don't know what a smartphone is; 2% - Not allowed; and 3%-Other reasons).” These statistics show that while less than half of the households with children had connectivity, only about 1/3 of the children of school-going age had access to online teaching.²⁵

How does such a gross inequality become a human rights issue? First, there is the primary commitment and responsibility of the state to provide education that is accessible to all children. Given the unusual circumstances caused by COVID-19, one could expect that there will not be an immediate response by the government to the growing need for access to online learning for students. Schools closed on March 15th when a country-wide lock-down was declared by the State in response to the pandemic. Yet, a comprehensive circular covering all aspects of

25. “LIRNEasia Data Frames the Dialogue on Distance Education,” *LIRNEasia*, May 24, 2020. <https://lirneasia.net/2020/05/lirneasia-data-frames-the-dialogue-on-distance-education/>.

Open and Distance Learning linked to school education was not issued until July, 2021.²⁶ This circular outlined the dire situation when it comes to accessing online education.

*According to the Sri Lanka Labor Force Survey Report (2019) issued by the Department of Census and Statistics, the percentage of households with “desktop” or “laptop” computers is 22%. Therein, the urban sector is 38%, the rural 19% and the plantation sector 4.6%. The percentage of households using Internet is 30.3%. Therein, the urban sector is 47.4%, the rural 27.5% and the plantation sector is 12.2%. Other approaches include television and radio. According to the statistics, it confirms that about 90% of households are with television facilities and 63% of households are with radio facilities and this scenario is a good trend.*²⁷

Thus, for over one year, there was no regulated system to ensure the education of a majority of children in the country and there was no governmental plan to deliver education to children through more accessible platforms such as television or radio. The inequality is particularly stark, because it seems to reproduce the already existing inequality within school education across the urban and rural sectors. Although a majority of children had access to television and radio, it is clear that it was by mid-2021 that the Ministry was ready to implement a properly planned and integrated system of Open/Distance education to the children who had no access to Internet or smart devices. This lack of regard for the rights of children of underprivileged households

26. “Circular and Guidelines on Distance Learning for School Education in Sri Lanka,” 2021. <https://moe.gov.lk/wp-content/uploads/2021/09/ENGLISH-06.09.2021.pdf>

27. “Circular and Guidelines on Distance Learning for School Education in Sri Lanka” 2021, 1

speaks to the way their fundamental right to education was disregarded by authorities. It fell upon teachers to devise various ways of delivering online education or to find alternative ways of providing some form of education to children. Parents became a main source of education for children, burdening them with further responsibilities during some very trying economic times. The health crisis precipitated by the pandemic, clearly, also brought about a crisis in education that is linked to lack of access, knowledge, and support systems.

5. Corporal Punishment, Ragging, and Human Rights Activism

A long-standing problem that came into prominence during the relevant years was the issue of corporal punishment. Several court cases and the responses of the public and political figures underscored the importance of this problem during the said time. The United Nations Convention of the Rights of the Child (UNCRC) clearly identifies the right to be free from corporal punishment, physical abuse, and psychological abuse of the child. Article 19:1 of the UNCRC is the basis for this particular right:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.²⁸

28. "United Nations Convention on the Rights of the Child.Pdf" n.d.<http://34.196.27.239/storage/app/media/United%20Nations%20Convention%20on%20the%20Rights%20of%20the%20Child.pdf>, [Accessed July 28, 2022]

Corporal punishment is defined by the UNCRC as follows:

The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.²⁹

Many forms of punishment mentioned in this definition are reported in cases from Sri Lanka.

Several relevant cases were reported during the period under review for this report. The first was an incident that took place at an international school, where a child had been punished for forgetting a book. She had been asked to kneel and the teacher had pulled her ear. The parent of the child complained to the school, the police, and the Supreme Court of Sri Lanka to no avail. A

29. “University of Minnesota Human Rights Library.” n.d.<http://hrlibrary.umn.edu/crc/comment8.html>, [Accessed April 3, 2022]

complaint was then lodged with the UNHCR, which registered the case and requested that the government furnish the relevant evidence.³⁰ In response to this incident, the organization called Stop Child Cruelty was formed evolving into a broader coalition eventually with civil society activists and celebrity figures getting involved in its campaigns.³¹

Another incident that is quite revealing of the culture of corporal punishment in Sri Lanka and its widespread acceptance was the caning of a student by the principal of the Polpithigama Central College. The incident had occurred in 2011. The student had been beaten when he was in grade 7, and the court case had dragged on for seven years. The principal had been sentenced, finally, on the 9th of July, 2018.³² What was perhaps most revealing was the public opinion regarding the incident: several civil society leaders, including the Maha Sangha (Buddhist clergy), principals and retired principals, and the JVP member Namal Karunarathna and the President of the Pradeshiya Sabha had participated in the event organized to bless the principal who had been punished. This public display of support, not only by conservative sections of society, but also so-called radical elements go to show the limits of how far legal action alone cannot ensure that children remain free of cruel punishment.³³

In another incident, a female student had been abused by school authorities, “accusing” her of being pregnant, because she had

30. “Stop Child Cruelty.” n.d.<https://stopchildcruelty.com/News-Detail/UNHRC-registers-complaint-made-by-Sri-Lankan-child/85>, [Accessed July 28, 2022]

31. Ibid

32. “Principal Imprisoned for 3-Yrs over Caning a Student,” n.d. *Sri Lanka Mirror*, <https://www.srilankamirror.com/news/9700-principal-imprisoned-for-3-yrs-over-caning-a-student> , [Accessed March 28, 2022]

33. Ibid

vomited during school. She had been sent to the hospital, where hospital officials confirmed that she was not pregnant. Yet, the school authorities and other children continued to abuse her. Such incidents also point to how sex education, ideas about the right to the body, and the right of a child to be free from physical and mental abuse remain crucial issues when it comes to safeguarding the rights of children.³⁴

Another related issue that emerged in the higher education sector was an incident of ragging that took place during March 2019. A student of the NDT Homagama committed suicide, allegedly, following unbearable ragging. While student unions and the IUSF remained silent on the issue, several anti-ragging university groups mobilized around the death of the student in order to bring out the deeper and underlying problems of ragging. They insisted on the institutional responsibility for ragging and pointed to ways that ragging is a systemic form of violence that persists within the higher education sector.

In Sri Lanka, ragging is prohibited by the 1998 Prevention of Ragging and Gender-Based Violence Act. It is a broadly framed act in which any form of verbal, psychological, or physical abuse is explicitly prohibited. Despite the sweeping powers given to punish perpetrators, university administrations have generally failed to curb ragging in universities and the practice continues at different levels depending on the university setting, the groups carrying out the ragging and the situation of those being ragged. Despite the UGC's elaborate mechanism to report cases of ragging (including a hotline) there are few instances where

34. "Pregnant' School Girl: Noose Hangs over School Authorities." *Daily Mirror*, December 7, 2017 https://www.dailymirror.lk/breaking_news/Pregnant-school-girl-Noose-hangs-over-school-authorities/108-141765, [Accessed March 30, 2022]

disciplinary action is carried out against perpetrators. In the case mentioned above, despite the deceased students' family's repeated claims that the student had committed suicide due to ragging, even the UGC failed to take action because, according to the news reports citing the Acting Chairman, the victim "had not named the perpetrators" in his suicide note, and there wasn't enough evidence or a complaint from the victim or the family to take action.³⁵ Such disclaimers of responsibility on the part of authorities shows how university administrators fail to see ragging as a structural and systemic issue, where, primarily, the institution is responsible for violence taking place within its premises.³⁶

6. Sexual Identity, Self-Expression and Inclusive Education

On October 8th, 2018, Saakya Rajawasan, a former student at the Colombo International School issued a public statement that explained her side of the story regarding an incident that had been circulating on online news sites and social media. She described how her school, Colombo International School, had attempted to enforce a girls' uniform on her when she asked for permission to wear a boys' uniform: "I identify as bi-sexual and gender-fluid so wearing trousers is a way of expressing myself. Additionally, wearing trousers instead of a skirt gives me more freedom of movement, and protection from dengue. The school

35. "Diyagama Campus Suicide : Justice for Shanilka Demanded," *Sunday Observer*. April 6, 2019, <https://www.sundayobserver.lk/2019/04/07/news-features/diyagama-campus-suicide-justice-shanilka-demanded>.

36. For a detailed report on ragging in the university system see the report Prevalence of Ragging and Sexual and Gender Based Violence in Sri Lankan State Universities (UGC 2021); University Grants Commission. (2020). Redressing Victims of Ragging & Providing a Regulatory Mechanism to Prevent Ragging Related Abusive Conduct in Sri Lankan State Universities and Higher Educational Institutions (Colombo, Sri Lanka, 2020)

administration told me that changes in the uniform system were unlikely”³⁷ claimed Rajawasan in her statement. She goes on to describe how she was banned from the school fashion show because she had designed a rainbow cape, which she was not allowed to wear. She was also denied the prefect-ship she had qualified for based on her choice to wear the boys’ uniform and eventually, banned from all extra-activities at school, and a letter was delivered informing her of her “unacceptable and irresponsible behavior.”

The incident was taken up by rights activists in Colombo as an instance of how even the more liberal international schools do not allow the sexual expression of young people. The Colombo Telegraph quoted several human rights activists criticizing the school’s move to censure the child’s sexual expression. Chamindra Weerawardhana, a renowned LGBTQI+ rights activist claimed,

*The principal and staff should have been happy of what the child did. They should have stood resolutely with the child and their rights. Across the developed world, child-friendly guidelines are being put in place, with the objective of ensuring the rights of children across the broadly-defined LGBT+ spectrum.*³⁸

Several others joined to condemn CIS and wrote in support of the student’s right to express her sexuality.

37. “Colombo International School Homophobic Bullying Saga: Victimised Student Goes Public - Activists Commend,” *Colombo Telegraph* (blog). October 8, 2018. <https://www.colombotelegraph.com/index.php/colombo-international-school-homophobic-bullying-saga-victimised-student-goes-public-activists-commend/>.

38. “Colombo International School Homophobic Bullying Saga: Victimised Student Goes Public - Activists Commend,” *Colombo Telegraph* (blog). October 8, 2018. <https://www.colombotelegraph.com/index.php/colombo-international-school-homophobic-bullying-saga-victimised-student-goes-public-activists-commend/>.

This incident is atypical in several ways. The fact that it occurred in an international school (usually considered to be more liberal than State-run government schools), the fact that the student was privileged enough to know how to respond to the school, the fact that she was strongly supported by her family, including her father, makes her case atypical. In a government school or even a private school it is rarely that young people are given the right to express themselves sexually in Sri Lanka. According to the Convention on the Rights of the Child,³⁹ the student's right to expression is guaranteed by Article 13 of the CRC:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.⁴⁰

It is no surprise, then, that human rights activists should have seen the incident as the one that violates the rights a child has to express him/herself, even though it conflicted with the public

39. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

40. "United Nations Convention on the Rights of the Child.Pdf." n.d. Accessed July 28, 2022. <http://34.196.27.239/storage/app/media/United%20Nations%20Convention%20on%20the%20Rights%20of%20the%20Child.pdf>.

“morals.” The school may have been responding to potential opposition from other parents or other relevant stakeholders. Such social and cultural pressure points to the way policy alone or even a rights-based approach alone cannot ensure children’s right to express themselves and their identity. Public and popular debates on such contentious issues are framed by cultural politics that end up becoming determined by the outcomes of these discussions. An integrated approach that links the rights-based approach to popular and public awareness and empowerment of students can, perhaps, better bring about a change in the rights of LGBTQI students and other students who wish to express their sexuality within schools.

A related incident that occurred in 2020 was the banning of the school textbook “Hathe Ape Potha,” a textbook on sex education designed by officials of the Ministries of Education and Health. At the end of 2020, a group of conservative monks opposed the book, claiming that it promoted masturbation. At a parliamentary sectoral oversight committee hearing, the tearful authors of the book tried to explain that they had been trying to teach children about their sexuality so that they can remain safe from SGBV and enjoy pleasures in measured and safe ways. Several monks present at the hearing accused the authors of promoting masturbation by implicitly suggesting that it is a safe way to enjoy one’s sexuality in a safe manner. The priests repeatedly claimed that it went against the traditional wisdom and religious understanding of sexuality. Several civil society activists and female politicians tried to argue against the conservative views of the Buddhist monks opposing the book.⁴¹ Despite the measured arguments forwarded by the

41. WasaVisa, සමයං වින්දනසෙන් උණුසුම් වූ සෞඛ්‍ය පාඨම Grade 7 Text book “Hathe Ape Potha,” 2020, <https://www.youtube.com/watch?v=iScn7-PmQro>.

authors, the book was withdrawn from circulation by the end of 2020.

Both the above issues point to the importance of including the right to sex education as well as the right to self-expression including sexual expression within a human rights framework. There are few provisions that define access to sexual education as a human rights issue even at the international level. However, as both the above examples show, a rights-based approach to sexual education might be the only way that politicized cultural pressure that prevents the inclusion of sex education within the Sri Lankan education and higher education system can be mitigated and countered.

As Meghan Campbell has pointed out, several fundamental rights guaranteed through the international charter on human rights as well as SDGs are linked to access to knowledge about sexual health, sexual rights, and sexual expression.⁴² Sri Lanka still has an archaic Victorian law that determines the rights of sexual minorities.⁴³ Thus, non-binary sexual practices, technically, are still illegal in Sri Lanka, violating one of the most fundamental human rights. Yet, such sexual expression cannot be considered in isolation. Access to sexual education intersects with other forms of access that exists within our education system, where knowledge about the body, contraceptives, pregnancy, sexual orientation, and sexual pleasure are imparted by a few, urban, liberal schools. The general school curriculum remains singularly silent on the issue, and if at all, inculcates values that are counter-

42. Meghan Campbell, n.d. "Let's Talk about Sex Education and Human Rights | OHRH," <https://ohrh.law.ox.ac.uk/lets-talk-about-sex-education-and-human-rights/>. [Accessed July 28, 2022]

43. Penal Code, n.d. LawNet (blog). Accessed August 12, 2022. <https://www.lawnet.gov.lk/penal-code/>.

productive to an honest and direct discussion about sexual health and well-being. As discussed above, access to quality education is already a serious problem within Sri Lanka, given the many forms of discriminatory practices that exist within our education system. Within this context, access to knowledge about reproductive rights, sexual health, and wellbeing have become a new dividing line across existing inequalities within the education system. Thus, one of the key human rights issues to emerge from both the above incidents is the need to frame the right to sex education and sexual expression as fundamental rights guaranteed, particularly, as a right of the child.

7. Conclusion

This chapter has argued that when education is framed as a human right, it becomes necessary to examine how those articulating these rights frame them. Ideally, they should be framed based on broader ideas about social justice. Thus, education, as a right, cannot be understood outside the socio-political realities within which they are articulated. Similarly, we have seen that those who argue for educational equity, the right to sexual expression and the right to be free from corporal punishment all resorted to the language of human rights. In enacting broader socio-political issues as ones about human rights, such groups tend to turn human rights into a tool that they could use in their fight against socio-political injustice. One could, possibly see this trend of citing human rights as the ground on which socio-political justice is demanded (rather than collective political mobilization, policy shifts, or social change) becoming more intense in the coming years as Sri Lanka now faces consecutive severe economic and political crises. In such contexts, where actual socio-economic

change driven by State funding and policy will be absent, human rights can become a powerful instrument for implementing change in the field of education by those who seek social justice and educational equity.

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THE RIGHT TO HEALTH IN SRI LANKA : CHALLENGES, CONTESTATIONS AND CONTRADICTIONS

*Dr Ramya Kumar**

1. Introduction

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations (UN) General Assembly in 1948, enshrines the right to health, defined broadly to encompass standards of living sufficient for health and wellbeing, including food, shelter, medical care, social services, and the right to security.¹ Since then, the right to health has made its way into numerous UN treaties, including, the International Covenant on Economic, Social and Cultural Rights (ICESCR; 1966), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD; 1965), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; 1979), Convention on

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1. UN (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

the Rights of the Child (CRC; 1989) and the Convention on the Rights of Persons with Disabilities (CRPD; 2006).² ICESCR deals with the right to health most comprehensively where Article 12 recognizes the right to enjoy the “highest attainable standard of physical and mental health.”³

In Sri Lanka, the constitution does not explicitly guarantee the right to health. However, the fundamental rights enshrined in the constitution address the right to equality, including protection from discrimination based on “race, religion, language, caste, sex, political opinion, place of birth” or “such grounds,”⁴ which may be extended to the provision of health and other services. With respect to the country’s international commitments, Sri Lanka has acceded or ratified a series of legally binding UN treaties including the ICESCR (1980), CEDAW (1981), ICERD (1982), CRC (1991) and CRPD (2016), which all reference the right to health.⁵

This chapter offers an overview of how the Government of Sri Lanka respected, protected and fulfilled its commitments to the right to health in the time period 2018 to 2020. The period is remembered for several incidents that had wide-ranging health consequences, including the organised anti-Muslim riots that occurred both before and after the Easter bombings of 2019, sending shockwaves across the country and a backlash against Muslim communities, and also the advent of the COVID-19 pandemic in 2020 and its long lasting social, political and

2. Office of the High Commissioner on Human Rights (OHCHR), 1996-2022

3. UN (1967).

4. *The Constitution of the Democratic Social Republic of Sri Lanka* Revised edition – 2021, Parliament Secretariat, 2021, <https://www.parliament.lk/files/pdf/constitution.pdf>

5. OHCHR, n.d.

economic impact. In addition, the health sector had to grapple with an ever-increasing burden of Non-Communicable Diseases (NCDs), intensified by demographic changes, in particular, a rapidly aging population. The chapter begins by introducing the right to health as explicated by the UN Committee on Economic, Social and Cultural Rights (CESCR), and then examines the extent to which Sri Lanka respected, protected and fulfilled the right to health between 2018 and 2020, focusing first on the availability, accessibility, acceptability and quality (3AQ) of health services, and then on a number of specific groups and issues that were, and still are, troubling in the Sri Lankan context. The chapter concludes by pointing to some areas overlooked by rights-based approaches that may merit attention.

2. The Right to Health

In 2000, the UN's CESCR interpreted the right to health in General Comment 14 (GC 14) as being dependent on a series of other economic, social, civil and political rights, and as embodying both freedoms and entitlements; here, freedoms included the “right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation,”⁶ while entitlements included the “right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable

6. General comment no. 14 (2000), “The Right to the Highest Attainable Standard of Health” (Article 12 of the International Covenant on Economic, Social and Cultural Rights). United Nations Digital Library. <https://digitallibrary.un.org/record/425041?ln=en> CESCR, 2000, (emphasis added).

level of health”⁷ (emphasis added). This health system, according to CESCR, should ensure access to health services as well as the underlying determinants of health, including “access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”⁸

With respect to health services, GC 14 addresses four areas, namely availability, accessibility, acceptability and quality (3AQ). Healthcare and other services/utilities like water and sanitation must be available. They must be accessible (inclusive of physical, economic and information accessibility); here, economic accessibility should be ensured irrespective of whether the services are publicly or privately provided. Services must be delivered in a form that is acceptable to the community, respecting its needs, values, and the broader sociocultural context. Finally, they must be of sufficient technical quality. In particular, the CESC Remphasized equity and non-discrimination, and asked that States ensure the participation of citizens in decisions on health at community, national and even at global levels.⁹

As per the UN’s interpretation then, the right to health extends far beyond the health sector, and is inextricably linked with other freedoms and entitlements that impact physical, mental and social wellbeing.

7. General comment no. 14 (2000), “The Right to the Highest Attainable Standard of Health” (Article 12 of the International Covenant on Economic, Social and Cultural Rights). United Nations Digital Library. <https://digitallibrary.un.org/record/425041?ln=en> CESCR, 2000, (emphasis added).

8. Ibid

9. Ibid

3. Sri Lanka and 3AQ (availability, accessibility, acceptability and quality)

3.1 Availability of health services

GC 14 specifies that “functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party,” including the determinants of health, such as “safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.”¹⁰

The healthcare system in Sri Lanka is made up of a non-fee levying public healthcare system and a fee-for-service private health sector. Between 2018 and 2020, government spending on health was less than 2% of the GDP with about 9% of the budget going to the public health sector.¹¹ The public healthcare system comprises state-owned and -administered healthcare facilities that are free of charge at the point of use, estimated to purvey about 90% of inpatient admissions and the bulk of preventive care.¹² Despite impressive levels of coverage, especially for mothers and children extending even to rural and remote areas, acute resource constraints limit the availability of services for other health problems. A large proportion of outpatient visits for NCDs take place in the fee-levying private sector, accounting for significant levels of out-of-pocket expenses on consultations,

10. Ibid

11. World Bank, 2022.

12. Owen Smith, “Sri Lanka: Achieving Pro-poor Universal Health Coverage without Health Financing Reforms,” 2018, <https://openknowledge.worldbank.org/handle/10986/29175>

tests, and medicines.¹³ Moreover, budgetary allocations for elderly care, long-term care, rehabilitative care, and palliative care are inadequate to sustain service delivery in the public sector, translating to inequities in access, especially for resource intensive treatments and procedures.¹⁴

Regional disparities in healthcare workers are widespread, disadvantaging rural and war-torn districts. According to data published by the Ministry of Health, in 2017, 620 specialists, 4,745 medical officers and 8,562 nurses served in the Colombo District, compared with 147 specialists, 1,208 medical officers and 1,234 nurses in all five districts of the Northern Province. Such disparities are especially visible at the primary care level in rural and remote areas.¹⁵ For instance, in 2017, Kilinochchi district had 3 medical officers in the preventive sector versus 16 in Jaffna and 61 in Colombo.¹⁶ Similarly, Mullaitivu district had 42 public health midwives as compared to 138 in Jaffna and 418 in Colombo district.¹⁷ With respect to physical resources, if we consider the acute management of NCDs, in 2017, there were 193 cardiology beds in the Colombo district, versus 24 in Jaffna district, the latter serving all five districts of the Northern Province.¹⁸ In 2020, 344 intensive care unit (ICU) beds were located in Colombo versus 30 in the Northern Province.¹⁹ Admittedly, the post-war Northern Province is sparsely populated, accounting

13. Legido-Quigley et al., “Patients’ Experiences on Accessing Health Care Services for Management of Hypertension in Rural Bangladesh, Pakistan and Sri Lanka: A Qualitative Study,” *PLoS One*, 14 no 1 (2019) .(1), e0211100, 2019.

14. WHO, 2021.

15. Ministry of Health, 2017.

16. Ministry of Health, 2017.

17. Ministry of Health, 2017.

18. Ministry of Health, 2017.

19. WHO, 2021.

for about 5% of the country's population compared with 11.3% in Colombo District. However, the Northern Province accounts for a much greater land mass (13.2%) compared to that of Colombo (1.1%), reflecting the disparities in service availability between Colombo and peripheral districts. Even within districts, tertiary care services tend to be concentrated in urban centres, disadvantaging rural communities.²⁰

The private sector delivers over half the volume of outpatient services.²¹ Most private sector doctors, including general practitioners and specialists, are full-time employees of the Ministry of Health.²² Thus, the availability of private outpatient care tends to mirror the availability of public healthcare services. Private general practitioners, most of whom are dual practitioners, run independently managed outpatient facilities close to where they work, in both urban and rural areas, while specialists consult in the private sector in urban areas where public hospitals tend to be concentrated. However, as private hospitals tend to be concentrated in urban areas, especially in Colombo and its suburbs, there are significant disparities in the availability of private inpatient care. Such urban—rural disparities in the availability of private hospital services translate to far wider inequities in access as they are financed chiefly through out-of-pocket payments.²³

20. Ministry of Health, 2017.

21. WHO, 2021.

22. Ramya Kumar, "The Privatization Imperative: Women Negotiating Healthcare in Kandy, Sri Lanka," PhD [dissertation], (University of Toronto, 2018), https://tspace.library.utoronto.ca/bitstream/1807/82972/3/Kumar_Ramya_201803_PhD_thesis.pdf

23. Ramya Kumar, "Public–Private Partnerships for Universal Health Coverage? The Future of "Free Health in Sri Lanka." *Globalization and Health*, 2019, 15(1), 1-10. <https://doi.org/10.1186/s12992-019-0522-6>

3.2 Accessibility of health services

GC 14 defines accessibility in terms of physical, economic and information accessibility, and underscores accessibility without discrimination.²⁴ Physical accessibility of services is linked with their availability, discussed in 2.1, as well as disability accessibility.

In 2018, 52% of health spending came from private sources: 81% of this was paid out-of-pocket by households.²⁵ As private healthcare services are delivered primarily on a fee-for-service basis, the private sector remains largely inaccessible to economically disadvantaged communities. Thus, any shortfalls in public healthcare ultimately translate to compromised financial accessibility. Even the poorest are compelled to spend on laboratory tests and medicines in the private sector, with levels of out-of-pocket expenses in the private sector rising steadily over time.²⁶

Catastrophic health expenditures—defined as healthcare spending that exceeds a household’s capacity to pay—are relatively low because the public system covers the bulk of inpatient care.²⁷ Even so, some resource-intensive treatment modalities like coronary artery bypass grafting (“bypass”), dialysis or kidney transplant, and specific cancer therapies, are in short supply at public hospitals, requiring people to wait in line for months if

24. CESCR, 2000.

25. “Sri Lanka Health Accounts: National Health Expenditure 1990-2019,” Institute for Health Policy, 2021.<https://www.ihp.lk/publications/docs/HES2106.pdf>

26. Ajantha.Sisira Kumara &RamanieSamaratunge, “Patterns and Determinants of Out-Of-Pocket Health Care Expenditure in Sri Lanka: Evidence from Household Surveys,” *Health Policy and Planning*, 31, no8 (2016): 970-983, <https://doi.org/10.1093/heapol/czw021>

27. Owen Smith, “Sri Lanka: Achieving Pro-Poor Universal Health Coverage Without Health Financing Reforms,” 2018<https://openknowledge.worldbank.org/handle/10986/29175>

not years,²⁸ incurring health expenditures on transport and time off work, not to mention the associated adverse health outcomes. Meanwhile, households with means circumvent such service delays by accessing care in the private sector.²⁹ Apart from access inequalities based on ability to pay, pervasive deficits in disability accessibility makes the healthcare system, regardless of sector, unwelcoming toward persons with disabilities (more details in Section 8).³⁰

Information (in) accessibility is also a concern; healthcare users, in both public and private sectors, frequently receive inadequate information from healthcare providers. The 2016 Demographic and Health Survey (DHS) reported that about half the female contraceptive users surveyed did not receive information on the side effects of contraceptives or the methods available.³¹ This lack of information has also been documented in obstetrics,³² and cancer care.³³ Furthermore, young people have restricted access to sexual and reproductive health information, with comprehensive sexuality education yet to be introduced to the health education curriculum, even at the secondary school level.³⁴

28. Ibid.

29. Kumar et al., 2018

30. LakshilaWanigasinghe, “Leave No One Behind: Building a Disability-Inclusive COVID-19 Recovery Plan for Sri Lanka”, Talking Economics, IPS Blog, <https://www.ips.lk/talkingeconomics>, 2021, more details in Section 8.

31. Demographic and Health Survey ,2016, Department of Census and Statistics (2017) <http://www.statistics.gov.lk/Health/StaticInformation>

32. Kanya D’ Almeida, 2020-2022), *The Darkest Light*. <https://thedarkestlight.buzzsprout.com/>

33. Chrisanthi. I. Rajasooriyar et al., (2021). “Exploring The Psychosocial Morbidity of Women Undergoing Chemotherapy for Breast Cancer in A Post-War Setting: Experiences of Northern Sri Lankan Women,” *Supportive Care in Cancer*, 29(12), (2021): 7403-7409. <https://doi.org/10.1007/s00520-021-06296-5>; N. Soysa, “Am I Ready to Die?”, 2021, <https://www.youtube.com/watch?v=cwomFLADUCK>

34. Nisali De Silva, “ ‘Hathe Ape Potha’ Was Product of Much Effort and Research, Says Author,” *Economy Next*, 2020, <https://economynext.com/hathe-ape-potha-was-product-of-much-effort-and-research-says-author-48132/>

3.3 Acceptability of health services

GC 14 defines acceptability in relation to respectfulness, medical ethics and cultural appropriateness of healthcare services, specifically that healthcare providers be “respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality...”³⁵

Over a decade after the end of the civil war, and despite the Official Languages Commission Act (1991),³⁶ official Sinhala-Tamil bilingual language translators are not appointed to healthcare facilities. Although all healthcare providers in the public sector are required to pass an examination in the language that is not their mother tongue (Tamil or Sinhala), the former functions as a check box for promotion. There are no incentives for healthcare institutions or providers to adopt ethnicity or language-inclusive practices. Indeed, when a person who is unable to speak Sinhala seeks care at a healthcare facility in the South, they face numerous challenges, including castigation in the hands of healthcare providers.³⁷ The low priority given to issues of diversity within the healthcare system is magnified by the failure to address these concerns in health professional curricula, resulting in negative stereotyping and other discriminatory practices based on ethnicity/language against Tamil-speaking minorities.³⁸

35. CESCR, 2000.

36. Official Languages Commission Act, No. 18 of 1991

37. Ramya Kumar, “The Privatization Imperative: Women Negotiating Healthcare in Kandy, Sri Lanka”. PhD dissertation, (University of Toronto, 2018), https://tspace.library.utoronto.ca/bitstream/1807/82972/3/Kumar_Ramya_201803_PhD_thesis.pdf; D. Perera et al., “‘When Helpers Hurt’: Women’s and Midwives’ Stories of Obstetric Violence in State Health Institutions, Colombo District, Sri Lanka,” *BMC Pregnancy and Childbirth*, 18(1), (2018) 1-12, <https://doi.org/10.1186/s12884-018-1869-z>

38. *Ibid*

While gender-responsiveness has been, to some extent, integrated into health professional curricula, initiatives to improve gender equality within the healthcare system are still to make ground. Incidents of sexual harassment/violence at the hands of healthcare providers are frequently reported in the media and also affect healthcare workers.³⁹ Muslim women encounter various forms of discrimination at public hospitals where they are often barred from wearing the abaya, hijab or niqab in the wards.⁴⁰ With no obligation to provide information, healthcare providers frequently carry out medical procedures without adhering to standard informed consent protocols. For instance, vaginal examinations are often carried out indiscriminately in public and private health sectors, at times against the wishes of women, constituting a form of sexual violence.⁴¹

Healthcare facilities, whether public or private, are rarely held accountable to healthcare users as mechanisms in place to provide redress are time-consuming and weak.⁴² The Sri Lanka Medical Council (SLMC), which oversees standard setting and regulation and is mandated to protect the public from medical malpractice, is viewed to be partial, even by insiders.⁴³

39. Emma .A. Adams, "Perceptions on the Sexual Harassment of Female Nurses in a State Hospital In Sri Lanka: A Qualitative Study," *Global Health Action*, 12 no1 (2019), 1560587; "Captain Wanted in Gang Rape Case of Nurse Arrested," Daily News, Feb 16, (2018), <https://www.dailynews.lk/2018/02/16/local/142961/captain-wanted-gang-rape-case-nurse-arrested>

40. Ramya Kumar, "The Privatization Imperative: Women Negotiating Healthcare in Kandy, Sri Lanka," PhD [dissertation], (University of Toronto, 2018), https://tspace.library.utoronto.ca/bitstream/1807/82972/3/Kumar_Ramya_201803_PhD_thesis.pdf

41. Kanya D' Almeida, K , *The Darkest Light*, (2020-2022), <https://thedarkestlight.buzzsprout.com/>

42. P. Rupasinghe, "Medical Negligence and Doctor's Liability; A Critical Review in Present Legal Regime in Sri Lanka, 2015," <http://ir.kdu.ac.lk/bitstream/handle/345/1394/law-043.pdf?sequence=1>

43. Ruwandi Gamage, "New Regulations Desperately Needed to Stop Doctor Malpractices," *Daily FT*, August 4, 2018, <https://www.ft.lk/Front-Page/New-regulations-desperately-needed-to-stop-doctor-malpractices/44-660293>

3.4 Quality of health services

GC 14 interprets quality in terms of technical quality that is scientifically and medically sound services requiring “skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.”⁴⁴ Although there is very little literature available regarding quality assurance processes implemented in the health sector, the levels of coverage achieved as well as the relatively good health outcomes—the latter influenced by a host of other health determinants—might suggest reasonable levels of quality of care.

Studies indicate more or less equal levels of quality of care in the public and private sectors.⁴⁵ While the public sector offers higher technical quality of services, including treatment and management in areas that are not constrained by resources, the private sector performs better interpersonal satisfaction and patient education.⁴⁶ Regardless of sector, quality of care is compromised by lacking space for patients to ask questions and be involved in their care.⁴⁷

Moreover, as healthcare services are delivered in a largely unregulated environment, certain basic requirements remain unfulfilled. For instance, there are no minimal standards guiding consultation time and documentation, compromising continuity

44. CESCR, 2000.

45. Ravindra P. Rannan-Eliya et al., “Quality of Inpatient Care in Public and Private Hospitals in Sri Lanka,” *Health Policy and Planning*, 30(suppl_1), (2015a), i46-i58.; Ravindra P. Rannan-Eliya et al., *The Quality of Outpatient Primary Care in Public and Private Sectors in Sri Lanka—How Well Do Patient Perceptions Match Reality and What are the Implications?* *Health Policy and Planning*, 30(suppl_1), (2015b) i59-i74.

46. *Ibid.*

47. Kanya D’ Almeida, *The Darkest Light*, (2020 -2022), <https://thedarkestlight.buzzsprout.com/>; N. Soysa, *Am I Ready to Die?* (2021), <https://www.youtube.com/watch?v=cwomFLADUCk>

of care in both sectors. While instances of abuse, neglect, and discrimination in the hands of healthcare providers are widely reported, basic measures to ensure non-discrimination and make healthcare facilities inclusive for all, irrespective of class, ethnicity, gender, sexual orientation, disability, etc. are starkly absent.⁴⁸

Having provided a broad overview of the extent to which the government respects, protects and fulfils the right to health in relation to 3AQ, the remainder of the chapter delves into specific rights concerns that trouble the health sector in Sri Lanka.

4. Young People's Sexual and Reproductive Health

Sexual and reproductive health (SRH) among adolescents and youth remains a low priority in Sri Lanka. Notwithstanding the National Strategic Plan on Adolescent and Youth Health 2018-2025,⁴⁹ which is comprehensive in scope, its implementation has been inconsistent in many areas. Access to basic SRH information for young people is limited. In 2020, a highly politicised controversy led to the withdrawing of a textbook on SRH titled, "Hathe Ape Potha," introduced to the Grade 7 health education curriculum. Sections of the Buddhist clergy protested the inclusion of material on masturbation, which they linked to attempts by external forces to destroy Sinhala Buddhist culture.⁵⁰ Despite attempts by the Ministry of Health to address

48. Dinusha Perera et al., "When Helpers Hurt': Women's and Midwives' Stories of Obstetric Violence in State Health Institutions, Colombo District, Sri Lanka," *BMC Pregnancy and Childbirth*, 18, no1 (2018): 1-12, <https://doi.org/10.1186/s12884-018-1869-z>; N. Soysa, N. (2021). Am I ready to die? 2021, <https://www.youtube.com/watch?v=cwomFLADUCK>

49. Ministry of Health, n.d.

50. Rohana.R. Wasala, "Controversy about 'Hathe Ape Potha', A Supplementary Reader in Sinhala for Sexuality and Reproductive Health Education for Grade 7", *Lanka Web*, 2020, <https://www.lankaweb.com/news/items/2020/03/06/controversy-about-hathe-ape-potha-a-supplementary-reader-in-sinhala-for-sexuality-and-reproductive-health-education-for-grade-7/>

information and service gaps through the adolescent-friendly health services initiative, implementation has been piecemeal at best.⁵¹

Not surprisingly, SRH awareness is low among adolescents in Sri Lanka. A UNFPA-UNICEF survey carried out among 8,000 plus youth (15-24 years) across the island in 2013/2014 (the most recent) found that only 59% had received reproductive health education at school and 55% or less had knowledge about STIs, including how to prevent them.⁵² Moreover, only 35% of those in school had knowledge on emergency contraception.⁵³ A prior survey conducted in the Kalutara district found that schoolteachers often skipped lessons on SRH and lacked the expertise and experience to teach sex education to young people.⁵⁴ Despite teenage pregnancy, unsafe abortion and rising HIV incidence being crucial public health problems, an alarming proportion of adolescents are sexually active without access to SRH information and services.⁵⁵

The minimum age for marriage in Sri Lanka is 18 years with certain exceptions under customary law, the latter under a

51. "Protocol for Yowun Piyasa: Adolescent and Youth Friendly Health Service (AYFHS) Center", Family Health Bureau, 2018, [https://fhb.health.gov.lk/images/FHB%20resources/Adolecent%20Health/Guideline/Protocol%20Yowun%20Piyasa/Protocol%20Yowun%20piyasa\(pages%201-52\).pdf](https://fhb.health.gov.lk/images/FHB%20resources/Adolecent%20Health/Guideline/Protocol%20Yowun%20Piyasa/Protocol%20Yowun%20piyasa(pages%201-52).pdf); M. Kumarasinghe & W.I. De Silva, W., "Adolescent and Youth Sexual and Reproductive Health in Sri Lanka: Are Policies and Strategies Geared to Address Issues?" *Asian Journal of Education and Social Studies* 29(1), (2022) 36-45. DOI: 10.9734/AJESS/2022/v29i130690

52. "The Need for Comprehensive Reproductive Health Education (CRHE) For Youth in Sri Lanka," UNFPA (2017). https://srilanka.unfpa.org/sites/default/files/pub-pdf/NEW%20CRHE%20Policy%20Brief%20%283%29_0.pdf

53. "The Need for Comprehensive Reproductive Health Education (CRHE) For Youth in Sri Lanka," UNFPA (2017). https://srilanka.unfpa.org/sites/default/files/pub-pdf/NEW%20CRHE%20Policy%20Brief%20%283%29_0.pdf

54. Ibid.

55. Ibid.

lengthy and contested reform process.⁵⁶ Sexual intercourse with an underage woman (less than 16 years) is considered statutory rape by law, except when the woman under 16 years is married. This law also applies to male “perpetrators” who are minors (less than 18 years of age).⁵⁷ This legislation surrounding statutory rape impedes access to SRH services for adolescents, in fear of law enforcement, an issue that was partially addressed by a 2015 Ministry of Health circular that permits healthcare providers to offer SRH information and services to adolescents.⁵⁸ However, few are aware of the circular and this group continues to have limited access to SRH services, making them vulnerable to unwanted pregnancy and its complications.

It is widely recognised that adolescents and youth need to be involved in the formulation of health policy and programmes for their success.⁵⁹ Yet, young people remain largely absent from decision-making forums on health in Sri Lanka. Arguably, this failure to engage young people converges with other factors to result in poor health outcomes, including teenage pregnancy, unsafe abortion, sexually transmitted infections (STI), substance use, and mental health problems.⁶⁰

56. “What is the Muslim Marriage and Divorce Act (MMDA) 1951?” Muslim Personal Law Reform Action Group (n.d.). <https://www.mmdasrilanka.org/faqs-about-the-mmda/>

57. Imesha Madhubhani, “Statutory Rape Laws in Sri Lanka: The Underpinning Issues”, *Sunday Observer*, September 10, 2017, <https://www.sundayobserver.lk/2017/09/10/issues/statutory-rape-laws-sri-lanka-underpinning-issues>

58. “Providing Sexual and Reproductive Health Services to Adolescents.” Ministry of Health (2015a), <http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-25/2015&med=english>

59. “Engaging People for Health and Sustainable Development,” WHO (2018), <http://apps.who.int/iris/bitstream/handle/10665/274368/9789241514576-eng.pdf?ua=1>

60. “National Strategic Plan on Adolescent and Youth Health (2018-2025).”, Ministry of Health (n.d.), <http://yowunpiyasa.lk/images/Guidelines/sp/SP.pdf>

5. Women's Sexual and Reproductive Health

Sri Lanka is internationally acclaimed for providing universal and non-fee levying maternity care through its public healthcare system. Encompassing pre-pregnancy, pregnancy, delivery and postpartum care, the system has achieved an institutional delivery rate of 99% (95% in the public sector), with similar levels of skilled attendance at birth.⁶¹ Public health midwives, who function as grassroots healthcare workers, register “eligible families” for service delivery, the latter comprising, by definition, not only married women, but also single pregnant women and households with young children.⁶²

Family planning services are delivered free-of-charge through the National Family Programme. Available contraceptive methods include: oral contraceptive pills, injectables, implants, intra-uterine devices and female sterilisation. These services are delivered at community clinics and/or hospitals; condoms and oral contraceptive pills are also distributed to “eligible families” by public health midwives during home visits.⁶³ Yet, single working women (and men) are effectively excluded from these services as they do not fulfil the criteria of “eligibility.” Moreover, social sanctions against sex before marriage and inconvenient (morning) public sector service hours drive many to the private sector, usually pharmacies, which provide limited SRH information.⁶⁴

61. “Demographic and Health Survey 2016”, Department of Census and Statistics, 2017. <http://www.statistics.gov.lk/Health/StaticInformation>; Sri Lanka RMNCAH fact sheet July 2018, WHO SEARO (2018). https://cdn.who.int/media/docs/default-source/maternal-health/rmncah-fs-srl.pdf?sfvrsn=9263909d_2

62. “Annual Report of the Family Health Bureau 2019”, Family Health Bureau (2021), https://drive.google.com/file/d/1j3KdkBN0cwueRB9opmYsJN_03tNGvWdZ/view

63. Ibid.

64. Bakamoono, “Contraception in Sri Lanka: An Insight,” 2021, http://www.bakamoono.lk/admin/wp-content/uploads/2016/06/Bak-Contraceptive-Survey-Report_Feb2021.pdf

The mix of contraceptive methods used by women varies across urban/rural sector and education level. Notably, the use of long-acting reversible contraceptive methods and female sterilisation is much higher among estate and rural sector women compared to educated urban women, who opt for “natural” family planning, raising questions around autonomy and choice.⁶⁵ This situation is compounded by the fact that a significant proportion of women do not receive adequate information from contraceptive service providers.⁶⁶ Moreover, women in Sri Lanka encounter new restrictions in relation to accessing contraception, quite different from the population control strategies of yesteryear.⁶⁷ Driven by ethnonationalist preoccupations among Sinhala Buddhist factions regarding the growth of the Muslim population, Sinhala women’s requests for sterilisation are frequently turned down, even when they fulfil the criteria of the national policy on sterilisation: women above 26 years of age with two children, the younger having to be at least two years.⁶⁸ Following the 2019 Easter bombings and the much publicised, and fabricated, allegations of a Muslim doctor conducting sterilisations without consent on Sinhala women following Caesarean section, this situation worsened (personal communication with a local public health expert).

Another women’s health issue that has been left on the backburner for far too long is abortion, which is criminalised in Sri Lanka except under lifesaving circumstances. The restrictive legal

65. Bakamoono, “Contraception in Sri Lanka: An Insight,” 2021.

66. “Demographic and Health Survey 2016,” Department of Census and Statistics, September, 2017. <http://www.statistics.gov.lk/Health/StatisticalInformation>

67. Sasikumar Balasundaram, “Stealing Wombs: Sterilization Abuses and Women’s Reproductive Health in Sri Lanka’s Tea Plantations,” *Indian Anthropologist*, 41, no2 (2011): 57-78.

68. “Eligibility for Sterilization,” Family Health Bureau (1988), <https://www.fhb.health.gov.lk/images/FHB%20resources/Family%20Planning/Family%20Planning%20Unit/Circulars/Eligibility%20for%20Sterilization%20general%20circular%20no%201586.pdf>

environment compels socially and economically disadvantaged women to seek abortion services under unsafe conditions, while others access (safe) services in the private sector.⁶⁹ Medical professionals play a gatekeeping role when it comes to abortion. Misoprostol, a drug used for medical abortion—registered in 2015 by the National Medicines Regulatory Authority after a lengthy and disputed registration process—is now available at public hospitals, but only for indications other than induced abortion, when prescribed by an obstetrician/gynaecologist (OBGYN).⁷⁰ Misoprostol is widely available in the black market, but access is limited to women who are directed to pharmacies through trusted contacts, often private OBGYNs, for a fee. Relatedly, the criterion of “saving a mother’s life” may be interpreted variously, enabling some categories of women, such as adolescent survivors of rape or incest, to access abortion services at public hospitals (personal communication with an OBGYN practicing in Sri Lanka). Efforts to liberalise abortion law have reached an impasse with reforms targeting instances of rape and incest facing strident opposition from religious quarters,⁷¹ in spite of post-abortion sepsis being an important cause of maternal mortality.⁷² The Ministry of Health’s guidelines on post-abortion care (PAC) seek to ensure access to

69. Ramya Kumar, “Abortion in Sri Lanka: The Double Standard,” *American Journal of Public Health*, 103, no.3 (2013): 400-404.

70. Ramya Kumar, “Misoprostol and the Politics of Abortion in Sri Lanka,” *Reproductive Health Matters*, 20, no 40 (2012): 166-174; “National Guideline on Use of Misoprostol in Gynaecology and Obstetrics,” Ministry of Health (2021), <https://drive.google.com/file/d/12UjgbofQ06Zfrhmg hASNrK7WLWOKdApU/view>

71. Kingsley Karunaratne, “Buddhist, Muslim and Christian Leaders Oppose Abortion,” *UCAnews*, 2017, <https://www.ucanews.com/news/buddhist-muslim-and-christian-leaders-oppose-abortion/80326>

72. “Annual Report of the Family Health Bureau 2019,” Family Health Bureau (2021), https://drive.google.com/file/d/1j3KdkBN0cwueRB9opmYsJN_03tNGvwdZ/view

compassionate care for women following abortion,⁷³ but those who access PAC often encounter healthcare providers who lack empathy and gender sensitivity.⁷⁴

In 2019, the Ministry of Health launched a policy on the prevention and management of gender-based violence (GBV). Although this effort is commendable, with no dedicated GBV prevention staff, the already over-burdened Medical Officer of Health (MOH) and public health midwives are tasked with its implementation.⁷⁵ The MithuruPiyasa/NaptuNilayam centres, now located at secondary and tertiary hospitals, offer befriending and counselling, and also refer service users, as and when required, for legal services.⁷⁶ According to a Women's Wellbeing Survey carried in out in 2019, only a small minority of perpetrators are held to account for GBV in Sri Lanka.⁷⁷

The Family Health Programme of the Ministry of Health, which purveys maternal and child health services, including family planning, places men peripherally, assigning the primary responsibility for pregnancy and childbirth to women.⁷⁸ Although a few initiatives have commenced in the public sector

73. "National Guidelines on Post-Abortion Care," Ministry of Health (2015b), <http://fhh.health.gov.lk/images/FHB%20resources/Family%20Planning/Family%20Planning%20Unit/Publications/National%20Guidelines%20on%20Post%20%20%20Abortion%20Care.pdf>

74. Sophie Cousins, "Sri Lankan Women too Scared to Seek Legal Post-Abortion Care," *The New Humanitarian*, 11 Dec 2017. <https://deeply.thenewhumanitarian.org/womenandgirls/articles/2017/12/11/sri-lankan-women-too-scared-to-seek-legal-post-abortion-care>; "Fighting for Safe Abortion Access in Sri Lanka", International Planned Parenthood Federation (IPPF), 2019 <https://www.ippf.org/blogs/fighting-safe-abortion-access-sri-lanka>

75. "Health Sector Response to Gender-Based Violence Sri Lanka 2019," Family Health Bureau (2019); Standard Operating Procedures for First Contact Point Health Care Providers, <https://srilanka.unfpa.org/sites/default/files/pub-pdf/Standard%20Operating%20Booklet.pdf>

76. Ibid.

77. "Women's Wellbeing Survey 2019 – Sri Lanka," Department of Census and Statistics (2020), http://www.statistics.gov.lk/Resource/refference/WWS_2019_Final_Report

78. "Health Sector Response to Gender-Based Violence Sri Lanka, Standard Operating Procedures for First Contact Point Health Care Providers," Family Health Bureau (2019); <https://srilanka.unfpa.org/sites/default/files/pub-pdf/Standard%20Operating%20Booklet.pdf>

to involve men in parenting, such as a package of services for “newly married couples” and antenatal health education sessions that encourage spousal participation, the clinic and hospital set up, remain unwelcoming. Men are not permitted to participate in the delivery at public hospitals given the unavailability of private delivery rooms.⁷⁹

6. LGBTIQ+ People

LGBTIQ+ communities face various forms of discrimination, harassment and abuse with wide ranging health consequences. While Section 365 of the Penal Code criminalises intercourse “against the order of nature,” Section 399 criminalises impersonation and the Vagrants’ Ordinance prohibits soliciting and acts of “gross indecency.” This legislation is frequently used to arrest LGBTIQ people. Apart from the law, entrenched gender norms reinforce negative stereotypes and societal attitudes towards gender non-conforming people.⁸⁰

In Sri Lanka, coming out as LGBTIQ+ is challenging. Conversion therapy is widely practiced and routinely recommended by doctors, both indigenous and allopathic,⁸¹ resulting in serious harm.⁸² For transgender persons, gender transitioning services, including hormone therapy and sex reassignment surgery, are available at public hospitals, albeit with urban-rural inequities in access.⁸³ In 2016, the Ministry of Health launched a system

79. Kanya D’ Almeida, (2020-2022), *The Darkest Light*. <https://thedarkestlight.buzzsprout.com/>
80. “All Five Fingers Are Not the Same”, Human Rights Watch, 2016, https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf

81. Conversion therapy Practices in Sri Lanka, Asia Pacific Transgender Network (2021). https://weareaptn.org/wp-content/uploads/2021/03/Conversion-Therapy-2020-SriLanka_28Dec.pdf

82. “Analyzing The Culture of Transphobia”, Equal Ground (2015). <https://www.equal-ground.org/wp-content/uploads/Trans-Gender-Report-.pdf>; All Five Fingers Are Not the Same, Human Rights Watch, 2016.

83. “All Five Fingers Are Not the Same”, Human Rights Watch, 2016

to issue gender recognition certificates to transgender people after assessment by a consultant psychiatrist with the Ministry of Health.⁸⁴

Accessing gender transitioning procedures in Sri Lanka involves stigma and discrimination, and there are no guarantees of privacy or confidentiality.⁸⁵ Those who have undergone these procedures report being treated like specimens on exhibition, especially at public hospitals. Health professional curricula tread lightly on transgender health, resulting in healthcare providers being ignorant in this area, with many asking intrusive questions. Surgery is often undertaken by inexperienced surgeons with inadequate training in sex reassignment procedures.⁸⁶ Given these circumstances, those who can afford it, access services in the private sector, paying very steep fees. Overall, the weak regulatory environment and lack of accountability in healthcare leaves the trans community vulnerable to various forms of malpractice and exploitation, regardless of sector.⁸⁷

7. Sex Workers

Sex workers represent another group that faces significant health challenges. An estimated 35,000 to 40,000 sex workers offer services in Sri Lanka.⁸⁸ Yet, the Vagrant Ordinance (1841)

84. "Issuing of Gender Recognition Certificate for Transgender Community." Ministry of Health. 2016. <http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=english>

85. "All Five Fingers Are Not the Same", Human Rights Watch, 2016.; "Analyzing The Culture of Transphobia, Equal Ground," 2015, <https://www.equal-ground.org/wp-content/uploads/Trans-Gender-Report-.pdf>;

86. "All Five Fingers Are Not the Same", Human Rights Watch, 2016.; "Analyzing The Culture of Transphobia," Equal Ground, 2015.

87. "All Five Fingers Are Not the Same", Human Rights Watch, 2016.; "Analyzing The Culture of Transphobia," Equal Ground, 2015.

88. I. Bozicevic et al., "Estimating the Population Size of Female Sex Workers and Transgender Women in Sri Lanka." *PLoS one*, 15 no 1 (2020) e0227689.

provides for the arrest of “every common prostitute wandering in the public street” and also criminalises soliciting.⁸⁹ While these “crimes” are legally difficult to prove, law enforcement authorities frequently make arrests on the grounds of possessing condoms as proof of sex work,⁹⁰ serving to discourage sex workers from carrying condoms. Indeed, a substantial proportion of sex workers report not using condoms during sexual intercourse with clients, with serious implications for STI prevention.⁹¹ In the health sector, sex workers face considerable stigmatisation and stereotyping, and, at times, are even denied essential healthcare, including maternity services.⁹² The pandemic presents a unique set of challenges for sex workers, driving many to financial hardship.⁹³

8. People living with HIV (PLWHIV)

With <0.1% of adults aged 15 to 49 years affected, Sri Lanka records low (but steadily climbing) HIV prevalence.⁹⁴ The public

89. “Laws Concerning Commercial Sex and HIV/AIDS Prevention”, National STD/AIDS Control Programme & UNFPA (n.d.), http://www.aidscontrol.gov.lk/images/pdfs/books/Laws_Concerning_en.pdf

90. “Status of Women Sex Workers in Sri Lanka,” Abhimani Women’s Collective, The Stand Up Movement Lanka, Praja Diri Padanama, Community Strength Development Foundation & Women’s Resource Centre, 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26289_E.pdf

91. Ariyaratne Manathunge et al., “HIV Prevalence, Sexual Risk Behaviours and HIV Testing Among Female Sex Workers in Three Cities in Sri Lanka: Findings from Respondent-Driven Sampling Surveys,” *PLoS one*, 15(10), 2020, e0239951.

92. “Status of Women Sex Workers in Sri Lanka,” Abhimani Women’s Collective, The Stand Up Movement Lanka, Praja Diri Padanama, Community Strength Development Foundation & Women’s Resource Centre, 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26289_E.pdf

93. Himel Kotelawala, “Sri Lanka’s Sex Workers Struggle to get by as COVID-19 Brings Industry to A Halt,” *Economy Next*, 2020, <https://economynext.com/sri-lankas-sex-workers-struggle-to-get-by-as-covid-19-brings-industry-to-a-halt-70850/>

94. “HIV/AIDS Surveillance Data in Sri Lanka – Update 2nd Quarter 2022”, National STD/AIDS Control Programme (2022). http://aidscontrol.gov.lk/images/HIV_2ndQ_2022.pdf; UNAIDS data ,2021, https://www.unaids.org/en/resources/documents/2021/2021_unaids_data

system provides universally accessible comprehensive diagnostic and treatment services for HIV/AIDS. Although PLWHIV report positive experiences at HIV treatments centres, often stigmatizingly called “STD clinics” or “Room 33” (the latter refers to the room designated for STI-related consultations at the outpatient department of the Colombo National Hospital), most do not disclose their HIV status during other encounters with healthcare, in fear of stigma and discrimination.⁹⁵

These deep-rooted fears are held with reason. Despite few disclosing their HIV status to healthcare providers, a 2017 survey among a representative sample of 150 people living with HIV in Sri Lanka found that 3% had experienced verbal abuse from healthcare providers.⁹⁶ With respect to HIV testing, only half the sample (49%) had received pre- and post-testing counselling, and about 40% were not even informed when they were tested, with 2% tested against their wishes.⁹⁷ A substantial proportion of survey participants reported having decided to abstain from sex (30%), not have children (27%) or not get married (20%), reflecting both societal perceptions of HIV/AIDS and internalised stigma.⁹⁸ Indeed, 20% of the sample reported suicidal ideation, and about twice as many responded that their family was a barrier to accessing HIV services.⁹⁹

95. Stigma Assessment of People Living with HIV in Sri Lanka, National STD/AIDS Control Programme (n.d.). <https://www.aidsdatahub.org/sites/default/files/resource/stigma-assessment-plhiv-sri-lanka-2017.pdf>

96. Ibid

97. Ibid

98. Ibid

99. Ibid

9. People with Disabilities

Despite the Protection of the Rights of Persons with Disabilities Act of 1996 and disability accessibility regulations in effect since 2006, healthcare access for people with disabilities remains an unresolved problem in the health sector.¹⁰⁰ For one, the total lack of disability accessible transport prevents many people with disabilities, especially the poor, from accessing healthcare. Most outpatient settings, including public primary care facilities, channelling centres, private dispensaries, laboratories, and community pharmacies, do not have even the most basic infrastructure to enable people with disabilities to navigate healthcare services independently. Although ramps and elevators are generally available at hospitals, disability accessible washrooms are scarce at most healthcare institutions. The (limited) adjustments that have been made to the built environment mostly address physical disability; the lack of sign language and audio-visual media services impede access for people with visual and hearing impairment.¹⁰¹

Negative stereotyping by healthcare providers results in persons with disability being overlooked for SRH services, and at times being discouraged from having children.¹⁰² The lack of educational opportunities and institutionalised discrimination against children with disabilities in the education sector, reflects

100. Pieris-John et al., “Disability Studies in Sri Lanka: Priorities for Action”, *Disability and Rehabilitation*, 36 no20 (2014): 1742-1748.

101. Lakshila Wanigasinghe, Leave No One Behind: Building a Disability-Inclusive COVID-19 Recovery Plan for Sri Lanka, 2021, <https://www.ips.lk/talkingeconomics/2021/08/16/leave-no-one-behind-building-a-disability-inclusive-COVID-19-recovery-plan-for-sri-lanka>

102. “People with Disabilities Not Getting Sexual and Reproductive Health Services – UNFPA.” *Economynext*, 2020, <https://economynext.com/people-with-disabilities-not-getting-sexual-and-reproductive-health-services-unfpa-53473/>

societal attitudes toward people with disabilities, with critical impacts on health and social wellbeing.¹⁰³

10. Elderly People

Demographic projections foretell a steep rise in the elderly population in coming decades, from 9.4% in 2015 to 21% by 2045.¹⁰⁴ Yet, elderly care is poorly developed in Sri Lanka. In the absence of community-based long-term care for the elderly, they must rely on public hospitals that are not tailored to address their needs. For instance, the health sector's disability (in)accessibility is a serious concern for the elderly, and the healthcare system is not set up to offer care for specific conditions that affect elders, such as dementia, a growing problem with huge social consequences.

Elderly care services must go hand in hand with social and occupational support, which are also largely absent. The Department of Social Services has neither the resources nor a system in place to support independent or assisted living among the elderly, who are still mostly cared for (albeit at times neglected) by their families. Under difficult circumstances, some families are compelled to resort to institutionalised care. Public sector elderly homes are scarce and generally reserved

103. UN Universal Periodic Review - Sri Lanka 2017 Third Cycle, 28th Session 2017; Submission for the Review of the Situation of Persons with Disabilities in Sri Lanka, Disability Organisations Joint Front, 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/RightAccessJusticeArticle13/CSO/DisabilityOrganizationsJointFrontSrilanka.pdf>; Ramya Kumar, "Education for Some but Not for Others: Learning Support, Disability and Free Education," *Island*, 2021, <https://island.lk/education-for-some-but-not-for-others-learning-support-disability-and-free-education/>

104. "Growing Old before Becoming Rich: Challenges of an Aging Population in Sri Lanka", (Asian Development Bank 2019). <https://www.adb.org/sites/default/files/publication/557446/aging-population-sri-lanka.pdf>

for those with no family support.¹⁰⁵ Private homes are of varying quality and standards. Because the government lacks an effective mechanism to monitor these services, elderly persons are exposed to extortion and other forms of exploitation, even at healthcare settings.¹⁰⁶

11. Selected Health Issues of Concern

11.1 COVID-19

Sri Lanka has an impressive track record in the control of communicable diseases. Between 2018 and 2020, the World Health Organisation (WHO) certified Sri Lanka as being free of measles (2019), congenital rubella syndrome (2020) and mother-to-child of HIV (2020), on the heels of polio (2014) and malaria elimination (2016).¹⁰⁷ Many of these achievements are attributed to the highly successful (non-fee levying) National Immunisation Programme, delivered alongside maternal and child health services at the grass roots level.¹⁰⁸

Despite these successes, in early 2020, the government placed the national COVID-19 pandemic response in the hands of the military. Admittedly, the government did expand COVID-19 testing, contact tracing and treatment facilities within a short space of time. However, the COVID-19 response came under scrutiny for its aggressive surveillance strategy that targeted low-income groups and ethnic minorities, particularly Muslim communities.

105. Ibid

106. Ibid

107. B. J. C. Perera, "Elimination of Several Infectious Diseases from Sri Lanka: A Tribute to the Parents of our Children and to Our Immunisation Programme," *Sri Lanka Journal of Child Health* 49, no. 4(2020): 317-319. <https://sljch.sjloj.info/articles/10.4038/sljch.v49i4.9260/galley/6878/download/>

108. Ibid

Even the Government Medical Officers' Association (GMOA)'s initial proposals for a COVID-19 exit strategy included the size of the Muslim population in an administrative division as a variable for risk stratification.¹⁰⁹

To make matters worse, the Ministry of Health issued a controversial mandatory cremation policy after a COVID-19 death—contrary to WHO recommendations and international practice—drawing widespread protest from human rights groups.¹¹⁰ Against the religious beliefs of Muslims, the policy was justified on the grounds that COVID-19 burials would contaminate ground water, and remained in place until early 2021, after which, as a result of international pressure, burial was permitted in a designated area in the Eastern Province.¹¹¹ The dead were returned to their families as per pre-pandemic practice only in early 2022, owing to international pressures in the context of the economic crisis.

Arbitrary arrests of social media activists became common place in the early months of the pandemic, after the IGP instructed the Police to take strict action against those who criticise Government officials engaged in COVID-19 control. While the details of these arrests are still not known, social medial activist Ramzy Razee kwas arrested for inciting religious disharmony under the International Covenant on Civil and Political Rights (ICCPR) Act after posting a social media call for an 'ideological

109. Ramya Kumar "Beyond Numbers: Sri Lanka's COVID-19 Response, Politics and People," *Polity* 8 (1&2), 2020, 8-13. <http://repo.jfn.ac.lk/med/bitstream/701/2368/1/Beyond-Numbers-.pdf>

110. Ibid

111. "Sri Lanka Buries First COVID Victims after Long Standoff," *NDTV*, March 5, 2021, <https://www.ndtv.com/world-news/sri-lanka-buries-first-COVID-victims-after-long-standoff-2384649>

Jihad’ to counter anti-Muslim propaganda.¹¹² A few weeks later, the Human Rights Commission of Sri Lanka¹¹³ expressed concerns about arbitrary arrests, including the use of the ICCPR Act in a targeted manner. While the mental health consequences of such arrests were dire, Razeek suffered medical complications in prison.¹¹⁴

As the incidence of COVID-19 increased among prisoners, a spate of prison riots brought attention to the appalling conditions in the country’s prison system. In November 2020, eight prisoners at the Mahara jail were killed as prison guards opened fire during a protest over COVID-19 spread in the prison.¹¹⁵ A report on Sri Lankan prisons published by HRCSL,¹¹⁶ reported excessive congestion and a general lack of basic facilities, including safe food, water and sanitation, “amounting to inhuman living conditions.”¹¹⁷ With respect to healthcare, the report drew attention to inadequate infrastructure and acute shortfalls of prison healthcare workers, resulting in delays in the provision of medical care. The HRCSL also highlighted that certain groups of prisoners were made more vulnerable by these conditions,

112. Damith Chandimal & Ruki Fernando, “Free Expression, Hunger and Racism in Context of COVID-19,” *Groundviews*, April 14, 2020, <https://groundviews.org/2020/04/14/free-expression-hunger-and-racism-in-context-of-COVID19/>

113. “Sri Lanka HRC writes to IGP: Limiting freedom of expression in a democracy needs to strike a lawful balance,” Sri Lanka Brief, April 27, 2020, <https://srilankabrief.org/sri-lanka-hrc-writes-to-igp-limiting-freedom-of-expression-in-a-democracy-needs-to-strike-a-lawful-balance>

114. “Sri Lanka: Health Concerns for Detained blogger: Ramzy Razeek,” Amnesty International, 2020. <https://www.amnesty.org/en/documents/asa37/2357/2020/en/>

115. “Sri Lanka Prisoners Killed in Riot over Coronavirus Conditions,” *The Guardian*, November 30, 2020, <https://www.theguardian.com/world/2020/nov/30/sri-lanka-prisoners-killed-in-riot-over-coronavirus-conditions>

116. “Prison Study by the Human Rights Commission of Sri Lanka,” Human Rights Commission of Sri Lanka, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

117. *Ibid* p. vi

including “prisoners on death row, women, young offenders, foreign nationals, prisoners detained under the Prevention of Terrorism Act and prisoners with disabilities.”¹¹⁸

11.2 NCDs, mental health and illness

The Ministry of Health’s approach to NCD control focuses on early identification and treatment of NCDs and, to a lesser extent, primary prevention through lifestyle modification.¹¹⁹ Despite an epidemic of NCDs—the number one cause of death in Sri Lanka¹²⁰—public health teams have no dedicated staff to address the problem. NCD screening is, to some extent, promoted by public health inspectors, but they are heavily burdened by commitments to infectious disease control.¹²¹

Although unhealthy diets are a key risk factor for NCDs and obesity and other metabolic risk factors, such as high blood sugar and high cholesterol, are on the rise, the government has failed to take adequate measures to regulate the food industry. The Food Act of 1980 largely focuses on food sanitation with far less attention to legislation to protect the public from NCDs.¹²² The few public health interventions designed to control NCDs, place the onus on people: in 2016, the Ministry of Health introduced a traffic light labelling system for sugar-sweetened beverages and in 2019 for commercially packaged foods.¹²³ Yet, there is no

118. *Ibid* p. iii

119. “Circulars and Guidelines,” Directorate of NCD, 2022, https://www.ncd.health.gov.lk/index.php?option=com_content&view=article&id=14&Itemid=142&lang=en

120. “Health Data, Sri Lanka,” IHME, <https://www.healthdata.org/sri-lanka>

121. “Manual for the Sri Lanka Public Health Inspector”, Ministry of Health, 2010, https://phi.lk/Manual_for_the_Sri_Lanka_PHI.pdf

122. “Food Control Administration Unit, 2022a,” Food Act. https://eohfs.health.gov.lk/food/index.php?option=com_content&view=article&id=17&Itemid=158&lang=en

123. Food Control Administration Unit, 2022b, Current Regulations, https://eohfs.health.gov.lk/food/index.php?option=com_content&view=article&id=18&Itemid=159&lang=en

regulation in place to limit the expansion of fast-food chains or the marketing of unhealthy foods to children and adolescents. On a positive note, however, the Government has long supported policies banning the advertisement of formula milk for infants,¹²⁴ and implemented strong anti-tobacco legislation.¹²⁵

Psychiatric services are delivered across the country through specialist psychiatry units at public hospitals. A designated medical officer based at the Office of the Regional Director of Health Services (RDHS) oversees mental health services within each district. These services are targeted to people with psychiatric illness and community outreach services are under development for this group. However, community-based mental health promoting services, including for school-going adolescents and the elderly, are poorly developed or non-existent.¹²⁶ Similar to NCDs, there are no cadres to promote mental health in the Medical Officer of Health (MOH) system.

Mental health is inadequately addressed in the School Health Programme and health education curricula. Although school counsellors are appointed by the Department of Education, service quality and, consequently, utilisation varies, with stigmatisation an ongoing concern.¹²⁷ Some of these gaps are filled by non-government organisations, but they tend to provide

124. "Sri Lanka Code for the Promotion, Protection and Support of Breastfeeding and Marketing of Designated Products," Government of Sri Lanka, 2004, http://www.health.gov.lk/moh_final/english/public/elfinder/files/publications/list_publi/act/Act-BreastFeeding-English.pdf

125. "Legislation by Country: Sri Lanka, Campaign for Tobacco Free Kids", 2022, <https://www.tobaccocontrol.org/legislation/country/sri-lanka/summary#:~:text=The%20law%20prohibits%20the%20sale,under%20the%20age%20of%202021.>

126. Kathriarachchi et al., "Development of Mental Health Care in Sri Lanka: Lessons Learned," *Taiwanese Journal of Psychiatry*, 33 no 2(2019): 55-65, DOI: 10.4103/TPSY.TPSY_15_19.

127. H. K. H. Jayawardena & G. P. Gamage "Exploring Challenges in Mental Health Service Provisions for School-Going Adolescents in Sri Lanka," *School Psychology International*, 43, no1 (2022): 18-37

patchy service coverage. The neglect of adolescent mental health is reflected in the rising incidence of mental health issues among adolescents and young people.¹²⁸

11.3 Occupational health and safety

Livelihoods are critical for health, whether through their direct effects on physical and mental health or through their influence on income and social wellbeing. Despite such importance, occupational health and safety legislation remains weak in Sri Lanka.¹²⁹ Much of the informal sector is not covered by the legislation, and where applied, implementation has been ineffective.¹³⁰ New legislation, in draft stage for years, is yet to be passed by the Parliament.¹³¹

The Factory Ordinance (1942) remains the primary piece of legislation governing occupational health and safety. It requires reporting of occupational accidents and diseases, but underreporting is widespread with very few who sustain injury or disease receiving any form of compensation from employers. A study of construction companies found that among the 22 companies surveyed, over two-thirds had no occupational health

128. T. Rajapakse “Minimizing Self-Harm Among Adolescents and Young People,” In *Suicide Prevention in Sri Lanka: Recommendations for Action*, Sri Lanka Medical Association, 2019, 52-59, <https://slma.lk/wp-content/uploads/2020/10/Suicide-Prevention-in-Sri-Lanka-Recommendations-for-Action-final.pdf>

129. Work Safety and Security, *Daily FT*, February 1, 2021, https://www.ft.lk/ft_view__editorial/Work-safety-and-security/58-712356

130. Arnold et al., “Occupational Hazards in Medium and Large-Scale Industrial Sectors in Sri Lanka: Experience of a Developing Country”, *BMC Research Notes*, 12, no1(2019): 1-5; A.T. Onni, (2021). *Work and Health in the Coir Industry in Sri Lanka: A Descriptive Study with a Specific Focus on Risk Factors for Injuries and Incidence of Injuries at these Workplaces* [MPhil thesis]. University of Bergen. <https://bora.uib.no/bora-xmlui/bitstream/handle/11250/2834972/Anindita-Coir.pdf?sequence=1&isAllowed=y>

131. Work Safety and Security, *Daily FT*, February 1, 2021, https://www.ft.lk/ft_view__editorial/Work-safety-and-security/58-712356

and safety policy and about three-fourths did not provide health and safety training to their workers.¹³² With the post-war boom in the construction industry, fatal falls from heights among construction workers are widely reported in the media.¹³³

Despite the legislation in place, workplace hazards are weakly monitored and controlled. A study conducted in the Biyagama Export Processing Zone in the Western Province found numerous physical hazards, unsafe machinery and inadequate safety measures in many work settings.¹³⁴ During the pandemic, garment factory workers were compelled to work amid spreading COVID-19.¹³⁵ Owing to widespread union-busting practices at EPZs, workers have very little negotiating power to demand healthy and safe work conditions.¹³⁶

11.4 Social and structural determinants of health

GC 14 highlights the importance of addressing the underlying determinants of health, including safe water, sanitation, food, nutrition, housing, work and the environment. These aspects are usually neglected in discussions on the right to health where the focus tends to be on the healthcare system. Social determinants

132. W.D. Darshana, "Improvement of Health and Safety in Construction Sites in Sri Lanka," *Engineer: Journal of the Institution of Engineers*, Sri Lanka, 1(50), 2017, 53-70.

133. "Worker Dies after Falling in Lift Shaft of Lotus Tower," *Ada Derana*, 2018, <http://www.adaderana.lk/news/47962/worker-dies-after-falling-in-lift-shaft-of-lotus-tower>; Daily Mirror (2019). "Construction Worker Falls to Death from Hotel Building," *Daily Mirror*, April 9, 2019, https://www.dailymirror.lk/breaking_news/Construction-worker-falls-to-death-from-hotel-building/108-165226

134. Arnold et al., "Occupational Hazards in Medium and Large-Scale Industrial Sectors in Sri Lanka: Experience of a Developing Country," *BMC Research Notes*, 12(1), 2019, 1-5.

135. "Sri Lanka: Protect Garment Workers' Rights During Pandemic," HRW (2021), <https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>

136. "Overworked and Underpaid, Sri Lanka's Garment Workers left Hanging by a Thread: Workplace Issues in the Sri Lanka Garment Sector," Solidarity Centre, 2021, https://www.solidaritycenter.org/wp-content/uploads/2021/11/Workplace-Issues-in-the-Sri-Lanka-Garment-Sector.10.2021.FINAL_.pdf

of health (SDOH), as defined by the WHO Commission on SDOH,¹³⁷ are broad in scope and include the “conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life.” Since the Commission’s report, however, SDOH have been operationalised with less attention to the social relations, such as class, race or gender that structure/pattern health and illness.¹³⁸ This section briefly considers the structural determinants of health with reference to water, sanitation and nutrition in Sri Lanka.

According to national statistics, over 90% of households in Sri Lanka have access to safe drinking water and sanitation.¹³⁹ These aggregate statistics mask significant regional disparities. For instance, only 54% of households in NuwaraEliya, a tea plantation district and home to the deprived Malaiyaha community, have access to clean water when compared with 99.9% in Colombo.¹⁴⁰ Moreover, the availability of piped water and piped sewerage systems is far lower across the island with only 36% and 2%, respectively, having access to these facilities.¹⁴¹

High and persistent rates of malnutrition disproportionately affect rural and plantation districts in Sri Lanka. The most recent DHS 2016 reported that: 21% of children <5 years across the

137. “Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health: Commission on Social Determinants of Health Final Report,” WHO Commission on Social Determinants of Health & World Health Organization, 2008 <https://apps.who.int/iris/bitstream/handle/10665/43943/97892?sequence=1>

138. Crear-Perry et al., “Social and Structural Determinants of Health Inequities in Maternal Health,” *Journal of women’s health*, 30(2), 2021, 230-235.

139. “World Bank Open Data”, World Bank ,2022,<https://data.worldbank.org/>

140. Ibid

141. “Sri Lanka Needs New Water and Sanitation Policies to Unlock Investment Barriers,” World Bank, 2021, <https://www.worldbank.org/en/news/feature/2021/08/31/sri-lanka-needs-new-water-and-sanitation-policies-to-unlock-investment-barriers#:~:text=According%20to%20the%20Sri%20Lanka,and%20%25%20to%20piped%20sewerage>

island are underweight (30% in the NuwaraEliya district); 15% children <5 years are wasted (24% in the Moneragala district); and 17% of children <5 years are stunted (32% in the Nuwara Eliya district).¹⁴² The higher levels of malnutrition in rural and plantation districts suggest that malnutrition is closely linked with poverty and the unavailability of nutritious food.

Anaemia is widespread with 25% of children <5 years and 35% of women of reproductive age having anaemia in 2019.¹⁴³ An island-wide survey from 2006 (the most recent national survey) found a social gradient in the prevalence of moderate to severe anaemia among children <5 years where the lowest wealth quintile had the highest prevalence (39.9%) compared with the second (39.2%), middle (30%), fourth (29.6%) and highest (26.4%) quintiles, respectively. Similar differences were identified among non-pregnant women of reproductive age where 17.2% of the lowest wealth quintile and 10.7% of the highest wealth quintile were affected by moderate to severe anaemia¹⁴⁴ (Department of Census and Statistics, 2009). Numerous nutrition-specific health sector interventions address malnutrition, including promoting exclusive breastfeeding, healthy complementary feeding, protein-energy and micronutrient supplementation, as well as targeted in-kind benefits for pregnant women. However, malnutrition rates have remained resistant to such interventions, suggesting that broader welfare measures that address social and economic wellbeing may be needed.

142. "Demographic and Health Survey 2016," Department of Census and Statistics, 2017, <http://www.statistics.gov.lk/Health/StaticalInformation>

143. "World Bank Open Data," World Bank, 2022, <https://data.worldbank.org/>

144. "Prevalence of Anaemia among Children and Women Demographic and Health Survey 2006/7," Department of Census and Statistics, Dec 2009, <http://www.statistics.gov.lk/Resource/en/Health/PrevalenceOfAnaemiaAmongChildrenANDWomenInSriLanka.pdf>

12. Obscuring health disparities

The right to health, as interpreted by the CESCR, emphasizes equity and non-discrimination. In order to measure health inequity (or avoidable differences in access or outcomes), health information systems must be designed to collect data on social class/socioeconomic status, sex/gender, ethnicity, sexuality, disability and other variables. In Sri Lanka, for the most part, health information systems do not collect these data. The DHS considers age group, education level, urban/rural/estate sector, district of residence and wealth quintile,¹⁴⁵ but disease surveillance systems only elicit a bare minimum, usually age, sex and district of residence.

Even after Sri Lanka's 30-year civil war, which ended in 2009, data are not disaggregated by ethnicity. In the rare instances they are, clear disparities are discernible. In 2021, the Family Health Bureau reported maternal mortality by ethnicity for the year 2019; over a third (34%) of dead women represented ethnic minorities (Tamil 20%, Muslim 14%)¹⁴⁶, a higher proportion than their representation in the general population (24%; Tamil 15% and Muslim 9%).¹⁴⁷ Notably, the Family Health Bureau did not breakdown the category 'Tamil' into Sri Lankan and Indian Tamil—considered distinct ethnic groups in the Census. This omission may serve to mask wider inequity as the highest rates of maternal mortality are usually reported from plantation districts,

145. "Demographic and Health Survey 2016," Department of Census and Statistics ,2017, <http://www.statistics.gov.lk/Health/StaticInformation>

146. "Annual Report of the Family Health Bureau 2019," Family Health Bureau, 2021, https://drive.google.com/file/d/1j3KdkBN0cwueRB9opmYsJN_03tNGvwdZ/view

147. "Demographic and Health Survey 2016," Department of Census and Statistics ,2017,<http://www.statistics.gov.lk/Health/StaticInformation>

home to the Malaiyaha (Indian) Tamils.¹⁴⁸ While the Ministry of Health does disaggregate data by sex, it does not routinely report sex disaggregated health statistics. Other axes of difference like gender, sexual orientation and disability are completely obscured by a lack of data. In the absence of such data, it is impossible to delve into health inequities meaningfully.

13. Conclusion

The Government of Sri Lanka (GOSL), between 2018 and 2020, respected, protected and fulfilled the right to health by supporting the Free Health policy. Despite its limitations, the latter guarantees access to healthcare services on a non-fee levying basis, although the public system is weighed down by resource deficits at multiple levels, compelling even the poorest to incur out-of-pocket expenses in the private sector. Over the years, the growth of the private health sector has been aided by fiscal incentives, such as tax and import concessions, provided by the government as well as the latter's failure to invest adequately in the public healthcare system. These developments have widened inequities in access, amplified by a weak regulatory environment. For economically disadvantaged communities in rural areas, services are in short supply or simply unaffordable. The care needs of vulnerable groups like the elderly and people with disabilities remain unaddressed.

Health reform takes place with little participation of citizens. This also means that health policy making lacks transparency and accountability. Within the healthcare system, lengthy and ineffective mechanisms of redress make it near impossible for

148. "Annual Report of the Family Health Bureau 2019, "Family Health Bureau (2021). https://drive.google.com/file/d/1j3KdkBN0cwueRB9opmYsJN_03tNGvwdz/view

people to demand justice. More than a decade after the end of the civil war, ethnicity and language are unresolved concerns. Social class, gender and ethnicity intersect to structure healthcare experiences, for young people, women, LGBTIQ+ communities, people living with HIV/AIDS, and sex workers, resulting in health inequity. In 2020, the COVID-19 pandemic response was tainted by military incursion of the civil health sector as well as policies that discriminated against Muslim communities and other vulnerable groups, such as factory workers and prisoners. Even in other areas, the social and structural determinants of health have been largely neglected by the Government.

Applying a rights-based approach compels us to consider the availability, accessibility, acceptability and quality (3AQ) of health-related services, through a lens of equity and non-discrimination.¹⁴⁹ While this approach helpfully throws light on gaps and understudied areas in relation to GOSL's efforts to respect, protect and fulfil the right to health, it also raises a number of questions. For one, the right to health is not explicitly enshrined in the constitution of the country, although a Free Health policy guides the delivery of healthcare services in Sri Lanka. How do we understand redistributive policies like Free Health or Free Education in the absence of a constitutional guarantee to the right to health? Are collective claims on the state any less valid than mechanisms that allow individual citizens to resort to legal action on the right to health?

Second, and relatedly, how do we understand the individual right to health against collective entitlements to public health?

149. Gruskin et al., "Rights-Based Approaches' to Health Policies and Programs: Articulations, Ambiguities, and Assessment," *Journal of Public Health Policy*, 31, no 2(2010): 129-145. <https://doi.org/10.1057/jphp.2010.7>

As Meier argues,¹⁵⁰ dwelling on individual health rights could obscure the bigger picture or societal structuring and patterning of ill health, influenced by macro political and economic actors and forces, the latter being often neglected considerations in public health. The human rights establishment does not, for instance, grapple with the steady weakening of public health systems across the world and especially in the global South, under structural adjustment programmes and/or other interventions by the World Bank and International Monetary Fund (IMF).¹⁵¹ Amidst the calls for “private sector engagement” for universal health coverage, even within the United Nations and its agencies, how does one understand the privatisation agenda that has underpinned health sector reform in the post-Cold War era, through a human rights lens?

Third, are governments to be held solely accountable to the right to health? What about intergovernmental entities and multilaterals that operate at the global level, for instance, the World Bank and International Monetary Fund, or philanthropic actors like the Bill and Melinda Gates Foundation, or multinational conglomerates, all of whom have considerable influence on global and national health policies and budgets?¹⁵² How do we ensure that such actors also respect, protect and fulfil the right to health? And, lastly, to what extent do rights-based approaches create space for discussions on ongoing coloniality in global health? These are some tensions that need to be resolved in tandem with health rights advocacy at the country level.

150. Benjamin Mason Meier, “Advancing Health Rights in a Globalized World: Responding to Globalization through a Collective Human Right to Public Health,” *The Journal of Law, Medicine & Ethics* 35, no 4(2007): 545-555. <https://doi.org/10.1111/j.1748-720X.2007.00179.x>

151. M. Rodwan. Abouharb & David. Cingranelli, *Human Rights and Structural Adjustment* (Cambridge University Press, 2007).

152. Birn et al., *Textbook of Global Health* (Oxford University Press, 2017).

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SCHEDULE I

UN Conventions on Human Rights & International Conventions on Terrorism signed, ratified or acceded to by Sri Lanka as at 31st December 2020 (Years covered, 2018, 2019 & 2020)

Additional Protocol to the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons)

Acceded on 24 September 2004

Cartangena Protocol on Bio Diversity

Acceded on 26 July 2004

Convention on Biological Diversity

Acceded on 23 March 1994

Convention against Corruption

Acceded on 11 May 2004

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Acceded on 3 January 1994

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Acceded on 15 April 1958

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Ratified on 5 October 1981

Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I,II, and III)

Acceded on 24 September 2004

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

Acceded on 27 February 1991

Convention on the Prevention and Punishment of the Crime of Genocide

Acceded on 12 October 1950

Convention on the Rights of Persons with Disabilities

Ratified on 8th February 2016

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Acceded on 4th May 1979

Convention on the Rights of the Child (CRC)

Ratified on 12 July 1991

Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Acceded on 6th September 2000

International Convention against the Taking of Hostages

Acceded on 6 September

International Convention for the Suppression of Acts of Nuclear Terrorism

Acceded on 14 September 2005

International Convention for the Suppression of Financing of Terrorism

Ratified on 6 September

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Acceded on 18 February 1982

International Convention on the Protection of All Migrant Workers and Members of their Families

Acceded on 11 March 1996

International Convention for the Protection of All Persons from Enforced Disappearance

Ratified May 2016

International Covenant on Civil and Political Rights (ICCPR)

Acceded on 11 June 1980

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Acceded on 11 June 1980

International Covenant on the Suppression and Punishment of the Crime of Apartheid

Acceded on 18th February 1982

Kyoto Protocol to the Framework Convention on Climate Change

Acceded on 3 September 2002

Optional Protocol 1 to the International Covenant on Civil and Political Rights (ICCPR)

Acceded on 3 October 1997

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Ratified on 15 January 2003

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Ratified on 6 September 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

Ratified on 22 October 2006

Optional Protocol of the Convention against Torture (CAT-OP)

Acceded on 5 December 2017 (a)

Paris Agreement on Climate Change

Ratified on 21 Sep 2016

Protocol against the Smuggling of Migrants by Land, Sea and Air – Supplementing the United Nations Convention against Transnational Organised Crime

Signed on 15 December 2000

Protocol on Prohibitions and Restrictions on the use of Mines, Booby traps and Other Devices (Protocol 11 as amended on 03 May 1996) annexed to the Convention on Prohibitions or Restrictions on Use of certain Conventional Weapons

Acceded on 24 September 2004

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children – Supplementing the United Nations Convention against Transnational Organised Crime

Signed on 15 December 2000

Protocol on Prohibitions and Restrictions on the use of Mines, Booby-traps and Other Devices (Protocol 11 as amended on 03rd May 1996) annexed to the Convention on Prohibitions or Restrictions on Use of certain Conventional Weapons

Acceded on 24 September 2004

The Ramsar Convention on Wetlands

Acceded on 15 October 1990

United Nations Convention against Transnational Organised Crime

Signed on 15 December 2000

United Nations Convention on the Law of the Sea

Acceded 19 July 1994

Vienna Convention on Consular Relations

Acceded on 4 May 2006

Vienna Convention for the Protection of the Ozone Layer

Acceded 15 December 1989

SCHEDULE II

ILO Conventions Ratified by Sri Lanka as at 31 December 2020

No	Convention Name	Ratified Date	Present Status
C4	<i>Night work (Women) Convention, 1919</i>	<i>08.01.1951</i>	<i>Denounced</i>
C5	<i>Minimum Age (Industry) Convention, 1919</i>	<i>27.09.1950</i>	<i>Denounced</i>
C6	<i>Night Work of Young Persons (Industry) Convention, 1919</i>	<i>26.10.1950</i>	<i>Denounced</i>
C7	<i>Minimum Age (Sea) Convention, 1920</i>	<i>2.09.1950</i>	<i>Denounced</i>
C8	<i>Unemployment Indemnity (Shipwreck) Convention, 1920</i>	<i>25.04.1951</i>	
C10	<i>Minimum Age (Agriculture) Convention, 1921</i>	<i>29.11.1991</i>	<i>Denounced</i>
C11	<i>Rights of Association (Agriculture) Convention, 1921</i>	<i>25.08.1951</i>	
C15	<i>Minimum Age (Trimmers & Stockers) Convention, 1921</i>	<i>25.04.1951</i>	<i>Denounced</i>

C16	<i>Medical Examination of Young Persons (Sea) Convention, 1921</i>	25.04.1950	
C18	<i>Workmen's Compensation (Occupational Diseases) Convention, 1925</i>	17.05.1952	
C26	<i>Minimum Wage Fixing Machinery Convention, 1928</i>	09.06.1961	
C29	<i>Forced Labour Convention, 1930</i>	05.04.1950	
C41	<i>Night Work (Women) Convention (Revised), 1934</i>	02.09.1950	<i>Denounced</i>
C45	<i>Underground Work (Women) Convention, 1935</i>	20.12.1950	
C58	<i>Minimum Age (Sea) Convention (Revised), 1936</i>	18.05.1959	
C63	<i>Convention concerning Statistics of Wages and Hours of Work, 1938</i>	25.08.1952	<i>Denounced</i>
C80	<i>Final Articles Revision Convention, 1946</i>	00.09.1950	
C81	<i>Labour Inspection Convention, 1947</i>	03.04.1950	
C87	<i>Freedom of Association and Protection of the Right to Organise Convention, 1948</i>	15.11.1995	

SCHEDULE II

C89	<i>Night Work (Women) Convention (Revised), 1948</i>	31.03.1966.	<i>Denounced</i>
C90	<i>Night Work of Young Persons (Industry) Convention (Revised), 1948</i>	18.05.1959	
C95	<i>Protection of Wage Convention, 1949</i>	27.10.1983	
C96	<i>Pre-charging Employment Agencie Convention (Revised), 1949</i>	30.04.1958	
C98	<i>Rights to Organise and Bargaining Convention, 1949</i>	13.12.1972	
C99	<i>Minimum Wage Fixing Machinery (Agriculture) Convention, 1951</i>	05.04.1954	
C100	<i>Equal Remuneration Convention, 1951</i>	01.04.1993	
C103	<i>Maternity Protection (Revised), 1952</i>	01.04.1993	
C105	<i>Abolition of Forced Labour Convention, 1957</i>	07.01.2003	
C106	<i>Weekly Rest (Commerce and Offices) Convention, 1957</i>	27.10.1983	
C108	<i>Seafarers' Identity Convention, 1958</i>	24.04.1995	

C110	<i>Conditions of Employment of Plantation Workers Convention, 1958</i>	24.04.1995	
C111	<i>Discrimination (Employment and Occupation) Convention, 1958</i>	27.11.1998	
C115	<i>Radiation Protection Convention, 1960</i>	18.06.1986	
C116	<i>Final Articles Revision, 1961</i>	26.04.1974	
C131	<i>Minimum Wage Fixing Convention, 1970</i>	17.03.1975	
C135	<i>Worker's Representatives Convention, 1971</i>	16.11.1976	
C138	<i>Minimum Age for Admission to Employment, 1973</i>	11.02.2000	
C144	<i>Tripartite Consultations to Promote the Implementation of ILO Convention, 1976</i>	17.03.1994	
C160	<i>Labour Statistics Convention, 1985</i>	01.04.1993	
C182	<i>Worst Forms of Child Labour Convention, 1999</i>	01.03.2001	

SCHEDULE 111

**Humanitarian Law Conventions Ratified by Sri Lanka as at
31st December 2020**

*Geneva Convention for the Amelioration of the Conditions of the
Wounded and Sick in the Armed Forces in the Field, 1949*

Ratified on 28 February 1959

*Geneva Convention for the Amelioration of the Conditions of the
Wounded, Sick and Shipwrecked Members of the Armed Forces at
Sea, 1949*

Ratified on 28 February 1959

*Geneva Convention Relating to the Protection of Civilian Persons
in Time of War, 1949*

Ratified on 28 February 1959

*Geneva Convention Relating to the Treatment of Prisoners of War,
1949*

Ratified on 28 February 1959

SCHEDULE IV

Some Human Rights Instruments NOT Ratified by Sri Lanka as at 31st December 2020

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity - 26 November 1968 (date of adoption), 11 November 1970 (entered into force)

Convention on the Political Rights of Women - 20 December 1952(date of adoption), 7 July 1954 (entered into force)

Convention Relating to the Status of Refugees - 28 July 1951 (date of adoption), 22 April 1954 (entered into force)

Hours of Work (Industry) Convention – 1919 (date of adoption), 1921 (entered into force)

ILO Convention 168 concerning Employment Promotion and Protection against Unemployment – 1988 (date of adoption), 1991 (entered into force)

ILO Convention No 102 concerning Minimum Standards of Social Security- 28 June, 1952(date of adoption), 27 April 1955 (entered into force)

ILO Convention No 141 concerning Organisations of Rural Workers and their Role in Economic and Social Development – 1975 (date of adoption), 1977 (entered into force)

ILO Convention No 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service- 1978 (date of adoption), 1981(entered into force)

ILO Convention No 154 concerning the Promotion of Collective Bargaining – 1981(date of adoption), 1983(entered into force)

Optional Protocol II to the International Covenant on Civil and Political Rights (ICCPR) – 15 December 1989 (date of adoption), 11 July 1991 (entered into force)

Optional Protocol to the Convention on the Rights of Persons with Disabilities - 13 December, 2006 (date of adoption), 3 May 2008 (entered into force)

Promotional Framework for Occupational Safety and Health Convention - 2006 (date of adoption), 2009 (entered into force)

Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)- 1977 (date of adoption), 1979 (entered into force)

Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)- 8 June 1977 (date of adoption), 7 December 1978 (entered into force)

Protocol to the Convention relating to the Status of Refugees - 16 December 1966 (date of adoption), 4 October 1967 (entered into force)

Rome Statute of the International Criminal Court (ICC) – 17 July 1998 (date of adoption), 1 July 2002 (entered into force)

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SRI LANKA : STATE OF HUMAN RIGHTS (2018 – 2020)

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The Sri Lanka state of human rights 2018-2020 contains the following chapters :

- Overview of the state of human rights in 2018-2020
- Judicial interpretation of human rights 2018, 2019 and 2020
- Women's rights : women's issues between 2018-2020
- Freedom of religion or belief in Sri Lanka between 2018 - 2020
- Right to housing
- Education and human rights
- The right to health in Sri Lanka : challenges, contestations and contradictions

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