

# Executing Police Powers during Demonstrations: Legal Challenges in the Sri Lankan Context

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**Abstract**— *Upholding peace and order in the society is the prime duty and responsibility of the police force. In the present context, this main objective has become a challenge to the police officials due to various circumstances because they are directly involved with the civil life of the people. This was particularly evident in the incidents that recently transpired in Sri Lanka, where police officials executed their powers during demonstrations. This had eventually evolved into unlawful assembly and riots, resulting in the death of policemen as well as civilians.*

*In this regard, the objective of this research is to critically evaluate the legal challenges faced by the police officials in Sri Lanka in executing their Powers, in order to advocate peace and order in the society during a demonstration which at times evolves into unlawful assembly. Additionally, this research will examine the legal framework for the police force to intervene in demonstrations. This research thus delves in examining the challenges faced within the practical scenario rather than the theoretical procedures of both the police and civil majority. Identifying these challenges would minimize the abuse of police powers and to ensure further civil trust to the police force.*

*This study will be based on a qualitative research method which will critically analyse applicable legal standards, practical experiences of the police officials, views of the experts, demonstrators and ordinary citizens in order to understand the problem and to find possible answers. These reforms are to be introduced to our country, in order to expand developmental horizons through education, research and innovation to the police force to overcome possible challenges in the future.*

**Keywords**— Police Power, demonstration, legal framework

## I. INTRODUCTION AND BACKGROUND OF THE STUDY

Executing peace and order in the society is the vital element which leads to maintain the stability of the country. This mission of national security is legally bound to be secure through the Police force of a country. Sri Lankan Police Department does a tremendous task in order to accomplish this initial service towards the state. But in the present context, we see Police Department has to face various challenges when executing police powers, especially during demonstrations which later evolve to unlawful assembly. This has become the latest and most controversial trend, where police powers and fundamental rights of the citizens confront each other in the practical scenario. Because the Police Department is legally established through the Police Ordinance, all these challenges can be identified as legal challenges most importantly, the utmost legal challenge faced by Police officers is to disperse demonstrations without being guilty of breaching Fundamental Rights of demonstrators. On the other hand, it is important to identify the rights of the civil citizens to demonstrate and whether police is given legal power to control the demonstration in its initial stage or only when it evolves to an unlawful assembly and furthermore to a riot. This paper will explore the issues in question through examining the recent incidents that have transpired in Sri Lanka.

## II. DEFINING THE CONCEPTS: DEMONSTRATIONS, UNLAWFUL ASSEMBLY AND RIOTS.

Protest means an organized public demonstration expressing strong objection to an official policy or course of action. (Oxford Dictionary) According to this definition it is clear that the word protest is a synonym to the word demonstration. An Unlawful Assembly means any assembly of five or more persons likely to cause a disturbance of the public

peace. Riot can be described as the most violent form of a demonstration which involves the disturbance of peace by a large crowd of people. In practical terms, the sequence is progressive. The first stage is where protestors start a demonstration which is a lawful assembly. Secondly, due to certain acts of the protesters, the peaceful demonstration evolves into an unlawful assembly when a person carries a stone or a club or a board which contains provocative wordings inciting racism or the like. Finally, this can ultimately progress into a riot. Moreover, the word 'demonstration' is a neutral word which does not carry a negative meaning from its nature whereas the word "riot" carries a negative connotation. Peaceful, lawful demonstrations cannot be dissolved by the police since they do not amount to violating the peace and order in the society. But an unlawful assembly or a riot amounts to violation of peace and order in the society. When such situation arises, Police is required to interfere to dissolve such demonstration. In essence, a demonstration is deemed unlawful when an action of a single protestor is on the verge of violating the peace and order of the society.

### III. LEGAL COVERAGE FOR RIGHT TO DEMONSTRATE

Right to demonstrate is considered as one of the foundation of a free and democratic country. (Mead, D 2010) While the Right to demonstrate is not specifically or independently enshrined in the Constitution of Sri Lanka, Chapter VI Article 14 (1) of the Constitution grants "that every citizen is entitled to the freedom of speech, expression and lawful assembly" as a fundamental right. People hold demonstrations to express their thoughts towards the public opinion in order to demand their requirements and pursue their basic rights in a democratic setting. In the case of Vivian Gunawardene, the right to demonstrate was granted by the Supreme Court decision. Famous philosopher Voltaire (1694-1778) emphasized the value of right to speech "I may disagree with what you say, but I shall defend to the death your right to say it". Since right to speech, expression and lawful assembly implies the right to demonstrate, it is my argument that even though the government disagree with their demands, the authorities must defend their right to demonstrate. This idea was supported by Westhuizen by saying that "it is regarded as

important because speech is an expression of self. The desire to communicate, to express feelings and thoughts and to contribute to discussion and debate is an essential characteristic of human nature." ( "1994, Rights and Constitutionalism- the new South African Legal order")

But in the Sri Lankan context, the right to demonstrate is not an absolute right where the restrictions are also included in the same chapter. Article 15(2) indicates that "it shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence". This law was implemented to our Constitution through the International Covenant on Civil and Political Rights law. Further, Article 15 (7) indicates that "Article 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health and morality, or for the purpose of securing due recognition and respect of the rights of freedoms of others, or of meeting the just requirements of the general welfare of a democratic society". For In this context, "law" includes regulations made under the law for the time being relating to public security. It is clear by these limitations that right to demonstrate cannot violate national security as well as public peace and order which need to be upheld by the Police Department of Sri Lanka.

### IV. POLICE POWERS DURING DEMONSTRATIONS

During the era of British rulers, Police Department of Sri Lanka was established by the Police Ordinance in 1865. Basically, the Department was initiated to foster and maintain peace and order in the country.

The laws regarding the execution of police powers during Demonstrations which evolve to unlawful assembly were emphasized by the Police Ordinance as well as the Department Orders. Even though the execution of police powers during demonstrations is not explicitly mentioned in the Police ordinance, the Departmental Orders fulfil these loopholes. Part II B of the order specifies dealing with disorderly and riotous Crowds. Section (1) signifies that a crowd must not be punished for an offence already committed and

that force can only be used while the commission of the offence is in progress. Section (2) highlight the point that when dealing with disorderly crowds the Officer-in-charge must carefully consider the number of men to dispose as well as the amount of Police is strong enough to avoid any danger of being rushed and overpowered. Section (3) emphasize that where there is a small body of Police is available to deal with a disorderly crowd, the Police should carry firearms and ammunition. Batons should only be employed when the police force is sufficiently strong or when an armed party is available in reserve to support the baton party. Most importantly, section (4) mentions that under no circumstances can fire be opened unless the crowd are committing or attempting to commit any of the offences contained in the police "Firing Orders" or section 93 and 96 of the Penal code.

Also, when a demonstration is in progress and if it is about to evolve into an unlawful assembly or a riot, the police must first advice the demonstrators to dissolve. In the event the warning is disregarded, the Police must take necessary precautions to prevent it from becoming more violent by arresting wrongdoer protestors or take action to dissolve it immediately.

#### V. CONFLICT OF INTEREST BETWEEN FUNDAMENTAL RIGHTS OF DEMONSTRATORS AND POLICE POWERS

According to Article 4 (a) of The Constitution of Sri Lanka, people have given their sovereign legislative power to the Parliament to make laws on their behalf. Such enacted law includes the power to dissolve demonstrations by police departments in the event where demonstrations evolve to unlawful assembly. Therefore the public themselves has in extension, provided the legal authority for the Police to execute its powers under this legal framework. . This emphasizes the Democracy of our country where "people govern by the laws made by people themselves".

On the other hand, the most crucial point is that whether the Fundamental rights of the citizens, which are granted by the supreme law of the country, can be restricted by police officers in the name of upholding their duties. There is certainly a conflict of interest between upholding fundamental rights and for the police to execute its duties as enshrined in the Police Ordinance.

Most of the times it was evident that Police use tear gas and water canon to dissolve demonstrations. As per the Constitution since right to lawful assembly is a fundamental right, it is the public opinion that is not ethical and fair to use such police powers to dissolve such demonstrations. But in the case of Bernard Soysa v Attorney General, Supreme Court held that Public places cannot be disrupted for the use demonstrations (e.g. roads, pavements, railway stations). The purpose of this dictum is to establish that it is prohibited by law to demonstrate in an unlawful manner which violates peace and order in the society, and should such situation arise; the Police have power to dissolve such demonstration. Furthermore, recently Police spokesman Senior Superintendent of Police Mr. Ajith Rohana stated that "Police take actions to dissolve demonstrations not because of any private matter with the minority demonstrators but because the Police cannot keep silent when majority citizen's rights are being violated". (Lankadeepa 2013, 23 March) Moreover, if the authorized Police officers did not exercise their duties in such instances, they will be penalized by the judiciary for neglect of duty according to the section 82 of the Police Ordinance as particular Police officials assist the demonstrators to commit wrongful acts. Apart from that, under the Departmental orders the particular officer will be issued a charge sheet or other departmental inquiry. Even though he is not found guilty in the judicial decision, with the help evidence he is still liable to the Department for neglecting the duty. Therefore, Police officers cannot afford to be silent during the demonstrations when it evolves into an unlawful assembly. They are legally bound to actively interfere and take immediate actions to disperse the demonstrators. The following section will examine few recent incidents as case studies where the conflict of interests came into limelight.

#### VI. RECENT INCIDENTS

##### A. Katunayake Free Trade Zone demonstration in 2011

This was the landmark incident witnessed in the history of demonstrations in Sri Lanka, where the Police Department faced an unexpected shock therapy by the demonstrators.

This was a clash between Katunayake Free Trade Zone workers and the Police, where the public was protesting against the government's proposed Private Pension scheme. This demonstration escalated, claiming the life of a 21 year old worker Roshan Chanaka, and injured over 200 workers and policemen. Media reports that "It is undoubtedly one of the brutal crackdowns in recent history. There are several video footages which clearly show the barbaric and inhuman manner that some police officers carried out attacks against unarmed protesters." Sri Lankan Inspector General of Police (IGP) of the time Mahinda Balasuriya resigned after the incident and two police officers who allegedly escalated the clash were arrested. In the wake of the incident, these crucial questions arose against the Police Department: Who ordered live bullets? Who ordered iron bars? Why were trained riot police not used? And why was water cannon not brought in? This incident was a turning point to review the way of executing Police powers during demonstrations that progress to an unlawful assembly or riot. Moreover, it was emphasized by the reassignment of the IGP that Police has used excessive powers and unauthorized measures to dissolve the riot. In such situations where the demonstration has evolved into a riot, the Police riot squad should be summoned to the incident place to control the riot and dissolve the protestors since they are well trained by the Police department, especially to face such circumstances.

Here, the legal challenges faced by the Police officers are the lack of taking appropriate and timely decisions by the senior Police officers, as well as prior unawareness of information which also can be considered as major aspects to bring the failure towards Police department. To overcome this challenge, the Police officers should be empowered with necessary procedures to adapt during such incidents, backed by proper legal coverage.

#### B. Rathupaswala demonstration in 2013

This demonstration was with regard to a factory situated in the Rathupaswala, Weliveriya in Gampaha district, which area residents accuse a factory of being responsible for ground water pollution in the area due to the irresponsible disposal of waste water. Police had fired tear gas and water cannon at the protesters in an attempt to force them off the new Colombo-Kandy road, which they had been blocking, causing traffic

disruptions. Also, the Army has summoned in order to control the situation. Three civilians died during the protest and 10 others were hospitalized following clashes between protesters and members of the security forces and police.

In fact, Section 95 of the code of Criminal Procedure gives authority to a police officer above the rank of Superintendent of Police, a Magistrate or the Government Agent to summon security forces during a demonstration. More specifically, the Police can summon security forces in order to assist the Police to dissolve the protesters by Section 95 and 96 of code of Criminal Procedure. Moreover, On July 3rd 2013, President Mahinda Rajapaksha published a gazette that authorized the armed forces (army, navy, and the air force operating in every area of Sri Lanka) to engage in "the maintenance of public order". Bringing the military to Rathupaswala took place under this new gazette notification from 3rd July 2013. Also, he announced a new ministry under the title "the Ministry of Law and Order" in the aftermath of the said incident. It is crucial to point out that the maintenance of law and order within the legal framework of Sri Lanka is the function of the police, and the task of the armed forces is rather to defend the country against broader national security threats. The new developments as a result of the Rathupaswala incident have virtually reduced the function of the police, while the mandate of the security forces has broadened to include the maintenance of law and order- which was the primary duty of the Police department. The functions of the police and the functions of the military are completely different. The police, in carrying out their functions, have to do everything on the basis of the written law in the country, and their duty is directly under the control of the judiciary. There is an unbreakable link between the magistrate and the police which brings everything to centre around the courts. But when the armed forces enter into the maintenance of law and order, their framework of reference is not the law but the commands of their superiors. When the military enters into the maintenance of law and order, the place of the magistrate and the courts is undermined. The military operating in the streets do not have to report their actions to the courts; nor are they obliged to take directions from the magistrate at every step that they take.

What this means is that in Sri Lanka now, both the law and the courts have lost the place that they

had within the normal administration of law and justice.

#### C.Thunnana, Hanwella demonstration in 2014.

This demonstration occurred due to the protestors' demand that the rubber production factory be removed from the area because protesters charged that water sources in the area have been polluted by the factory. The protesters commenced a protest march from the factory to the Pahathgama Junction via the Highlevel Road. The protesters then returned to the factory and staged a demonstration. During the demonstration, the OIC of the Borella Police, Chief inspector Prasad Siriwardane was injured and passed away after being hospitalised. The OIC of the Borella Police was injured when he attempted to bring order to a protest organised by area residents against a factory located in the Thunnana area in Hanwella. Police Media Spokesperson SSP Ajith Rohana said that the OIC of the Borella Police was injured when a tree that had been cut down by the protesters fell on top of him.

Hanwella demonstration can be introduced as a contrast between Katunayake demonstration and Rathupaswala, because in latter events, protesters died during the incident while executing Police powers whereas in Hanwella, a Police officer died due to the aggressive actions of the protestors. Here, the legal challenge faced by the Police Department is the security of the Police officials during riots.

### VII. NEW DEVELOPMENTS IDENTIFIED BY THE POLICE DEPARTMENT

The fact that the Police Department as well as the protestors faced various challenges and difficulties when executing police powers during demonstrations has come to limelight in the aforementioned incidents. Since the prime responsibility of the Police force is to maintain peace and order in the society, police officials face a challenge to protect both the lives of the protestors as well as the Police officials in these circumstances. Therefore, the police department needs to promulgate new solutions to strike a balance between the aforesaid legal challenges. These new developments were highlighted by the actions taken by the Police officials during the recent demonstrations occurred in the Uva range of the country.

#### A. Badalkumbura demonstration 2014.

This demonstration was held against the proposed Kumbukkan Oya reservoir project. Here, the protestors acted violently by crossing the highways of Monaragala and Badulla causing traffic interruptions, using unauthorized instruments which produce sounds and damaging the main road. In this incident, notwithstanding the Police warning to disperse the unlawful assembly, the protestors continued the demonstration. Here, the Police took an advanced decision with the experiences of previous protests. Since there were hundreds of protestors, if the Police took action to dissolve it by hard measures, the unlawful assembly would have amounted to a violent stage and the damages to the lives and property would have increased. Had the Police clashed with the protestors then the story would end either by a severe injury or death of police officials or protestors or both. Because the majority motorists and pedestrians' human rights were being violated due to this protest, the Police used alternative roads to solve the traffic interruption. The Police are not suspected for neglecting their duty because since their prime responsibility is to maintain peace and order in the society to comfort the lives and property of people, here they have accomplished that task. Even though during the progress of the demonstration the Police was seen as silent, they have video-recorded the whole scenario and later identified and produced the 29 suspects to the magistrate court. The suspects were later released on bail, allowing the police to take further action. Also, the Police has estimated the road damage as Rs. 78,338/= with the assistance of the executive engineer of the Road Development Authority, and has filed a case to claim the damages from the protestors. The senior Police Officer, Uva range, Deputy Inspector General of Police Roshan Fernando stated that "this can be considered as a suitable reaction taken by Police against demonstrators rather than stepping towards a clash".

#### B. Anti-Muslim demonstrations in 2014.

In June 2014, anti-Muslim riots in Sri Lanka occurred where Muslims and their property were attacked by Sinhalese Buddhists in the towns of Aluthgama, Beruwala and Dharga Town in Kalutara District. At least four people were killed and 80 injured. This situation aroused after the incident

where a Buddhist monk and his driver were allegedly assaulted by Muslims in Dharga Town.

Under Section 77(1) of the Police Ordinance, ' to conduct a procession in public, notice in writing of same must be given at least 6 hours prior to such procession to the officer in charge of the police station nearest to the place at which the procession is to commence'. Therefore, the notice of the rally would have been given in writing to the Officer in Charge of the Aluthgama Police Division and if not the said rally itself would have been unlawful under Section 77(2) of the Ordinance. Section 77(3) provides that an officer of the police of a rank not below the grade of Assistant Superintendent, if he considers it expedient to do so in the interests of the preservation of public order, may give directions (whether orally or in writing) prohibiting the taking out of any procession'. Further, Section 79(2) provides as follows ' Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour which is intended to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence under this section.'

In contrast, when the next threat of Sinhalese Buddhist demonstrations against the Muslim community targeted Badulle town, the Police took a suitable precaution to prevent the incident by taking a court order. Here, several Sinhala Buddhists threatened the Police on 16<sup>th</sup> June 2014 that they will commence a riot on 18<sup>th</sup> June 2014. Subsequently, the Police took a court order under section 106 of the Civil Procedure Code to prevent meetings and demonstrations by the Sinhalese Buddhist in the Badulle district. The video clip which contained threatening words on 16th was brought forward to court by Police to prove the incident. Moreover, Police imposed the riot squad of the division as a preventive method. Here, one may argue Under 79(2) of the Ordinance why the Police did not arrest the threateners. Another legal challenge arises here that Police cannot act solely on law they must definitely look into the practical situation of the country because here if they arrest the threatener the maintenance of peace and order of the country would lead to worse. Later similar actions were taken in Mawanella also to prevent the disorder which was about to transpire in the area. With regards to this incident, the

media reported that had such measures with the usage of technology had been taken by Police during the demonstrations in Aluthgama, and then the problem would not have escalated to the extent we witnessed.

#### VIII. STATISTICS

There are no any organized statistics regarding the demonstrations since, nearly 40 demonstrations occur in Sri Lanka on a weekly basis, and even a simple objection by an individual is also considered as a demonstration. But it is important to mention that since the Katunayake incident, it was proved that Police has not even used the necessary powers to dissolve demonstrations. Moreover, even several demonstrations occurred from 2013- to date, Police has used tear gas or water power only 5 times. On the other hand, riots have been yearly reported through the Police Gazette. Under the grave crimes abstract for the year 2012, for the whole island from 01.01.2012 to 31.12.2012, number of riots reported was 18 and all of them are considered as true cases. Also 6 are considered reported by the complaints filed, where in 2 accuses were unknown. Among all reported riots; investigations pending in 8, 4 are pending in Magistrate court and 2 pending with Attorney General. Altogether, total pending cases are 14. Even though the years of 2013 and 2014 is not calculated yet it can be predict due to the number of riots occurred recently that the amount of riots would be highly increased. To this end, urgently addressing the aforesaid legal challenges is of utmost importance keeping in view of the increasing trend of demonstrations and protests in the country.

#### IX. MEASURES TO OVERCOME THE LEGAL CHALLENGES

That the aforementioned cases demonstrate the legal challenges which the Police have to face while executing police powers during demonstrations. To overcome all these challenges successfully, new legal measures can be introduced to the Police department. It was evident by the practical scenarios of demonstrations that the prevailing procedures of the Police Ordinance as well as the Department Orders are not adaptable in the present context. Especially, as the Police Ordinance was lastly amended in 1974, the demonstration situations in

the 1970's society and the present context have a vast difference. So this research recommends that new laws should be enacted in order to overcome the prevailing legal challenges faced by the police department during the practical scenario of demonstrations rather than in theoretical aspects.

When considering the Katunayake demonstration in 2011, even in the Department Order Part II B (4) and the Part III Riot Order mentions that the Police can open fire for the defence of a person and property under the given instructions of section 93 and 96 of the Penal Code and the sequence of open fire, it has become unsuccessful due to the complexity of the demonstrations held in the present day. Because when the Police practically commence to clash with the protesters, the Police is not in a status to evaluate the requirements of Section 93 and 96 of the Penal code to open fire or not.

Next, during Rathupaswala demonstration in 2013, summoning security forces to the incident highlights the controversial nature of this issue. When security forces summon under Section 95 of Criminal Procedure Code then the Security forces are under the power of Police orders, and then there the responsibility remains with Police. But in this case as per the Gazette notification, security forces hold responsibility of open fire. Under this framework, which will then be liable for the death of civilians by open fire of the security forces- is it security forces or the Police? The question remains unanswered.

Also, in the demonstration in Thunnana 2014, where the OIC Borella died due to a tree that had been cut down by the protesters fell on top of him, it is essential to discuss why he intervened to the scenario when Hanwella is not his respective Police station area. But it was legal to summon him to the incident as per the section 125 of the Code of Criminal Procedure that, any Police officer not below the rank of ASP to take over at any stage any investigation under this chapter for any offence to conduct and direct such investigation or any part of it to be conducted by any Police officer of his choice or by a team of specially selected police officers drawn from any part of the island. But still there is a matter of the security of the Police officers who try to dissolve demonstrations and riots in order to protect the lives of others. In the case of OIC Borella, at the time he was

appointed to dissolve the demonstration by senior officers, he reported and tried to get involved into the matter. But there were no precautions taken to prevent the harm which can occur not only to public but as well as to him. Based on this case, it is paramount to establish new laws for the protection of Police officers during demonstrations such as, where there should be a substantive time gap between the time appointed by the senior officer and the time to report to the incident point in order to study the nature of the demonstration and have prior plan on how to interfere to dissolve the riot as well as ensuring the security of the police officers. I suggest that It should be given at least 2hour time gap for the Police officials who are summoned as additional Police officers to dissolve a demonstration to have a prior knowledge of the nature of the demonstration and a prior plan on how to intervene to the situation.

Moreover, as highlighted during the Badalkumbura demonstrations as well as anti-Muslim demonstration that was to be held in Badulle, the Police Department should take the advantage of new technology in order to identify the suspects, to have a prior knowledge of the nature of demonstrations, and to collect evidence of the damages occurred. If all these measures are exercised in order to overcome the legal challenges, then the Police Department will be able to dissolve demonstrations with the least harm to human rights of civil community, public and private property, and protestors as well as to the Police officers.

## X. CONCLUSION

The prime duty of Police Department which is to maintain peace and order in the society as well as to protect the rights and property of the people has today evolved up to a legal challenge even to the protection of police officers. The research has identified various legal challenges through case studies, and offered few recommendations to overcome the challenges considering the failures which occurred in the recent past demonstrations. The latest incidents demonstrated that even when the provoked demonstrators were highly aggressive, the Police have nonetheless taken measures to patiently execute their police powers. It is paramount to establish a legal framework which allows the police to execute its powers without endangering the lives of the parties

involved in demonstrations. To this end, the legal provisions should be amended accordingly to the prevailing situation in the country. It is imperative to strike a balance between upholding the fundamental rights of the citizens to demonstrate, while allowing the police force to execute its duties within the legal framework.

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