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Protesting Against Protest Laws - Enabling a Legally Assured Fundamental Right to Peaceful Assembly in Sri Lanka

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Abstract

Sri Lanka'smpost-independence track record onnguaranteeing the constitutionally provided freedom of peaceful assembly (inter-changeable with the right to protest) has been tainted with suppression of non-violent assemblies by police forces violating the *de minis* rule of intervention, use of disproportionate force by national security forces which has resulted in the gunning of peaceful protestors, and the politicisation of the emergency regulations process. A key reason for this reality is the inefficaciousness of the archaic laws governing this freedom, and the absence of accountable legal and institutional frameworks for practically providing the right to peaceful assembly for the citizens.mIt is the main thesis of this research that the existing laws must be restructured and streamlined to provide for a legally assured fundamental right assembly. To substantiate this thesis, the essay first identifies key shortcomings in the existing laws and institutional frameworks, post to which it provides three immediate legal developments which must take place to provide for a protected freedom of peaceful assembly in Sri Lanka.

Keywords: *Peaceful assembly, National security forces, Freedom, Right to protest*

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Introduction

The historical development of the international human rights system has led to a normalisation of legally assured fundamental freedoms within national jurisdictions. The qualitative standard of living has become the facilitated access to human rights, whilst derogation from such a rights-based approach is viewed as an offence against humanity and a direct counter to the continued authority of governments. While the Western hemisphere of the world battles with the dilemma of political correctness and the right to offend, in the Eastern part of the world; specifically in Sri Lanka, the right to freely exchange ideas and the right to peacefully assemble and protest against the orthodoxies of the day seems to be a codified idea, riddled with chinks in its armour. Such inadequacies have slowly but surely built a culture of fear of expressing ideas that contradict the leviathan of government, lest the innocent dissenter suffers consequences for doing so, and has further entrenched the power of the police to control what is criminalized as "unlawful assembly". From the outset one must observe the obvious: the national laws governing the right to peaceful assembly are counterproductive in guaranteeing this freedom. Hence, this essay identifies the specific problems in the existing laws and institutional frameworks governing the right to peaceful assembly. Thereafter, it purports the key actions which must be taken to address the lacunas and inefficiencies in the present laws.

The Fundamental Rights Mirage Known as The Right to Peaceful Assembly

The right to freedom of expression and thereby, the right to peaceful assembly is the lifeblood of a society of liberty, yet a pervasive authoritarian culture continues to gain footing on the rocky slope that is the laws of Sri Lanka's fundamental right to peaceful assembly. Although the fundamental right to peaceful assembly is contained within Art 14 (1) (b) of the Constitution of Sri Lanka[3] and although Sri Lanka is a party to the International Covenant on Civil and Political Rights (ICCPR), which provides for the rights to freedom of peaceful assembly and association, there are various issues restricting the ability of a citizen to rightfully protest.

The primary restriction is contained within Art 15(2) of the Constitution[4]

[3] The Constitution of The Democratic Socialist Republic of Sri Lanka 1978.
[4] Ibid.

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which permits the restriction of freedom of expression in the interests of racial and religious harmony or as per Art 15(7)[5], even more vaguely, in the interests of national security, public order, and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. Additionally, the freedom to peaceful assembly could even be withheld from members of the armed forces, police and other forces in exercise of this right according to Art 15(8)[6].

What seems to be the greatest issue among these restrictions is their vague and arbitrary nature which permits the State to use it as a tool of suppression of any dissent against a political agenda. In other words, the government has been able to use increasingly emboldened police as its watchdog and evade any responsibility for harm caused by using the excuse of such restriction. Why? Quite simply because a dissenting public gave offence to the government of the day. Certainly, the judicial arm of the country has defined the right to freedom of expression theoretically. A central case is that of ***Joseph Perera v. Attorney General***[7] where the court stated that the freedom of speech and expression means the right to express one's convictions and opinions freely by word-of-mouth, writing, printing, pictures, or any other mode. The application of such a right was apparent in ***Amaratunga v. Sirimal***[8] where protestors were drumming and clapping to create noise as a part of a protest against the government and the court ultimately held that drumming and clapping was a part of the right to freedom of speech and expression. Nonetheless, the inconsistent usage of such laws were prevalent throughout the year spanning 2021 and, even more pertinently, today.

As an example, one may point to the P2P March ('Pottuvil to Polikandy' March)[9] where Tamil and Muslim citizens from the Northern and Eastern Provinces assembled on the streets during the period of 3 February 2021 to 7 February 2021. They attempted to address multiple issues, including

[5] Ibid.
[6] Ibid.
[7] Joseph Perera Alias Bruten Perera v The Attorney General And Others [1992].
[8] Amaratunga v. Sirimal and Others (Jana Ghosha Case) [1993].
[9] *Mahendran Thiruvarangan, 'The P2P march and beyond, re-imagining resistance amidst ethnic polarisation', <https://www.themorning.lk/the-p2p-march-and-beyond-re-imagining-resistance-amidst-ethnic-polarisation/> accessed 25 April 2022.*

the continuing militarization of the North and the East, the ban on burying the Covid-19 infected remains of Muslims, justice for the families of the disappeared, and the continuing detention of Tamil political prisoners. There were a series of court orders issues against these protests, including the Kalavanjikudi Magistrates Court on 1 February 2021 ordering to "prohibit protests planned in support of the accusation of human rights violations at the Geneva sessions". The Public Security warned of arrests and even threatened that the police had the protester's photographs and their vehicle numbers. Funnily enough, the Sri Lanka Freedom Party (SLFP) organizing an Independence Day rally[10] in Jaffna with the slogan 'One Country, One Race' faced no such interruptions.

What constitutes a valid restriction in terms of 'religious or racial' harmony or in terms of 'public order' is not without abuse and creates a double-standard in favour of the Leviathan that is the government. The Rule of Law (RoL), which maintains many concepts of constitutionalism within it, is infringed by such practices. A.V. Dicey's[11] understanding of the RoL maintained principles such as equality before the law and a system of checks and balances on the usage of power. The right to free speech is inherent in such a system as no man can be considered above the law. The practical effects of the current legislation certainly does not reflect the RoL as once conceived.

What is also common among these protest restrictions is the near unchecked power granted to policemen in controlling assemblies. A simple example are the events that transpired at the Black Lives Matter Solidarity[12] protests in June 2020 where in the Police arrested 53 protesters in June 2022 led by the Frontline Socialist Party for allegedly violating a court order preventing them from holding a protest in solidarity with the Black Lives Matter protests taking place around the world. The police clearly used serious force in arresting the protestors who simply stood by peacefully or resisted arrest, as evidenced by video recordings and television footage. This was later justified by Jaliya Senaratne (police spokesperson) who explained that they

[10] 'SLFP supporters parade 'One Country, One Nation' posters in 'Independence Day' rally across Jaffna', <https://www.tamilguardian.com/content/slfp-supporters-parade-one-country-one-nation-posters-independence-day-rally-across-jaffna > accessed 20 April 2022.
[11] A.V. Dicey, 'Introduction to the Study of the Law of the Constitution', 1885
[12] Kalani Kumarasinghe, 'Sri Lanka Cracks Down on Black Lives Matter Solidarity Protest', <https://thediplomat.com/2020/06/sri-lanka-cracks-down-on-black-lives-matter-solidarity-protest/> accessed 24 April 2022.

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were simply trying to prevent the spread of COVID-19. Another example of this is the Mass Rally[13] organized by the Samagi Jana Balawegaya (SJB) in November 2021 for the purpose of criticizing current economic issues. The police while failing to obtain a court order to prevent the protests from taking place still proceeded to place spike traps on roads to prevent buses from reaching Colombo for the protests. Even more recently the protests in Mirihana [14] on the 31st of March 2022 against the Rajapakshe regime and the protest in regards to the petrol shortage at Rambukkana[15] on 19th April 2022 gave the police all the excuse they needed to commit police brutality on a larger scale, even going so far as murdering an innocent. Such malicious intention may even permeate in more subtle ways such as the barricades[16] set-up by the police outside the Fort President's Palace which had concealed spikes with black tarpaulins as a precaution against protestors.

One may even make note of how the Unlawful Assembly law contained in Sec 138 of the Penal Code (PC)[17] of Sri Lanka is unfairly tipped against the protestor. It is noteworthy that even from the get-go that a negative connotation is attached to the very idea of assembly by its people and contributes to a culture of fear surrounding dissent. This section provides that an unlawful assembly is an assembly of 5 or more persons if the 'common object' is to overawe by using criminal force any Central/State Government or Parliament, to oppose performance of legal process, to carry out mischief, to deprive any person of any incorporeal right or to use criminal force to compel someone to do any illegal act. Sec 140 PC[18] sets the punishment out for this as being imprisonment which may extend to 6 months, a fine or both. The extended version of this is within Sec 141 PC[19] which would punish

[13] *Zulfick Farzan, 'SJB Protest: Police use Spike Strips to prevent buses from entering Colombo', <https://www.newsfirst.lk/2021/11/16/sjb-protest-police-use-spike-strips-to-prevent-buses-from-entering-colombo/> accessed 21 April 2022.*

[14] *Sarasi Wijeratne, 'Police brutality amidst allegations of orchestrated violence at Mirihana protest', <https://counterpoint.lk/police-brutality-amidst-allegations-orchestrated-violence-mirihana-protest/> accessed 27 April 2022.*

[15] *Kamanthi Wickramasinghe, 'Unrest in Rambukkana: State level contradictions galore as victims await justice', <https://www.dailymirror.lk/recomended-news/Unrest-in-Rambukkana%3A-State-level-contradictions--galore-as-victims-await-justice/277-235614> accessed 26 April 2022.*

[16] *Zulfick Farzan, 'Spikes on Barricades? Sri Lankan authorities position lethal barricades around President's Office', <https://www.newsfirst.lk/2022/04/24/spikes-on-barricades-sri-lankan-authorities-position-lethal-barricades-around-presidents-office/> accessed 22 April 2022.*

[17] *Penal Code An Ordinance To Provide A General Penal Code For Ceylon.*

[18] *Ibid.*

[19] *Ibid.*

people with a weapon offence at an unlawful assembly with imprisonment extending to 2 years, a fine or both.

The primary problem with this law is the difficulties associated with determining who can be held vicariously liable for the acts of other members of an unlawful assembly. Sec 146 PC[20] provides that if an offence is committed by any member of an individual assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. Where is the line drawn though? Dr. Gour[21] explains that all persons who take part in an unlawful assembly are guilty of that offence, although mere bystanders and those who are simply curious will not be. Further, he expresses a note of caution that in an assembly of a large number of persons where some resort to violence "it need not necessarily mean that every one of the persons present actually shares the opinions, intentions or objects of those who misbehave or resort to violence".

Ultimately, this is a matter of interpretation from case to case and could be unfairly tipped against an innocent party who can only orally maintain his innocence. The ability of the courts to impose wide interpretation on this idea of vicarious liability was apparent in ***Sirisena Ranawaka and Others v. The Attorney-General***[22] where the court held the appellants were clearly members of the unlawful assembly the common object of which was to cause hurt to Heen Banda and the fact that all of them did not enter the house made no difference to their liability. It was determined that once the accused is found to be a member of an unlawful assembly the extent of their participation is immaterial.

Granted, theoretically the case of ***K.A. Andrayas v. The Queen***[23] maintained that mere membership of an unlawful assembly, without more, does not render each member of that unlawful assembly criminally liable for an offence committed by some other member thereof. The Crown must prove such liability beyond a reasonable doubt. However, in many protests it is the

[20] *Ibid.*
[21] *H.S. Gour, 'Penal Law of India' [2018].*
[22] *Sirisena Ranawaka and Others v. The Attorney-General [1985].*
[23] *K.A. Andrayas v. The Queen [1964].*

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so-called 'little man' who campaigns for rights, which in many instances, is to simply obtain a reasonable standard of living. His ability to protect himself against an oppressive and restrictive police and access to legal counsel to defend himself through the criminal justice system pales in comparison to the leviathan of the State. Therein, the theoretical burden of proof is merely a turnstile which could be easily bypassed under this vague, possibly suppressive law.

The Civic Struggle 2022: A Demonstration of The Unprotected Right to Peaceful Assembly

The 2022 Civic Struggle in Sri Lanka which is colloquially referred to as *The Aragalaya*, is a contemporary politico-legal development which exemplified significant shortcomings in the protest law of the Country whilst fostering advocacy spaces for a protected right to assembly within and outside the courtroom. It is paramount to reflect on selected legal events surrounding *The Aragalaya* to reflect on some of the specific developments on the legal standpoint pertaining to protesting.

On the 02nd of June 2022, the Supreme Court refused to hear a fundamental rights petition filed by Mr. Mohamed Husli Hameen[24], a civil engineer, who was an active participant of the People's Struggle in the 'Gota Go Gama' in the Galle Face Green, seeking an injunction restraining the government from taking action to evict the protesters. The Supreme Court ultimately sided with the State Counsel who explained that the construction of stages and other structures on the protest site hinders the movement of civilians as well as the staff of the Presidential Secretariat, including the President. On the other hand, it is commendable that the Colombo Fort Magistrate rejected the police request presented on the 07th of July 2022[25], to prevent protesters gathering near President Gotabaya Rajapaksa's official residence in Colombo, ahead of the major anti-government protest.

[24] *'FR petition seeking an order not to remove structures set up at GotaGoGama dismissed', <https://www.dailymirror.lk/breaking_news/FR-petition-seeking-an-order-not-to-remove-structures-set-up-at-GotaGoGama-dismissed/108-238273>*

[25] *'Court rejects police request against protests in vicinity of President's House', <http://www.adaderana.lk/news/83486/court-rejects-police-request-against-protests-in-vicinity-of-presidents-house>*

Amidst the controversy of the subsequent 09th of July protest during which the protestors stormed the Presidential Palace[26], so was the response of the state authorities in curtailing the "violent" anti-government protest. Despite the subjective morality of ousting the eighth Executive President of Sri Lanka, through organised civic action, RoL necessitates that any protestor suspected of committing acts of violence and public property destruction in the name of freedom of assembly, would be penalised through due procedure. In violation of this necessary RoL standard, the consequent government deployed the Sri Lankan Security Forces in the dead of the night on the 22nd of July 2022, to forcibly disperse people from the *Gota-Go-Gama* protest site and assaulted protesters in central Colombo, injuring more than 50 people and arresting at least 9 others[27]. This use of force was despite a public pledge by the protestors of evacuating the protest site later in the same day.

Such a suppressive approach towards the 2022 Civic Struggle is continually apparent from the actions of the incumbent state authorities, despite the vocalisation of strong criticism by international human rights actors. An apt example of this is the arrest and detention of frontliners of the protest in the past few weeks without adherence to due process under the Prevention of Terrorism Act (PTA)[28]; a highly contested legislation for its obsolete and unethical provisions on arrest and detention for national security purposes. The brief analysis on the state response to the 2022 Civic Struggle strengths the main thesis of this study on the need to systematically reform the protest law in Sri Lanka. The following section will deliberate on key points of change in the law to achieve such a reform.

Changing Narratives: From Unlawful Assembly to a Legally Assured Right to Peaceful Assembly

In a status quo where the right to peaceful assembly has become a peremptory human right codified in core international human rights conventions such as the International Covenant on Civil and Political Rights

[26] *Alys Davies & Simon Fraser, 'Sri Lanka: Protesters storm President Gotabaya Rajapaksa's residence', <https://www.bbc.com/news/world-asia-62104268>*
[27] *Human Rights Watch, 'Sri Lanka: Security Forces Assault Peaceful Protesters',<https://www.hrw.org/news/2022/07/22/sri-lanka-security-forces-assault-peaceful-protesters>*
[28] *Prevention of Terrorism Act 1979*

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(ICCPR)[29], the archaic laws constitutionally recognising a right to peaceful assembly but practically curtailing this right under the 'unlawful assembly' umbrella, require immediate reformation. The succeeding analysis will academically advocate for three key legal developments in the peaceful assembly laws of Sri Lanka, needed for a legally assured fundamental right.

The inherent vulnerability of environments of assembly to violence and politicisation, requires clearly defined limitations on instances in which assemblies can be criminalised and/or dispensed under the domestic law of Sri Lanka. Due to this, the first proposition is to couple the limitations set out in Article 15(3) and (7)[30] applicable to the entrenched freedom of peaceful assembly and to reword such limitations in line with the concept of 'legitimate aims'. An international precedent on this concept is set out in ***S.A.S. v. France***[31] where the European Court of Human Rights argued that every legislation limiting the exercise of a universal freedom must set out clear goals which justify such limitations as being necessary for the existence of a democratic society. As per Article 15(3), a limitation on the enjoyment of the fundamental right to peaceful assembly are the domestic laws set to preserve racial and religious harmony in the Country. Article 15(7) sets out grounds such as 'national security' and 'public morality' as being of greater legal priority, which must prevail when in conflict with the freedom for peaceful assembly. On a first level of analysis, it is argued that racial and religious harmony interests provided for in Article 15(3) are automatically covered under Article 15(7) because racial and religious harmony is a prerequisite for public security and policy. This permits for an amalgamation of the two provisions on the basis of legal redundancy.

On a second level it is observed that there is a legal misinterpretation when transferring from Article 15(3) and 15(7) limitations, to the concept of 'common object' under Section 138 of The Penal Code of Sri Lanka[32]. The exhaustive list of common objects defined in the section pertain to governance, protection of RoL and provision of selective individual freedoms.

[29] *International Covenant on Civil and Political Rights (adopted 16 December 1966) Art 21.*
[30] *(n 1) Art 15(3), 15(7).*
[31] *S.A.S. v. France, application n° 43835/2011, the Grand Chamber (GC) of the European Court of Human Rights (the European Court, ECtHR)*
[32] *The Penal Code of Sri Lanka 1883 Sec 138.*

This leaves out grounds such as public health and morality recognised under Article 15(7) of the 1978 Constitution. Furthermore, as seen by the case facts of ***Bandaranaike v Jagathsena & Others***[33] such criminalising circumstances has been expansively interpreted by courts to include behaving in a manner which constitutes an act of insult towards the incumbent president of the Country. Therefore, there is a disconnect between the constitutionally provided limitations on the right to peace assembly, and the supportive laws which practically limit such a freedom under the offence of unlawful assembly.

In light of both these levels of analysis, it is proposed that a specific, non-exhaustive list of limitations pursuing 'legitimate aims' must be introduced to Article 15 of the present constitution or into the fundamental rights (FR) chapter of a new constitution to be adopted in Sri Lanka. Adopting the advisory opinion of Article 19; an international human rights organisation defending the freedom of expression, protests may be constitutionally limited in exceptional circumstances under five legitimate aims, namely, national security, public safety, public health, public morals and public order[34]. Furthermore, the connective *mens rea* element of 'common object' under the offence of unlawful assembly, which was defined in ***The Queen v H. Ekmon***[35] must be strictly interpreted by the courts as an objective violating one or more of the aforementioned legitimate aims.

The second proposition is introducing a national legislation supportive of Article 14 (1) (b)[36] which pertains to the exercise of the freedom of peaceful assembly and the intervention of security forces to contain gatherings which violate the legitimate aims identified in the previous suggestion. Undoubtedly, such an Act would replace the Penal code, Criminal Procedure Code (CrPC)[37] and Police Ordinance (PO)[38] provisions governing the offence of unlawful assembly. Hence, the proposed Act would streamline all laws surrounding freedom of peaceful assembly, rectify all conflicts with emergency law and

[33] *Bandaranaike v. Jagathsena And Others [1984], Sri Lanka Law Reports Volume 2, Page No. 397.*
[34] *Article 19, 'The Right to Protest: Principles on the protection of human rights in protests', 12 - 13, <https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf> accessed 30 April 2022.*
[35] *The Queen v. H. Ekmon, New Law Reports Volume, 67- 49.*
[36] (n 23) art 14(1)(b).
[37] *Criminal Procedure Code No.15 of 1979.*
[38] *Police Ordinance No.41 of 1984.*

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laws pertaining to terrorism by serving as the superseding law, and provide the enforcement mechanism to the constitutional guaranteed right. The suggestion to introduce such a national statute is supported below by academic conversation on possible general principles embodied by the Act and the matters it should provide for.

The first provision of the Act should be specific legal definitions on key components of the right to peaceful assembly, such as the constituents of an 'assembly', grounds for deeming an assembly 'unlawful', and the concept of 'proportionate intervention'. The need for specificity in such components is captured in the UN Human Rights Committee Expert Commentary on Article 21 of the ICCPR[39] (The Commentary). Paragraph 06 of the commentary presents an expansive interpretation to the term 'assembly' where such an action can include online demonstrations and expressions in private spaces. Furthermore, governments are obligated to provide equal protection to all such assemblies under the Article 21 liberty[40]. When comparing this with the numerical implied definition on the term 'assembly' which is available in Section 138 of the Penal Code, it becomes apparent that the present approach to freedom of assembly is entirely restrictive. Another apt example of the need for specificity is found in Paragraph 31 of The Commentary where the "block(ing) or hinder(ing) of internet connectivity"[41] is not seen as a 'proportionate intervention' because many activities associated with peaceful assemblies take place online. The silence of existing 'unlawful assembly' laws and the Public Security Ordinance (PSO)[42] on the subject of online activities related to peaceful assemblies, has permitted recent Governments to consistently block social media during times of civil protests[43]. Both these examples evidentiate the need for specific legal definitions pertaining to key components of the right to peaceful assembly.

Secondly, the Act should delegate authority for intervention in times of

[39] *United Nations Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), International Covenant on Civil and Political Rights <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement> accessed 29 April 2022.*
[40] *ibid para 06.*
[41] *(n 32) para 31.*
[42] *Public Security Ordinance No.25 of 1947.*
[43] *See* Peony Hirwani, 'Sri Lanka reverses 'completely useless' ban on social media amid protests' *Independent UK* (United Kingdom 03 April 2022) <https://www.independent.co.uk/asia/south-asia/sri-lanka-curfew-social-media-blocked-b2049853.html> accessed 27 April 2022.

unlawful assembly to identified public institutions and offices, and provide exact directives on what constitutes proportionate intervention. An observable shortcoming in the present laws governing peaceful assembly is the sheer variety of actors with legitimate authority of intervention. Such actors range from the President who is empowered by Section 06 of The PSO[44] to delegate power to 'such authorities and persons' to impose emergency regulations curtailing public gatherings during times of public crisis, to the Magistrate who possesses authority under Section 95 of The CrPC[45] to disperse assemblies which are deemed unlawful. The involvement of various government agents exercising administrative discretion when intervening in circumstances of peaceful and unlawful assemblies, has led to a track record of suppression of civic demonstrations. Additionally, since protective principles such as 'legitimate restrictions' and 'non-discrimination' are not directly integrated into and protected by the existing laws pertaining to peaceful assembly, whether or not an intervention is deemed proportionate and just is determined reactively by a court when a FR petition is made. This reactive approach to facilitating the freedom of peaceful assembly is strongly discouraged by international persuasive precedent set out in cases such as ***Castillo Petruzzi et al. v. Peru*** [46]. Here, it is stated that the law must actively promulgate norms and facilitate the development of practices which are necessary to protect the freedoms (including that of peaceful assembly) guaranteed to citizens. Therefore, the Act should codify the delegation of legitimate authority to government entities to intervene in circumstances of unlawful assemblies, along with just principles and directions on intervening proportionally.

The third provision is to codify tests and standards pertaining to the exercise of freedom of peaceful assembly and indictment under 'unlawful assembly', which have developed through judicial interpretation. Such a codification would enable a direct application of law rather than an absolute reliance on judicial discretion and circumstantial analysis by police at the point of arrest. For example, ***Samy and Others v Attorney-General***[47] sets forth that the mere presence of an individual at the scene of the unlawful assembly

[44] *(n 35) sec 6.*
[45] *(n 30) sec 95.*
[46] *Castillo Petruzzi et al. v. Peru. Judgment of May 30, 1999, Series C No. 52, Para. 207.*
[47] *Samy And Others v. Attorney-General (Bindunuwewa Murder Case) [2007], Sri Lanka Law Reports, Volume 2, Page No.216.*

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does not automatically make them a participant of such an assembly, under the principle of presumption of innocence. This precedent could be codified through the proposed Act into a standard of 'intentional contribution to unlawful assembly through action or omission'. Such codifications of tests and standards will set forth a benchmark for facilitating the right to peaceful assembly and determining the culpability for unlawful assembly, thereby preventing arbitrary arrest and possible indictment of by-standers. The afore-provided propositions on the composition of a national statute governing the freedom of peaceful assembly, are merely an overview and cannot be deemed as an exhaustive list of provisions for the proposed Act.

The third legal development in the law on civic demonstration in Sri Lanka is introducing an expedited process of FR petitioning against unlawful interventions to the right to peaceful assembly. Though Article 126(5) of the Constitution[48] requires the Supreme Court to dispense a FR petition within two months, in 2017 there were approximately 3000 pending FR cases with the Supreme Court[49] and approximately 26% of FR cases filed took between one and two years to complete[50]. Key reforms to the law such as the introduction of 'epistolary jurisdiction' has simplified the application process to the Supreme Court considerably. Yet, the duration taken to table a trial is unsuitable to counter an undue intervention to the right to peaceful assembly, which is an immediate need. Therefore, it is proposed that a preliminary 'Shorter Trial Scheme' (STS) be introduced to the FR petition process to enable the release of a judgement within two to five days on key matters such as:a) should the citizen be released with or without bail? b) is the citizen permitted to continue exercising his right in the contended circumstances with or without specific limitations? and c) should the relevant government authority hold, reform or strengthen the intervention. At this shorter trial, the judge may determine if a more comprehensive hearing on the matter is needed, and this hearing can take place whilst the verdict of the STS is observed for the duration of the longer trial. This STS becomes extremely relevant in cases of online demonstrations of civil dissent and

[48] *(n 1) art 126.*
[49] *Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka (A/HRC/35/31/Add.1 23 March 2017) Para 82.*
[50] *D. Samararatne, Judicial Protection of Fundamental Rights in Sri Lanka: State of Human Rights (Law and Society Trust 2018) 137.*

prolonged protests in a designated site.

The three legal developments academically lobbied for in this section can be recognised as immediate points of reform which must be adopted to provide for a legally assured right to peaceful assembly in Sri Lanka. Post to such measures, long term action ought to be adopted to improve the overall sensitivity of the legal system towards protecting this fundamental human right.

Conclusion

The international standard for providing for the evolving human need to demonstrate objection and dissent through peaceful assembly, is legally assuring a corresponding right under the domestic law of a country. This requires the national law to adopt three key steps. The first is the conceptual provision of entrenching a fundamental right to peaceful assembly through suitable inclusions in the constitutional mechanism. Secondly, a country must supplement the constitutionally protected right to peaceful assembly with institutional guarantees and enabling legislation. The third step is to specify the limitations on this right with due adherence to established principles of fairness and justice, to avoid the politicisation, misinterpretation and abuse of such limitations. A study on the existing laws governing the right to peaceful assembly makes it apparent that Sri Lanka has completed the first step of conceptual provision. Though the national legal system has nominally taken the second and third steps, the efficacy of these measures in guaranteeing the freedom of peaceful assembly is low due to the archaic, vulnerable and uncoordinated nature of the laws in place. Recognising legal assurance as the best defence against an unlawful prohibition of the right to peaceful assembly, this essay justifies the need for restructuring the law and legal framework relating to this fundamental freedom and proposes directives on achieving a streamlining of these laws.