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எனது இல.
My No.

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உமது இல.
Your No.



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திகதி
Date.

28.10.2022

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

The Hon. Minister of Public Security
Ministry of Public Security
“Suhurupaya”
Battaramulla

The Hon. Minister,

The application of the Police Ordinance, No.16 of 1865, to civilian protests

One of the functions of the Human Rights Commission of Sri Lanka (Commission, HRCSL) is to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights and standards, by virtue of *section 10(d) of the Human Rights Commission of Sri Lanka Act, No.21 of 1996*.

In the pursuit of discharging this function, the Commission wishes to apprise the Hon. Minister, of the particulars of the application of the *Police Ordinance, No.16 of 1865 as amended*, in particular, *section 77 – 80* of the same, in order to ensure that the fundamental freedoms of speech and expression, and peaceful assembly of the citizens of Sri Lanka enshrined in *Articles 14(1)(a) and 14(1)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka* respectively are protected, subject to the restrictions contained in the Constitution itself.

The provisions that the Commission takes particular issue with are *sections 77(2) and (3) of the Police Ordinance, No.16 of 1865, as amended by Act No.41 of 1984*.

Section 77(3) of the Police Ordinance, No.16 of 1865, as amended by Act No.41 of 1984, states that a police officer not below the grade of Assistant Superintendent may prohibit a public procession or subject it to conditions if he considers it expedient to do so in the ‘interests of the preservation of public order.’ **The Commission emphasizes that the power conferred by section 77(3) of the Police Ordinance, No.16 of 1865, as amended by Act No.41 of 1984, is strictly subject to the Constitution and should only be exercised accordingly.**

Article 15(7) of the Constitution of the Democratic Socialist Republic of Sri Lanka provides that the freedoms of speech and expression, and peaceful assembly conferred by *Article 14(1)(a) and (b) of the Constitution* shall be subject to restrictions as may be prescribed by law in the interests of national security, public order and protection of public health and morality or for the purpose of securing due recognition and respect for the freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purpose of this paragraph, ‘law’ includes regulations made under the law for the time being relating to public security. It is axiomatic that all laws are subject to the conformity of the Constitution of this country.

The regulations mentioned therein are commonly known as Emergency regulations.

The interpretation of *section 77(3) of the Police Ordinance, No.16 of 1865, as amended by Act No.41 of 1984*, is supported by the case law of the courts of the Democratic Socialist Republic of Sri Lanka, with the Supreme Court in *Saranapala v Solanga Arachchi, Senior Superintendent of Police and Others* [1999] 2 Sri L.R. 166 stating that the exercise of the power in *section 77(3)* is subject to the *Constitution* and that the measures taken to maintain public order accordingly, must be unrelated to the suppression of free expression, and the incidental restriction on the exercise of free expression must be no more significant than is essential to the furtherance of public order.

The Supreme Court had interpreted this provision accordingly with consistency over a period of decades in *Fernando v Attorney General and Another* [1983] 1 Sri L.R. 374, *Gunawardena v Perera and Others* [1983] 1 Sri L.R. 305, *Amaratunga v Sirimal and Others (Jana Ghosha case)* [1993] 1 Sri L.R., and *Senasinghe v Karunatileke, Senior Superintendent of Police, Nugegoda* [2003] 1 Sri L.R. 172. "Exceptions to Article 14(1)(a) must be narrowly and strictly construed for the reason that the freedom of speech constitutes one of the essential foundations of a democratic society, which, as we have seen, the Constitution in no uncertain terms, declares Sri Lanka to be". (Amerasinghe J. in *Sunila Abesekera v Ariya Rubasinghe, Competent Authority and others, S.C. Application No. 2001 SLR 316*)

The Commission is of the view that in light of the above, *section 77(2) of Police Ordinance, No.16 of 1865, as amended by Act No.41 of 1984*, creates an offence for contravening *section 77(1)* of the same is ultra vires the *Constitution*.

The Commission is of the opinion that the *Police Ordinance, No.16 of 1865*, in particular *section 77 of the Police Ordinance, No.16 of 1865 as amended by Act No.41 of 1984*, has been incorrectly interpreted and applied in the recent past ultra vires the Constitution to suppress the fundamental freedoms of speech and expression. Peaceful assembly of civilian protesters enshrined in *Article 14(1)(a) and (b) of the Constitution*, respectively.

Besides the threat to fundamental freedoms guaranteed by the Constitution, this state of affairs mainly concerns the Commission because, as expressed by Fernando J in the *Jana Ghosha case*, 'stifling the peaceful expression of legitimate dissent today, can only result, inexorably, in the catastrophic explosion of violence some other day.....'

Therefore, the Commission recommends the Honourable Minister to **direct the IGP** that regulations made in terms of the Police Ordinance would not be permissible if it reasonably impacts the exercise of fundamental rights and freedom enshrined in the Constitution, specifically in relation to Article 14(1)(a) and (b).



Justice Rohini Marasinghe
Judge of the Supreme Court (Retired)
Chairperson
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