



RECOMMENDATIONS MADE BY THE SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

This booklet summarizes recommendations made by the Sub-Committee on Fundamental Rights. For purposes of clarity, the proposals recommended by the Sub-Committee have been simplified and presented in Question and Answer format

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The proposed Bill of Rights by the Sub-Committee on Fundamental Rights contains rights and freedoms that apply to all persons as well as rights that apply only to citizens of Sri Lanka. Some of these rights can be restricted on specific grounds recommended by the Sub-Committee.

Comments made in this booklet which are not extracted from the Sub-Committee Report have been given in italics and begin with an asterisk (). Some recommendations of the Sub-Committee have been paraphrased in order to simplify the contents of the Report.*

What are Human Rights?

Human rights are rights to which a person is inherently entitled as a human being. These rights as to how a human should be recognised and treated are universally accepted and are inalienable.

What are the main international instruments that recognise Human Rights, applicable to Sri Lanka?

- ✚ In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights as “*a common standard for all people and all nations.*” The Declaration, consisting of thirty Articles, covers civil and political rights as well as economic, social and cultural rights.
- ✚ The two International Covenants that recognise Human Rights are:
 - The International Covenant on Civil and Political Rights (ICCPR); and
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966.

Sri Lanka is a signatory to all these international instruments known as the International Bill of Human Rights.

The Constitutional evolution of Human Rights in Sri Lanka

The history of constitutional human rights in Sri Lanka can be traced back to the three Constitutions of the post-independence period.

The Soulbury Constitution:

- ✚ The Soulbury Constitution did not contain a Bill of Rights but provided safeguards for minority interests through Article 29(2).

The First Republican Constitution of 1972:

- ✚ The First Republican Constitution pledged to realize the objectives of a socialist democracy including fundamental rights and freedoms of all citizens.
- ✚ It introduced a separate Chapter on “Fundamental Rights and Freedoms” which was limited to Civil and Political Rights.
- ✚ The Constitution also included Principles of State Policy to guide the making of laws and the governance of Sri Lanka but they were not enforceable.
- ✚ The Constitution did not provide for a special mechanism to enforce Fundamental Rights.

The Second Republican Constitution of 1978 (present Constitution):

- ✚ The Second Republican Constitution contained a Chapter on “Fundamental Rights” which was again limited to Civil and Political Rights.
- ✚ Although the Fundamental Rights were expanded, they were subjected to extensive restrictions.
- ✚ The right to life clause of the 1972 Constitution was deleted.
- ✚ Action for redress could only be filed as regards any executive or administration action and there was no post enactment judicial review.
- ✚ The Chapter on Directive Principles of State Policy was more expansive than the earlier one and contained more specific provisions relating to the social and economic advancement of persons. However, not being justiciable, they were not elevated to the status of rights.

Why is it important to include justiciable socio-economic rights in the formulation of a progressive Bill of Rights?

- ✚ The Intrinsic link between political rights and freedoms, access to economic resources and a better quality of life cannot be disregarded.
- ✚ Therefore, it is essential to articulate not merely the right *per se*, but also the specific expression of the right.
- ✚ This is particularly so in a country such as ours where deprivation of such resources has led to violent conflicts in the past.
- ✚ Sri Lanka has also committed to the Sustainable Development Goals and it is appropriate that these commitments be given expression in the new constitution.
- ✚ The global trend is to recognize such rights as fundamental rights as evidenced by the Constitutions of South Africa, East Timor, Kenya, Nepal and Latin American countries.

What are the new rights recommended by the Sub-Committee [in comparison to the Fundamental Rights recognized under Chapter III of the present Constitution]?

Civil and Political Rights¹

**Civil and political rights guarantee the freedom of a person to engage in civil and political life of the society and the State without such freedom being infringed by the government, society, or other individuals².*

The following new Civil and Political Rights have been recommended for inclusion in the Bill of Rights by the Sub-Committee on Fundamental Rights:

- Inherent rights of the person to life, dignity, equality, freedom and security of the human person
- Right not to be subjected to enforced disappearance
- Right to equality and freedom from discrimination (a number of new grounds on which discrimination is prohibited have been introduced)
- Freedom to hold opinions
- Freedom from exploitation
- Right to privacy
- Family rights
- Rights of children
- Right of access to justice
- Right of access to fair State action

¹ This categorization is for purposes of convenience and is based on the text of the International Covenant on Civil and Political Rights (ICCPR) ratified by Sri Lanka on 11 June 1980.

² This definition is not provided in the Sub-Committee Report but has been furnished for purposes of clarity in compiling this booklet.

Socio-economic Rights³

**Economic, social and cultural rights are recognised to ensure a decent quality of life for individuals within the community. These rights create an obligation for States to ensure reasonable access to resources as guaranteed by such rights⁴.*

The following new Socio-economic Rights have been recommended for inclusion in the Bill of Rights by the Sub-Committee on Fundamental Rights:

- Labour Rights
- Family rights
- Right to education
- Right to health
- Social rights
- Right to environment and natural resources
- Social security rights for senior citizens
- Rights of citizens with disabilities and special needs
- Consumer rights and right to public services

³ This classification is for purposes of convenience and is based on the text of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Sri Lanka on 11 June 1980.

⁴ This definition is not provided in the Sub-Committee Report but has been furnished for purposes of clarity in compiling this booklet.

What inalienable rights are you entitled to as a human being?

Inherent rights of the person

- ✚ Every **person** shall have the inherent right to life, dignity, equality, freedom and security of the human person.
- ✚ Every **person** shall have the right to recognition as a person before the law.
- ✚ No **person** shall be arbitrarily deprived of his or her life or punished with death.

What rights do you have as a person arrested, detained or accused under the law?

Rights of arrested, detained and accused persons

Arrested, detained and accused persons too have rights. They are as follows:

- ✚ No **person** shall be arrested, detained or otherwise deprived of his liberty except according procedure established by law.
- ✚ Every **person** charged with or indicted for an offence shall be entitled to be tried without undue delay by a competent court at a fair trial.
- ✚ Every **person** is presumed innocent until such person is proven guilty.
- ✚ No **person** shall be compelled to testify against himself or herself or to confess guilty.

How can you be protected from the infliction of bodily harm?

Right not to be subjected to enforced disappearance

- ✚ Every **person** has a right not to be subjected to enforced disappearance.

Freedom from torture

- ✚ Every **person** has a right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Security of the Person

- ✚ No **person** shall be arbitrarily deprived of his or her bodily integrity.
- ✚ No **person** shall be subjected to medical or scientific experiment without such person's informed consent.

Are you protected from arbitrary discrimination?

Right to equality and freedom from discrimination

- ✚ All **persons** are equal before the law and have the right to the equal protection of the law.
- ✚ Women and men shall have equal rights and duties in all areas of public, family, political, economic, social and cultural life.
- ✚ The Sub-Committee recommends that discrimination based on the following grounds be prohibited:
 - Race
 - Gender
 - Sex
 - Sexual orientation
 - Gender identity
 - Maternity
 - Marital status
 - Parental status
 - Caste
 - Ethnic or social origin
 - Age
 - Disability
 - Religion
 - Conscience or belief
 - Political or other opinion
 - Culture
 - Language
 - Place of birth
 - Place of residence

What is the extent of your freedom of thought, conscience and religion?

Freedom of thought, conscience and religion

- ✚ Every **person** is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of the person's choice.
- ✚ No restrictions shall be placed on the exercise of the fundamental right declared and recognised by this Article.

What rights do you have to enjoy and promote your culture and to the use of your own language?

Right to enjoy and promote culture and use of language

- ✚ Every **person** is entitled alone or in association with others to enjoy and promote such person's culture and, to use the language of such person's choice.
- ✚ **Persons** belonging to a cultural or linguistic community shall not be denied the right, with other members of that community, to enjoy their own culture or to use their own language.

What is meant by freedom of speech and expression?

Freedom of speech and expression including publication and freedom of information

- ✚ Every **citizen** is entitled to the freedom of speech and expression including publication.
- ✚ This right shall include the freedom to express opinions and to seek, receive and impart information and ideas in any form, including orally, in writing, in print, in the form of art, or through any other medium, freedom of the media, freedom of artistic creativity, and academic freedom.

Do you have the freedom of assembly and association?

Freedom of peaceful assembly and freedom of Association

- ✚ Every **citizen** is entitled to the freedom of peaceful assembly and to the freedom of association.

What are your rights relating to movement within and outside the country?

Freedom of movement

- ✚ Every **person** is entitled to the freedom of movement within and outside the country.

- ✚ Every **person** shall be free to leave the Republic unless detained in accordance with the law.

Do you have a guaranteed freedom to engage in a livelihood or profession?

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

- ✚ Every **citizen** is entitled to the freedom to engage alone or in association with others in any lawful livelihood, trade, occupation, profession, business or enterprise.

What labour rights have you been given in relation to your work/occupation?

Labour rights

- ✚ Every **citizen** has a right to be fairly remunerated and to enjoy decent work and safe and healthy working conditions.

Trade Union rights

- ✚ Every **person** is entitled to the freedom to form and join a trade union of the person's choice and for such trade union to function without undue hindrance.

Do you have freedom from exploitation?

Freedom from exploitation

- ✚ No **person** shall be subjected to trafficking, slavery, practices similar to slavery, or forced labour.

What is the extent of your right to privacy?

Right to privacy

- ✚ Every **person** has the right to be protected from arbitrary interference with family life or the inviolability of the home, the right not to have the person's home or property searched or the person's possessions seized, except according to procedure established by law; and
- ✚ The right not to have privacy of the person's correspondence and communications infringed.

Are there any special rights that apply to you as a part of a family unit?

Family rights

- ✚ Every **person** of marriageable age shall be entitled to marry and to form a family.
- ✚ The rights of spouses within the family shall be equal.
- ✚ No marriage shall be entered into without the free and full consent of the intending spouses.

Do you have the right to ownership of property?

Right to ownership of property

- ✚ Every **citizen** is entitled to own property alone or in association with others subject to the preservation and protection of the environment and the rights of the community.

Do you have a guaranteed right to education?

Right to education

- ✚ Every **person** has the right to education.
- ✚ Primary and secondary education shall be compulsory and shall be provided free by the State.
- ✚ Tertiary education shall be provided free by the State to all on the basis of capacity and equitable opportunity, which shall be progressively realized.

What is the extent of your right to health?

Right to health

- ✚ Every **citizen** has the right to enjoy the highest attainable standard of physical and mental health and to have access to preventive and curative health-care services through free health services provided by the State.
- ✚ No **person** may be denied emergency medical treatment.

What are your social rights?

Social rights

- ✚ Every **citizen** shall have the right to participate in, contribute to and enjoy the benefits of sustainable economic, social, cultural and political development equally and without discrimination.

Do you have a right to a healthy environment and to natural resources?

Right to environment and natural resources

- ✚ All **persons** have the right to a healthy environment that is not harmful to their health or well-being and that can sustain all forms of life.
- ✚ All **persons** have the right to have the environment protected through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources.

What are the recommended rights of children?

Rights of children

- ✚ **Every child** shall have the right to special protection by the family, the community and the State, particularly against all forms of abandonment, maltreatment, neglect, discrimination, violence, oppression, abuse including sexual abuse and exploitation.

Do you have any guaranteed rights as a senior citizen?

Rights of senior citizens

- ✚ **Every senior citizen** shall have the right to special protection by the State to social security.

What are the rights of citizens with disabilities or special needs?

Rights of citizens with disabilities or special needs

- ✚ **Citizens** with a disability or special needs shall enjoy the same rights as all other citizens.
- ✚ **Persons** with disabilities have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others in all aspects of life.

Do you have a right of access to justice?

Right of access to justice

- ✚ Every **person** has the right of access to justice through courts or any other tribunal.
- ✚ Legal aid shall be made available by the State to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

What is meant by a right of access to fair State action?

Right of access to fair State action

- ✚ Every **person** has the right to State action that is lawful, reasonable, procedurally fair and proportionate.

What are your consumer rights and rights to public services?

Consumer rights and right to public services

- ✚ Every **person** shall have the right to goods and services of good quality, to truthful information and protection of their health and safety, fair prices and to reparation for damages.
- ✚ Public services shall be provided to all **persons** without discrimination and in a manner that is reasonable and without undue delay.

Do permanent residents who are non-citizens have any rights?

Rights of non-citizens permanently and legally resident

- ✚ A **person** who, not being a citizen of any country, has been permanently and legally resident in the Republic on the date on which the Constitution comes into force and continues to be so resident, shall be entitled to

all the rights declared and recognized by this Chapter, to which a citizen of Sri Lanka is entitled.

The regime for enforcement of Fundamental Rights in Sri Lanka

Responsibility to respect, secure, and advance Fundamental Rights by the State

- ✚ All organs of State shall take all necessary measures including the enactment and implementation of necessary legislation and the adoption and implementation of appropriate policies and programmes for the full realization of the rights enshrined in the Constitution.

Protection of Fundamental Rights in a State of Emergency

- ✚ In a State of Emergency measures may be prescribed by law derogating from the exercise and operation of the fundamental rights recognised in the Constitution to the extent strictly required by the need of the situation and necessary in a democratic society.

New Constitution to prevail over all written and unwritten laws

- ✚ All written and unwritten laws in force at the time of coming into force of the new Constitution including the Chapter on Fundamental Rights shall be read subject to

the provisions of the [new] Constitution and in the event of a court declaring that any such law is inconsistent with any such provision, such law shall be deemed to be void to the extent of such inconsistency.⁵

Legal remedy against infringement or imminent infringement of Fundamental Rights

- ✚ Every **person** shall be entitled to apply to the Court of Appeal as provided by the Constitution in respect of the infringement or imminent infringement by State action or non-State action of a Fundamental Right to which such person is entitled.
- ✚ Where the person aggrieved is unable to make an application to the Court owing to reasonable cause, an application may be made on behalf of such a person, by any relative or friend of such person, if the person aggrieved raises no objection to such application.
- ✚ An application may also be made in respect of any individual, group or class of persons affected or in the public interest, by any person or by any incorporated or unincorporated body of persons, acting bona fide.

⁵ The Sub-Committee recommends that this Article shall not apply to personal laws in force at the time of coming into force of this Constitution and within three months of the commencement of the Constitution, the President shall establish a Commission to examine all existing written and unwritten personal laws and to report to the President as to whether any such law is inconsistent with the provisions of the Constitution.

Interpretation of Fundamental Rights Provisions

- ✚ In interpreting the rights recognized in the Constitution, a court, tribunal or other body
 - shall take into account the Directive Principles of State Policy
 - shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom
 - shall have regard to the international legal obligations of the Republic and other sources of international law; and
 - may have regard to foreign law.

Fundamental Rights and Language Rights jurisdiction and their exercise

- ✚ The Court of Appeal shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by State action or non-State action of any fundamental right or language right enshrined in the Constitution.
- ✚ The jurisdiction of the Court of Appeal may be invoked by any person or body of persons.

Constitutionality of Laws and Statutes

- ✚ The Supreme Court/Constitutional Court shall have sole and exclusive jurisdiction and power to make a declaration that any law made by Parliament, any statute made by a Provincial Council or provision thereof that is inconsistent with any provision of the

Constitution is invalid to the extent of inconsistency.

Recommendations on Language Rights

- ✚ Sinhala and Tamil **to be recognized as the** national and official languages of the Republic. **Citizens** who use the national languages have equal rights in learning, practicing and promoting their languages. The link language of the Republic shall be English.
- ✚ Every **citizen** has the right to seek information of public importance from the government institutions or private or non-profit organization in either of the national languages or link language.
- ✚ A Member of Parliament or a Member of a Provincial Council or a member of a local authority shall be entitled to perform the duties and discharge his/her functions in any of the national languages or link language.
- ✚ Sinhala and Tamil shall be the languages of administration throughout the Republic.
- ✚ Sinhala shall be the language used for the maintenance of public records by national and provincial public institutions and local authorities in all the Provinces other than the Northern and Eastern Provinces, wherein Tamil shall be used.
- ✚ A **person** shall be entitled to communicate or transact business with any official in Sinhala, Tamil or English and to receive a response

from such official in the language in which the person communicated.

- ✚ Sinhala and Tamil shall be used as the languages for the maintenance of public records in any Divisional Secretary area where the Sinhala or Tamil linguistic minority, as the case may be, in such area exceeds one eighth of the total population of that area and is declared as such by the President.
- ✚ A **person** shall be entitled to be examined through the medium of either Sinhala or Tamil or English at any examination for the admission of persons to any national or provincial service or any public institution, subject to the condition that the person may be required to acquire a sufficient knowledge of Tamil or Sinhala, as the case may be, within a reasonable time.
- ✚ All Acts of Parliament, Statutes of Provincial Councils and subordinate legislation shall be enacted or made in Sinhala, Tamil and English.
- ✚ Sinhala and Tamil shall be the languages of the courts throughout the Republic.
- ✚ A **person** shall be entitled to be educated through the medium of either Sinhala or Tamil and if facilities are available, through the medium of English.
- ✚ The State shall provide adequate facilities for the **persons** with disabilities or special needs to exercise the right to communicate and seek information through all forms of communication of their choice including augmentative and alternative means and

modes of communication such as Braille, large print, sign language and visual media. Sign Language shall be recognized as the language of communication for the deaf community and its use should be promoted.

- ✚ The State shall provide facilities to preserve or foster a language used by any numerically small linguistic community if the grant of such facilities has been recommended by the Official Language Commission.

Directive Principles of State Policy and Fundamental Duties

The recommendations made by the Sub-Committee under this Chapter are not enforceable in any court or tribunal

What are Directive Principles of State Policy?

- ✚ The Directive Principles of State Policy are fundamental in the governance of the country and it shall be the duty of the State to follow them for the establishment of a just, democratic and free society.
- ✚ These Directive Principles shall guide all organs of government and all public officers at national, provincial and local government levels and all persons whenever any of them,
 - applies or interprets the Constitution
 - enacts, applies or interprets any law, or

- makes or implements public policy decisions

What Directive Principles of State Policy have been identified by the Sub-Committee?

Territory and Sovereignty

- ✚ The State shall safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka.

Peace and Democracy

- ✚ It shall be the duty of the State and all persons to ensure peaceful coexistence and harmony among all ethnic, religious and social groups while maintaining the plural character of Sri Lanka.
- ✚ The State shall safeguard and strengthen the democratic structure of government and democratic rights of the people and promote a peaceful, just and inclusive society.

Economic matters and the Social Order

- ✚ The State shall establish a just, equitable and moral social order.

Environment and Development

- ✚ The State shall ensure the full and equal participation of women and men as agents and beneficiaries of people-centred sustainable development.

Other matters

- ✚ The State shall take adequate measures to prevent transitional organized crime, human trafficking, forced labour, consumption of addictive substance while providing sufficient safeguards to victims of trafficking of persons.
- ✚ The State shall take appropriate measures to prohibit corrupt practices whether undertaken by public officials or private actors and identify and indemnify victims of corruption, both individuals and groups and establish appropriate means by which to secure compensation for identifiable victims from disgorged funds.
- ✚ The State shall promote international peace, security and co-operation and the establishment of a just and equitable international economic and social order and shall foster respect for international law.

What are the Fundamental Duties of the State and its officials as identified by the Sub-Committee?

- ✚ It is the primary duty of the State, all State institutions and representatives/officials to recognize the Constitution as the supreme and the fundamental law of the country and obey its provisions.
- ✚ It is the fundamental duty of the State to refrain from promoting in any manner ethno-nationalism in the country directly or indirectly. The State shall promote civic nationalism and liberal patriotism based on

most enlightened religious and secular principles, fundamental human rights and cosmopolitanism.

What are the fundamental duties of citizens as recommended by the Sub-Committee?

It shall be the duty of every citizen to:

- ✚ uphold and protect the independence, sovereignty, unity and territorial integrity of Sri Lanka;
- ✚ uphold and defend the Constitution and its ideals and institutions;
- ✚ foster national unity and promote harmony amongst all the People of Sri Lanka;
- ✚ respect the rights and freedoms of others;
- ✚ refrain from hate speech or expressions that could lead to incitement or social disharmony;
- ✚ value and preserve the rich heritage of the country's composite culture;
- ✚ protect and improve the environment, conserve its riches, and the value of all forms of life;
- ✚ safeguard and protect public property and combat its waste and misuse;
- ✚ refrain from directly and indirectly participating in bribery or corruption
- ✚ uphold the rule of law and renounce all forms of violence;
- ✚ work conscientiously in that citizen's chosen occupation.