

HUMAN RIGHTS COMMISSION OF SRI LANKA

My No.

Your No.

Date: 2024.09.26

Complainant -

01. E. A. N. H. Edirisuriya
No. 81, Pahalgama, Weveldeniya.

Victimized Party-

02. E. A. J. Natasha Edirisuriya
No. 81, Pahalgama, Weveldeniya

Respondents-

01. Lucky Randeniya
Senior Superintendent of Police,
Former Director, Criminal Investigation Department,
Colombo 01.

02. Chandima Arumapperuma,
Assistant Superintendent of Police,
Internet Surveillance and Intelligence Unit,
Computer Crime Division,
Criminal Investigation Department,
Colombo 01

03. U.P.O.P. S.M.U. Subhasingha,
Officer in Charge,
Internet Surveillance and Intelligence Unit,
Computer Crime Investigation Division,
Criminal Investigation Department, Colombo 01.

Head Office: No. 14, R.A. De Mel Mawatha, Colombo-04 Chairman:011-2505451 Fax:011-2505541 Email: echrcsl@gmail.com

Telephone: 94-11-2505580/81/82

Secretary:011-2505521 Hotline:996

Website: www.hrsl.lk

04. Controller General,
Immigration and Emigration Department
Colombo 01.

Complaint No: HRC/2603/23, HRC/2153/23 HRC/2154/23

Submissions of the Complainant

The complainant submits before the Commission that her sister, Natasha Edirisuriya, a stand-up comedian by profession, hosted an episode of "Modabhimana 3," a comedy show, on April 1, 2023. This episode was subsequently aired on the Colombo Comedy Central YouTube channel on May 23, 2023. Furthermore, on May 27, 2023, the same video was uploaded to her sister's personal YouTube channel. Upon its dissemination across the internet and social media platforms, her sister became the target of disparaging remarks and threats from various parties, subjecting her to extreme mental distress.

In an effort to alleviate her mental anguish, her sister, along with her partner, made arrangements for a brief vacation to Singapore, scheduled for May 27, 2023. Upon their arrival at the Katunayake International Airport at approximately 10:30 p.m. on the same day, officers from the Department of Immigration and Emigration obstructed her departure. She was subsequently detained at the immigration premises within the departure terminal and handed over to the Criminal Investigation Department. On May 28, 2023, facts were reported to court under case number B25774/2023.

Submissions of the Victim:

On April 1, 2023, she hosted a comedy show titled "Modabhimana," which was broadcast on the Colombo Comedy Center YouTube channel on May 23, 2023. Subsequently, on May 24, 2023, she uploaded the same content to her personal YouTube channel. Allegations arose that the program insulted Buddhism, leading to negative public opinion against her.

In response to the growing backlash, both the Colombo Comedy Center and herself publicly issued apologies on May 26, 2023, and promptly removed the controversial video. However, the social media outrage caused her significant mental distress, prompting her decision to take a short trip abroad. Upon arriving at Bandaranaike International Airport on May 27, 2023, with the intention of departing the country, she was detained by officers from the Department of Immigration and Emigration, who informed her of a travel ban, although no official documentation regarding such a restriction was provided at the time. Subsequent inquiries revealed that the Criminal Investigation Department (CID) had requested her detention without specifying any concrete grounds for the action.

It has been further noted that officers from the CID arrived at the airport and transported her to CID headquarters at 11:10 p.m. on the same day, May 27, 2023. During this time, she became aware that media personnel were present at the airport, seemingly prepared to cover her arrest. On May 28, 2023, she was not granted access to legal counsel or a meeting with her relatives; however, she was later allowed to meet with her partner. On the same day, she was escorted back to her residence for further investigation, during which several comedic books authored by her were seized by the authorities. Notably, media representatives were also present at her residence during this investigative process.

She further states that she was produced before the Magistrate on May 28, 2023, and was remanded in custody, where she remained until July 5, 2023. She contends that was subject to prejudice as a result of this unlawful arrest and states that her fundamental rights were violated.

Submissions of the 1st, 2nd and 3rd Respondents

On April 1, 2023, during a program held at the Colombo Bishop's College Auditorium titled "Modabhimana", statements were made against the Buddhist religion containing malicious and hateful remarks, disturbing the harmony and co existence between different religions. These were recorded on video and, on or around May 24, 2023, was published in the internet and circulated on social media and a formal complaint was lodged with the Computer Crime Investigation Division on May 27, 2023, by Venerable Attaragama Panjalankara Thero, of Sisila Buddhist Centre, stating that this media propagation caused unrest, confusion, and disharmony among those who believe in and adhere to the Buddhist

philosophy. The complaint prompted an investigation into this and six other complaints filed by several Buddhist priests, as well as a complaint from the Commissioner of Buddhist Affairs.

On May 27, 2023, the statement of Reverend Attaragama Panjalankara Thero was recorded. His complaint alleged that a YouTube channel called Colombo Comedy Central had circulated an offensive video through the internet containing hateful, malicious and defamatory remarks against Lord Buddha and Buddhism, thereby undermining religious coexistence and harmony. It was further stated that the video had been uploaded by a woman named Natasha Edirisuriya and featured a background scene from the “Modabhimana” program presented by her.

Furthermore, it is alleged that this individual has made a presentation that offends Buddhists by denigrating the traditions of Buddhism and that no one has the right to make statements that offend the leaders and followers of Buddhism, Catholicism, and Islam. It is asserted that all religions should be treated with respect and that narrow-minded statements that incite anger and hatred between religious groups can undermine public peace. The teachings of the Buddhist religion have been disparaged in a contemptible manner, and the traditions associated with Buddhism have also been treated disgracefully.

Accordingly, a comprehensive internet search was conducted to ascertain information related to the incident in question. During the ensuing investigation, it was discovered that the contentious video clip had been widely disseminated across various social media platforms, including "Colombo Comedy Central" and "Natasha Edirisuriya" YouTube channels. Further inquiries revealed that the program titled “Modabhimana” was presented by one Natasha Edirisuriya in front of an audience. It was revealed that she made several remarks referencing the life of Prince Siddhartha (the Buddha), stating, inter alia: *“Suddhodana's child walked on the very day he was born... but look at these children; their heads droop even when you try to hold them up... Suddhodana's little one recited a poem on the day of his birth, yet these children... Suddhodana's son decided on the day of his birth what he would do when he grows up”*. These controversial remarks trivialized Buddhist teachings, particularly concerning the early life of Buddha and historical narratives integral to Buddhist philosophy. These remarks were perceived as derogatory to the deeply held beliefs of the Buddhist community, thereby fostering discontent, sowing confusion, creating contradictions, and inciting unease and potential discord among followers of the

faith. Such remarks were likely to provoke unrest, and possibly incite hostility or discord between religious communities.

Moreover, it was established that the recorded video of the contentious presentation had been uploaded to the YouTube channel operated by Natasha Edirisuriya, and subsequently gained widespread attention, proliferating across various social media platforms at an accelerated pace.

In the interim, several reports were disseminated through electronic and social media, detailing complaints lodged by various parties with the Inspector General of Police and Police Headquarters. These complaints were in objection to the controversial statements made by her. The public disapproval was further magnified in a televised news segment, which captured and broadcasted the growing dissent. In response to the mounting criticism, she released a video on her YouTube channel, wherein she issued a formal apology for her remarks. However, this was met with further objections from certain segments of society.

During the subsequent investigations conducted amidst these circumstances, it was uncovered that Natasha Edirisuriya had made arrangements to travel overseas. Given the likelihood that her departure would obstruct the ongoing investigation, the Criminal Investigation Unit stationed at Katunayake International Airport was duly informed. On the same day, i.e., 27.05.2023, when Natasha Edirisuriya arrived at the airport with the intent to board a flight to Singapore, she was intercepted by immigration officers. Shortly thereafter, officers from the Computer Crime Investigation Division apprehended her at Bandaranaike International Airport, after explaining that she was being detained on allegations of making statements that were deemed to have caused injury to religious sentiments and insulted revered Buddhist religious figure, thereby inciting racial or religious hatred. Following her arrest, she was produced before the Fort Magistrate's Court on 28.05.2023, under Case No. B 25774/23. The charges levied against her included violations of Sections 120, 291(a), and 291(b) of the Penal Code, Section 6 of the Computer Crimes Act No. 24 of 2007, and Section 3 of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007. Upon a thorough consideration of the evidence presented, the learned Magistrate ordered that she be remanded until 07.06.2023.

It is further stated that the aforementioned controversial and questionable presentation has given rise to a situation that involves incitement to religious hatred, thereby provoking enmity or violence, which is prohibited under Section 3(01) of the International Covenant on Civil and Political Rights Act No. 56 of 2007. The investigation revealed that the first suspect committed the said offense by making expressions that insulted a particular religion, thereby inciting religious hatred. This, in turn, created a situation conducive to fostering enmity between religious groups and the potential for acts of violence. Furthermore, it was observed that the hostility or violent acts connected to this incident were fuelled by differing opinions regarding Buddhist philosophy, and there is a noted trend of violence between groups with opposing views on this matter.

The situation, exacerbated by the questionable presentation, cannot be narrowly confined, as it is possible that such circumstances may arise due to comments made on social media, particularly given the heightened tensions and unrest as observed in the Akurana area stemming from this kind of controversy. In light of these developments, it has been stated that prompt investigations were conducted, leading to the arrest and producing of the suspects before court and appropriate judicial actions have been initiated.

Statement of the 4th Respondent:

On 27.05.2023, at 12:44 p.m., the 4th Respondent received an order from the Criminal Investigation Department (CID), directing that the Respondent notify the CID if an individual named Jayani Natasha Edirisuriya Arachchi attempts to leave the country.

In compliance with this order, on 27.05.2023, the aforementioned passenger arrived at the immigration terminal intending to depart on flight MHO 0178. She presented her passport for immigration clearance to the authorized officer on duty at the terminal. At that time, upon scanning her passport, a notification (Alert Message) appeared on the computer screen of the officer. Upon receiving this alert, the passenger was referred to the senior authorized officer on duty. Natasha Edirisuriya inquired from the senior officer whether she could be lawfully prevented from leaving the country without a court order. The senior officer informed her of the CID's request and that she was being referred to the CID officers for further action, as per the CID's instructions.

Shortly after officers from the CID arrived at the terminal and took her into custody for their investigation. A log entry was made by the authorized officer noting that Officer Udaya Kumara from the CID took into custody Natasha Edirisuriya at 23:00 hours on 27.05.2023.

Summons for Hearings:

The Human Rights Commission summoned the parties and convened hearings on the following dates: 2023.11.21, 2023.12.19, 2024.03.13, 2024.04.05, 2024.04.24, 2024.05.15, and 2024.06.11.

Inquiry: -

The complainant alleges that she was unlawfully arrested, denied the equal protection of the law, and deprived of her freedom of expression. A thorough examination of the facts reveals a failure to adhere to the prescribed legal procedures during the arrest.

Article 13(1) of the Constitution of Sri Lanka enshrines the fundamental rights related to personal liberty and criminal procedure. It is provided that no person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest. This constitutional safeguard serves to prevent arbitrary detentions, ensuring that any restriction on personal liberty is grounded in lawful authority. A legal framework has been formulated in this regard to prevent urgent and arbitrary exercise of the law and also to act as a bulwark against the misuse of legal procedures urgent and arbitrary for personal vendettas or political manipulation.

Article 13(1) of the Constitution of Sri Lanka enshrines fundamental rights pertaining to personal liberty and criminal procedure. It is provided that no person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest. This constitutional safeguard is designed to prevent arbitrary detentions and to ensure that any restriction on personal liberty is firmly rooted in lawful authority. To this end, a comprehensive legal framework has been established to mitigate the urgent and arbitrary exercise of the law and serves as a bulwark against the potential misuse of legal procedures for personal vendettas or political manipulation.

In the context of this particular incident, the complainant and alleged victim claim that, on 27.05.2023, while attempting to travel to Singapore, the victim was detained by an authorized officer of the Immigration Department. Thereafter, officers from the Criminal Investigation Department (CID) arrived and took the victim into custody without providing any reason for the arrest.

01st, 2nd and 3rd Respondents submitted that the victim was under investigation due to complaints alleging that she made defamatory statements online that incited hatred against Buddhism, thereby disrupting religious harmony and coexistence. During the course of the investigation, it was discovered that the victim intended to leave the country. Given that her departure could impede the ongoing investigation, the Criminal Investigation Department (CID) officers at Katunayake Airport informed the victim on 27.05.2023 of the allegations concerning her defamatory statements regarding a religious spritual leader and subsequently arrested her.

Hence when investigating regarding the detention of this victimized person at Bandaranaike International Airport, 1st, 2nd and 3rd Respondents received intelligence during the course of their investigation indicating that the said individual was preparing to leave the country. It was determined that her departure would significantly impede the ongoing investigation, consequently, 1st and 2nd Respondents instructed the 3rd Respondent to take the necessary steps to ensure the detention of the said individual if she attempted to depart, and accordingly, a written directive was issued to the Immigration Department to prevent her from leaving the country.

Accordingly, upon examining the document addressed to the 4th Respondent concerning the enforcement of this travel restriction, which is duly signed by Respondent 1, it articulates the following "Until we get court order, if she try to go abroad, Please arrest her and produced to computer Crime Investigation Unit."

The document in question bears the signature of the 1st Respondent. When the Human Rights Commission inquired about the legal framework governing travel restrictions, the 1st Respondent stated that the Sri Lanka Police do not have formal, written guidelines concerning the prevention of travel in such cases. Nonetheless, it is customary practice to secure a court order to prohibit a suspect from leaving

the country. The Criminal Investigation Department typically follows this procedure to prevent suspects involved in reasonable criminal offenses from leaving the country.

Accordingly, it is evident that the 1st Respondent instructed the 4th Respondent to prevent the complainant's departure and facilitate her arrest by following a procedure that lacks transparency and does not adhere to an established legal framework.

According to the statements of the 1st Respondent, the suspension of the complainant's travel was allegedly connected to a serious criminal offense. The respondents informed the Human Rights Commission that the complainant was prohibited from leaving the country due to concerns that her departure might incite public unrest and impede the ongoing investigation. However, the Commission finds that such a restriction on an individual's right to travel cannot be justified based on unfounded assumptions, as the law does not permit limitations on movement that are grounded in mere conjecture.

In the case of *Navasivayam v. Gunawardena*, Justice Sharvananda, Justice Athukorala, and Justice H.A.G. De Silva concurred that the police officer had instructed the complainant to attend the police station for questioning in relation to a theft, recorded his statement, and subsequently allowed him to leave. However, the officer later intercepted the complainant's vehicle and took him to the police station with the police and deprived him of his liberty, without permitting him to continue his intended journey. This was deemed an unlawful arrest, constituting an infringement of the complainant's personal freedom.

In light of this legal precedent, coupled with the facts of the present case, the Commission observes that the actions undertaken by the 01st, 2nd and 3rd respondents were conducted outside the legal framework prescribed by law.

Moreover, under Article 13(1) of the Constitution, it is unequivocally stated that no person shall be arrested except in accordance with the procedure established by law. In **Kapugeekiyana v. Hettiarachchi and Two Others (1984) 2 SLR 153**, affirms that the "procedure prescribed by law" refers exclusively to that stipulated in the Code of Criminal Procedure Act No. 15 of 1979. Under Section 32(1) of the Code of Criminal Procedure Act No. 15 of 1979 a person may be arrested based on a

reasonable complaint or reasonable suspicion, provided there are legitimate grounds to substantiate such suspicion.

In the respondent's statements, 1st, 2nd and 3rd Respondents acknowledged that the arrest and detention of the complainant were conducted pursuant to an investigation arising from complaints received. They also conceded that they possessed sufficient information to reasonably suspect that the complainant had committed a criminal offense.

The 1st, 2nd, and 3rd Respondents have acknowledged that an investigation was initiated in response to complaints alleging that public statements, containing hate speech and inciting hostility against the Buddhist religion, were made, thereby disrupting religious harmony and coexistence through online platforms.

Furthermore, the Respondents contend that the victimized persons controversial remarks trivialized Buddhist teachings, particularly concerning the early life of Buddha and historical narratives integral to Buddhist philosophy. These remarks were perceived as derogatory to the deeply held beliefs of the Buddhist community, thereby fostering discontent, sowing confusion, creating contradictions, and inciting unease and potential discord among adherents of the faith. It was upon the revelation of these facts that the arrest of the respondent was executed.

Accordingly, upon careful examination of the written complaints dated 27.05.2023 regarding the respondents, it is noted that the said complaint was officially recorded at 9:30 a.m. on 27.05.2023.

Upon reviewing the investigation notes of the Respondents, it is observed that the 3rd Respondent recorded a note indicating that an internet surveillance was initiated at 10:30 a.m. on 27.05.2023 in relation to the matter. By 10:40 a.m., instructions were issued to gather further evidence, and additional investigations were conducted concerning the said individual.

Furthermore, it is recorded that at 14:00 hours on 27.05.2023, upon receiving intelligence concerning another program to be hosted by the said individual on 27.05.2023, officers were directed to ascertain and confirm the specifics of the event.

The note made at 16:00 hours on 27.05.2023 states, "Pursuant to information received from a private informant indicating that the aforementioned scheduled program would no longer take place, the Director was informed, and based on the Director's instructions via telephone, an order was given to the Criminal Investigation Department unit at Bandaranaike International Airport to detain the said individual before she could flee the country."

The 4th Respondent affirms that, at 12:44 PM on 27.05.2023, an official document was received mandating the detention of the victimized individual. According to the investigation notes of the respondents, it is evident that the directive to the Department of Immigration and Emigration to detain the respondent was issued promptly upon receiving the complaint, even before a comprehensive investigation had been completed.

It is apparent that the directive to detain the individual was issued promptly after receiving the complaint without the benefit of a thorough and proper investigation.

Upon examining Receipt A 979117, issued following the apprehension of the victim, it becomes evident that the grounds cited for the arrest relate to the making of statements that may incite national, ethnic, or religious hatred.

It is observed upon the perusal of the B report that facts were reported to Court that the victim was taken into custody pursuant to offenses under Section 3 of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007, Sections 120, 291(a), and 291(b) of the Penal Code of Sri Lanka, as well as Section 6 of the Computer Crimes Act No. 24 of 2007.

Hence, it is stated that the victim has committed an offense under Section 3(1) of the ICCPR Act. Section 3 (1) of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007 states as follows-

"No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Section 03 of this Acts mirrors the sub section 2 of Article 20

of the International Covenant on Civil and Political Rights, and it is well-established that it should be construed together with Article 19 of the said Covenant, which enshrines the right to freedom of speech and expression. Accordingly, the law affirms that any interpretation of the freedom of speech and publication must respect the broader context of this fundamental freedom.

The Human Rights Commission of Sri Lanka, in its prior legal analyses concerning the scope of Section 3 of the ICCPR Act No. 56 of 2007, has unequivocally stated that mere advocacy of hatred does not fall within the ambit of Section 3 unless it is accompanied by an intentional incitement to discrimination, hostility, or violence.

To constitute an offense under Article 3(1) of the ICCPR Act, the presence of two fundamental elements is imperative: (1) advocate national, racial or religious hatred and (2) incitement to discrimination, hostility or violence.

As outlined in the Rabat Plan of Action, promulgated by the Office of the United Nations High Commissioner for Human Rights, a rigorous six-part threshold test is employed to assess whether such an offense has occurred. This test, rooted in Article 20 of the International Covenant on Civil and Political Rights, mandates a meticulous evaluation of the following criteria: a) Context of the statement b) status of the Speaker c) Intention of the speaker d) The Content and Nature of the Expression e) The Extent and Magnitude of the Expression and f) Imminent Harm.

These six elements must be scrutinized as follows:

I. Context

The political and social circumstances prevailing at the time of the dissemination of the expression. (For instance, was the statement made in an environment of conflict, long-standing tension, or entrenched patterns of discrimination)

II. Speaker - whether the speaker possesses the authority and capacity to exert influence over their audience. (For example, is the speaker a prominent public figure, a state official, a religious leader, or someone holding significant social or political sway).

The ability to influence does not solely rest on the speaker's official title or social standing; rather, it encompasses the speaker's capacity to shape the opinions, beliefs, and emotions of their audience. The focus should be on the speaker's ability to sway the sentiments of those listening, inciting them towards hatred or violence. Social standing alone, without this influential capacity, is insufficient to fulfil the requirements of incitement.

III. Intent

For an individual to be deemed to possess the requisite intent for this offense, they must wilfully disseminate hate speech, fully cognizant of the consequences of their actions, and with the clear understanding that such consequences will ensue immediately.

IV. Content and nature of the Statement

The provocative nature of the statement, the reasoning and arguments advanced therein, the mode and manner in which these arguments are articulated, as well as the tone employed, all contribute to its character and overall impact.

V. The Extent and Magnitude of the Expression

This factor pertains to the breadth of the expression, specifically whether it was conveyed in a public forum and the extent of its audience.

VI. Imminent Harm

The inducement conveyed through the expression must be such that it reasonably and foreseeably results in imminent harm.

Upon reviewing whether the respondents duly considered these essential elements during the investigation, it is apparent from the investigative notes of the respondents and statements given that no mention was made of any religious or communal conflict at the time the victim's statement was delivered. It is noted by the Commission that the general public only became aware of the speaker following the promotion of this matter on the YouTube platform. During the Modabhimani program hosted on 01.04.2023, the audience did not raise any concerns or question the speaker's statements. The issue only garnered attention following its publication on YouTube on 23.05.2023.

Additionally, it is of significant importance that the speaker is a stand-up comedian, a fact recognized through the assessment of her previous comedic performances. The Commission observes that her role in the Modabhimana programs was purely to provide entertainment. Regrettably, the police investigation appears to have neglected this crucial context.

Moreover, the Commission observes that the 1st, 2nd and 3rd respondents failed to present any evidence that the victim's statement during the Modabhimani program incited or provoked violence against Buddhists among the program's audience. Upon reviewing the relevant video clip, it is clear that the target audience perceived the statement purely as a form of entertainment, without any incitement to violence or hostility.

Furthermore, upon reflecting on the speaker's intent and carefully considering the entirety of the program, it is evident that the primary purpose was merely to entertain.

In examining the complaints lodged with the Criminal Investigation Department, the Human Rights Commission observes that statements such as, “Suddhodana's child walked on the very day he was born... but look at these children; their heads droop even when you try to hold them up... Suddhodana’s little one recited a poem on the day of his birth, yet these children... Suddhodana’s son decided on the day of his birth what he would do when he grows up,” must not be considered in isolation. It is imperative that the entirety of the content be taken into account during the investigation.

Moreover, international law stipulates that a statement, even if it offends particular social groups or religious communities, or that it contains defamatory or irresponsible statements does not automatically invoke Article 3(1) of the International Covenant on Civil and Political Rights merely on the grounds of causing offense.

In light of these considerations, it becomes apparent that the respondents initially apprehended the suspect without undertaking a thorough investigation into the circumstances surrounding the victim's arrest.

In the case of **Ganesan Samson Roy v. A.M.M Janaka Marasinghe, Officer-in-Charge, Criminal Investigation Department SCFR 405/2018** revealed that it is an alarming tendency for the Respondents to engage in illegal action based solely on a mere complaint, neglecting to perform an adequate investigation. It has been clearly stated that police officers cannot mechanically make an arrest upon a mere complaint received, without forming the opinion that the allegation is credible. Thus, a police officer is required to make necessary investigations, unless the facts are obvious, to verify whether the complaint is credible or whether the information provided is reliable.

Furthermore, it was held that making an arrest upon a general or vague suspicion would lead to significantly abridging the personal liberties guaranteed to a person by the Constitution.

In the case of **Mohamed Razik Massi v. A.B.M.S.K. Senaratne, Officer-in-charge, Criminal Investigation Department, and Others**, the procedure for effectuating an arrest under the International Covenant on Civil and Political Rights (ICCPR) was thoroughly examined. The Court emphasized that prior to an arrest, the arresting authority must be fully satisfied with the factual basis supporting such an arrest, ensuring compliance with the stringent legal safeguards prescribed by law.

When the victim was presented before the court, it was alleged that she had committed an offense under the ambit of the Computer Crimes Act No. 24 of 2007.

However, this assertion gives rise to a critical legal question concerning the applicability of the offense under Section 6(1) of the Computer Crimes Act in the present case. The central issue pertains to whether it was appropriate to invoke Section 6(1) of the Act to criminalize the act of uploading content, particularly in the form of a comedic program, on the victim's YouTube channel.

Legal precedents have unequivocally established that an arrest must be grounded on a reasonable suspicion, information or complaint.

In the case of ***Dharmasena Thero and others Vs. Sanjeewa Mahanama and Others (1 Sri LR 81)***, Justice Dep held that in order to arrest a person there should be a reasonable complaint, credible information or a reasonable suspicion. Mere fact of receiving a complaint or information does not permit

a peace officer to arrest a person. Police Officer upon receipt of a complaint or information is required to commence investigations and ascertain whether the complaint is a reasonable complaint, the information is credible or the suspicion is reasonable before proceeding to arrest a person.

The Supreme Court has also reinforced this principle through several judgments, holding that arrests must not be made on the strength of a mere complaint in the absence of diligent and proper investigation.

In the case of **Emil Ranjan v. The Attorney General**, the court held that an individual cannot be remanded solely based on speculative statements from the investigating authority suggesting the potential for public unrest. It was further emphasized that the factual basis presented in support of remanding the petitioner must be carefully scrutinized and substantiated to justify the detention in line with the ongoing investigation.

Furthermore, it is noted that the High Court, by its order dated 25.07.2023, granted bail to the victim of this complaint pursuant to the bail application made under the provisions of the International Covenant on Civil and Political Rights (ICCPR) Act. In delivering the order, The High Court Judge M. Patabedige underscored the necessity of adopting an internationally recognized interpretation in determining whether the alleged hate speech, as contemplated by Section 03 of the ICCPR Act, had in fact transpired, in accordance with the obligations and responsibilities incumbent upon Sri Lanka under international law. The learned Judge further remarked that, in the absence of such an assessment, it would be improper to effect an arrest solely predicated upon a complaint.

In this instance, the victim has been subjected to undue prejudice through the imposition of a travel restriction and an arrest, both of which were carried out without the benefit of a comprehensive and proper investigation under the ICCPR Act. The arrest was based solely on speculative concerns that her actions might incite public unrest.

It is therefore concluded that the arrest of the victim was in violation of Article 13(1) of the Constitution, as it failed to comply with the procedural safeguards mandated by law.

Infringement of Article 12(1)

The Respondents contends that the arrest was conducted pursuant to the provisions of the International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007 concerning the statements made by the victim. Circular RTM 541, issued by the Inspector General of Police on 23 May 2022, delineates the procedural directives for initiating investigations under the International Covenant on Civil and Political Rights Act No. 56 of 2007.

Clause 02 of the IGP's instructions stipulates that when sufficient grounds exist to warrant an investigation under the aforementioned Act, a comprehensive file must be compiled, encompassing all pertinent extracts, which must then be promptly submitted to the Director of the Legal Division. Prior to any arrest being made under the ICCPR Act, the Director of the Legal Division must be informed, and arrests can only be conducted in accordance with his instructions. Without such authorization, no arrest can be made under the International Covenant on Civil and Political Rights Act No. 56 of 2007.

Moreover, the circular indicates that in cases deemed urgent and mandatory, verbal consultation with the Director of the Legal Division is permitted before any action is undertaken, with subsequent submission of the requisite documentation to the Legal Division. It is evident that these procedural requirements were not adhered to in the present case, resulting in a clear violation of the legal safeguards established under the ICCPR Act

It is mandated that investigations proceed in accordance with the directives issued by the Director of the Legal Division, subsequent to a review of the relevant file. Furthermore, the procedural instructions mandate that any verbal directives received must be duly recorded in the official information logs maintained at the respective police stations.

In situations where exceptional circumstances necessitate an arrest without prior written or verbal authorization from the Director of the Legal Division, the extraordinary nature of such circumstances must be contemporaneously documented in the relevant records.

Upon review, it is evident that the directives of the Inspector General of Police were not complied with in the management of the victim's case. This failure has been acknowledged by the Respondents during

the investigations conducted by the Human Rights Commission, and the 1st, 2nd, and 3rd Respondents stated that the advice of the Attorney General's Department was sought post-arrest.

The issuance of these directives by the Inspector General of Police is manifestly intended to prevent unwarranted and unlawful arrests. Securing legal counsel prior to an arrest serves as a crucial safeguard, ensuring that no individual is taken into custody without adequate legal justification, thereby averting undue harm and prejudice.

Moreover, it is pertinent to note that on 6 June 2021, the Attorney General's Department communicated to the Director of the Computer Crime Investigation Division that no further legal action would be pursued against the accused. Consequently, it was advised that the relevant Magistrate be informed to facilitate the accused's release. Accordingly, the victim was duly discharged from the proceedings by the Magistrate's Court on 19 June 2024.

Had the 1st, 2nd, and 3rd Respondents adhered to the established procedures as delineated in the Inspector General's instructions, the significant prejudices suffered by the victim could have been averted. The Human Rights Commission acknowledges that the harm inflicted is of an irreparable nature.

It is therefore observed that the actions of the 1st, 2nd, and 3rd Respondents constitute a clear violation of the fundamental rights of the victim, as guaranteed under Article 12 of the Constitution of Sri Lanka, by failing to act in accordance with the prescribed instructions.

With particular attention to the alleged violation of the victim's right to freedom of speech and expression, it is imperative to emphasize that Article 14(1)(a) of the Constitution of Sri Lanka unequivocally guarantees to every citizen the freedom of speech and expression, inclusive of the right to publish. Additionally, Article 19 of the International Covenant on Civil and Political Rights affirms:

19(1) Everyone shall have the right to hold opinions without interference.

19 (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

While the right to freedom of speech and expression is recognized as a fundamental and inviolable right, it is not without limitation. Articles 15(2) and 15(7) of the Constitution delineate the permissible bounds within which this right may be curtailed.

Article 15(2) provides that such freedom is 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.

Article 15(7)(a) provides that such freedom 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 or morality.

Moreover, under the provisions of the International Covenant on Civil and Political Rights, Article 20 mandates:

- (1) Any propaganda for war shall be prohibited by law.
- (2) Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.

The United Nations Human Rights Committee, the independent expert body tasked with monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), has underscored the importance of interpreting Article 20 of the ICCPR, which mandates certain prohibitions, in conjunction with Article 19, which guarantees the right to freedom of expression. In its General Comment No. 11, the Committee has emphasized that any prohibition imposed under Article 20 must be consistent with the right to freedom of expression protected by Article 19.

In determining whether the prohibition under Article 20 applies to the expression in question by the victim, it is necessary to assess whether such expression falls within the scope of permissible limitations.

To this end, the Rabat Plan of Action provides a six-part threshold test for defining restrictions on freedom of expression, incitement to hatred, and for the application of article 20 of the ICCPR. These factors include: (a) context, (b) speaker, (c) the intent of the speaker, (d) the content and form of the speech, (e) the extent and magnitude of the speech, and (f) the likelihood of imminent harm resulting from the speech.

In the present case, the alleged violation of Article 3(1) of the ICCPR by the victim involves a form of artistic expression made during a comedic performance, which was intended to be humorous. This expression was not made in a political, religious, or educational context, but rather in a forum meant to entertain and engage the audience through satirical commentary.

The reference made to the Buddha's childhood in the petitioner's performance does not, in any manner, discredit or demean Buddhist teachings. Instead, it offers the audience an opportunity to reflect on societal norms and expectations, specifically, the tendency of parents to compare their children's skills and abilities with others. The expression encourages parents to recognize and appreciate their children's individuality and is not aimed at defaming or insulting religious beliefs.

Moreover, the nature and context of the expressions articulated by the victim do not convey an authoritative tone nor do they prescribe any particular course of action for the audience to adopt in alignment with the statements made. It is evident that, as a comedic performer, the victim's intent was not to direct any individual to question religious beliefs or to incite animosity towards any person on the basis of religion, either directly or indirectly.

The Commission finds a complete absence of evidence indicating that any incidents of discrimination, hostility, or violence have occurred as a direct consequence of the victim's statements. Additionally, there exists no credible basis upon which to reasonably infer that any individual intended to act in a manner that would be deemed discriminatory, hostile, or violent, thereby instigating religious discord.

Consequently, as the victim's comments do not encompass the requisite elements of hate speech delineated in the six-part threshold test, it is unequivocally concluded that the statements made by the

petitioner do not advocate for religious hatred, nor do they incite discrimination, hostility, or violence. Thus, it is not tenable to assert that there has been a violation of Section 3(1) of the ICCPR Act.

In light of the absence of any advocacy for discrimination, hostility, or incitement to violence on the part of the victim, it cannot be legally established that the victim's remarks have posed or may pose a threat to national security. The respondents have not produced any evidence to substantiate that the statements in question fall within the confines of Article 15(7) of the Constitution. Accordingly, the Commission observes that the victim's statements do not contravene the provisions of Article 15(7) of the Constitution of Sri Lanka.

Even in instances where it is alleged that certain individuals belonging to a religious community were offended due to a misinterpretation of the victim's statements, it is fundamentally unjust to attribute liability to the individual expressing that opinion for the perceived harm caused to another resulting from a misunderstanding. Thus, emphasizing the critical importance of ascertaining the "intent" behind any expression in the context of curtailing freedom of speech and expression, it is further observed that the victim's comments do not fall within any legally permissible limitations. As such, it is concluded that the victim's right to freedom of expression has been unduly infringed in this particular situation.

The parameters of the right to freedom of speech and expression have been delineated through various judicial precedents. In the case of **Joseph Perera alias Bruten Perera v. The Attorney General and Others**, Justice Sharvananda held that " One of the basic values of a free society to which we are pledged under our Constitution is founded on the conviction that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. All ideas having even the slightest social importance, unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion have the protection of the constitutional guarantee of free speech and expression." Accordingly, we conclude that Article 14(1)(a) of the Constitution has been violated in relation to the victim.

Upon thorough consideration of the aforementioned facts, it is evident that the fundamental rights guaranteed under Articles 13(1), 12, and 14(1)(a) of the Constitution have been infringed upon by the

1st, 2nd and 3rd Respondents. Furthermore, the actions of the 4th Respondent constitute a violation of Article 12 of the Constitution.

Hence the following recommendations are made:

1. The Inspector General of Police shall initiate an investigation into the conduct of the 1st, 2nd, and 3rd Respondents and shall undertake appropriate actions.
2. The 4th Respondent shall engage in discussions with the Inspector General of Police to devise a comprehensive set of guidelines for the Department of Immigration and Emigration regarding travel restrictions and detention, ensuring that all authorized officers are duly informed of these protocols.
3. The Inspector General of Police shall formulate and disseminate updated guidelines pertaining to the detention of offenders at the Department of Immigration and Emigration who attempt to leave the country unlawfully, ensuring that this guidance is communicated to all relevant police officers. Furthermore, the Inspector General shall provide the Human Rights Commission with updates on the progress of this initiative.
4. The Sri Lanka Police shall prioritize the development of a training program aimed at educating all Officers-in-Charge and Assistant Superintendents of Police on Section 3 of the Civil and Political Rights Convention Act, RTM 541, as issued by the Inspector General of Police, as well as the applicable laws and procedures governing arrest.
5. It is hereby recommended that the 1st, 2nd, and 3rd Respondents collectively compensate the victim in the amount of Rs. 50,000 for the prejudice suffered as a result of their actions.

The respondents are hereby notified, in accordance with Section 15(7) of the Sri Lanka Human Rights Commission Act No. 21 of 1996, to effectuate this recommendation on or before 14 November 2024 and to submit a report to the Commission confirming such compliance.

Furthermore, the complainant is required to notify the Commission regarding the implementation of these recommendation within one week from the date of execution and reporting. Should the complainant fail to provide the requisite notification by the stipulated date, any subsequent requests will not be entertained.

(Signed illegibly)

L. T. B. Dehideniya,
Supreme Court Judge (Retired)
Chairman,
Sri Lanka Human Rights Commission.

*Justice L. T. B. Dehideniya
Supreme Court Judge (Retired)
Chairman,
Sri Lanka Human Rights Commission*

(Signed legibly in Sinhala as Nimal Punchihewa)

Nimal G. Punchihewa,
Commissioner,
Sri Lanka Human Rights Commission.

Nimal G. Punchihewa
Senior Lawyer,
Sri Lanka Human Rights Commission

Copies To:

- 1. Minister, Ministry of Public Security.*
- 2. Inspector General of Police, Police Headquarters, Colombo 01.*
- 3. Chairman, National Police Commission, Bandaranaike Conference Hall.*

I hereby certify that the foregoing is a true and accurate English translation of its original in Sinhala, which is the set of recommendations of the Human Rights Commission of Sri Lanka re: complaints bearing Nos. HRC/2603/23, HRC/2153/23 and HRC/2154/23, issued dated 26.09.2024.

On this 09th day of October, 2024.