

KNOW THE LAW

A BASIC GUIDE TO LAW AND RIGHTS IN SRI LANKA



Institute of Social Development (ISD)

Training Module : Developing Capacities of Grassroots Peace and Reconciliation Workers
Copyright : Institute of Social Development, Kandy.
November 2021

Published by :
Institute of Social Development (ISD)
No. 246/4, Ranawana Road,
Katugastota, 20800,
Sri Lanka.

Author :
Mrs. Ermiza Tegal Attorney-at-Law

Image Source : Google Images

Printed by :
www.printsrilanka.com



kandyisd@sltnet.lk



+94 81- 2071288



<http://www.isdkandy.org>



<https://www.facebook.com/ISD91>

PREFACE

The Institute of Social development (ISD) advocacy was founded in 1991 to empower the excluded Hill Country (Plantation) Community of Sri Lanka to demand and defend their fundamental rights. Since its inception, ISD has been working in collaboration with the plantation Trade Unions (TU), civil societies and like-minded agencies and individuals to advocate for the dignity of members of their community with policy makers of the country. In 2015, ISD focused on Transitional Justice and Reconciliation to promote a vision based on equality and coexistence in the country.

The objective of this handbook is to provide information on the laws and rights that citizens and community activists can use in their day to day activities.

This publication is supported by the International Coalition Sites of Conscience.

P. Muthulingam

Executive Director,
Institute of Social Development,
246/4, Ranawana Road,
Katugastota.

DISCLAIMER

This document is only a guide and therefore there is no assurance that the information provided in this document is accurate, up to date or applicable to the circumstances of any particular case. The reader must take responsibility for the decisions taken based on the guidance provided by this guide and must ensure that when using this guide, the information provided to the client is accurate and up to date. No liability for any direct, indirect, special, consequential or other losses or damages of whatsoever kind arising out of access to, or the use of this documentation or any information contained herein can be imputed to the organization that developed and / or disseminated this guide.

This disclaimer is necessary in view of the developments and amendments that are constantly made to the law. Therefore the document has been checked for accuracy only in relation to the law as it was at the time of printing. It can be used as a guide to checking the basic and general forms of protection and guarantees available to persons who have been arrested and detained. It may be used as a guide to assist a practitioner to navigate the different legal regimes applicable in Sri Lanka. However, at no time can

TABLE OF CONTENTS

1. POWER AND RIGHTS OF PEOPLE

- 1.1 The Constitution
- 1.2 What is 'Executive' power?
- 1.3 What is 'Police power'?
- 1.4 What does the Sri Lanka Police do?

2. SEARCH BY POLICE

- 2.1 Does the police have the power to search a place? 10
- 2.2 What rights do I have when a search is being conducted on my property? 11
- 2.3 During a search can anything be taken away? 11
- 2.4 What happens to the item and how do I get it back? 11
- 2.5 Can only female officers search the body of a female? 12

3. ARREST

- 3.1 What is an arrest? 12
- 3.2 What is an arrest warrant? 12
- 3.3 Can I be arrested without an arrest warrant? 13
- 3.4 What Can I ask the police at the time of arrest? 14
- 3.5 What should I do if the police asks me to go to the police station? do I have to go? 15
- 3.6 What should I know about making a statement at the police station? 15
- 3.7 What are my rights when I am arrested and in the custody of the police? 16

4. DETENTION

- 4.1 What is Detention? 17
- 4.2 Who can detain me? 17
- 4.3 Can I be detained anywhere? 17
- 4.4 Are there any situations where I can be detained without bail? 18
- 4.5 What are my rights if I am detained? 18

5. BAIL

- 5.1 What is Bail? 19
- 5.2 Can the bail granted to me be revoked? 19
- 5.3 When can I get Bail? 20
- 5.4 What happens if I am not permitted to post bail? 20
- 5.5 What happens after I get Bail? 20

6. TORTURE	21
6.1 What is torture?	21
6.2 What immediate steps can I take if I experience torture?	21
6.3 What legal remedies are available to me?	22
7. FREEDOM OF ASSOCIATION	4
7.1 What is Freedom of association? 2	4
7.2 When can my freedom of association be restricted?	24
7.3 Can I organise or participate in a public protest?	25
8. FREEDOM OF EXPRESSION	26
8.1 What is Freedom of expression?	26
8.2 Can my freedom of expression be restricted?	26
8.3 What are the other restrictions that I need to be mindful of?	27
9. CRIMINAL LAWS PROTECTING WOMEN	28
10. DOMESTIC VIOLENCE	33
10.1 What is domestic violence?	33
10.2 Who can I get a domestic violence protection order against?	34
10.3 What kinds of protection can I get?	34
10.4 How can I get these protection orders?	35
10.5 What is the process in the Magistrate court?	36
11. LEGAL REMEDIES	37
11.1 MAKING A POLICE COMPLAINT	37
Where should I make a police complaint?	37
Can my lawyer be present?	38
Can I make a complaint in any language I choose?	38
Can I write my complaint myself and paste it in the police complaint book?	38
Women and Children’s Bureau	38
11.2 TAKING A CASE TO COURT	39
The Law does not tolerate delays in filing cases	39
What types of cases can I file against State action?	41
Fundamental Rights	41
Writ Applications	45
11.3 INDEPENDENT COMMISSIONS/AUTHORITIES	47

01. POWER AND RIGHTS OF PEOPLE

1.1 THE CONSTITUTION

The 1978 Constitution of Sri Lanka says that people are 'sovereign'. This means the power of governing the country comes from the people. It is the people who:

- Give, in trust, their power to members of parliament to make the laws that affect our lives
- Give, in trust, their power to administrative and executive institutions to develop and implement policies and run the administrative institutions according to the law
- Give, in trust, their power to judges to decide on disputes including whether to check if administrators are working within the law and not violating the people's rights.

People give these powers with the trust that the individuals holding these powers will improve the lives of and protect ALL citizens and that they will not violate the people's fundamental rights. As citizens, people in Sri Lanka, all have this power and are responsible when they give it in trust to any part of the government - parliament, the executive or the judiciary. The main way of giving this power is by voting.

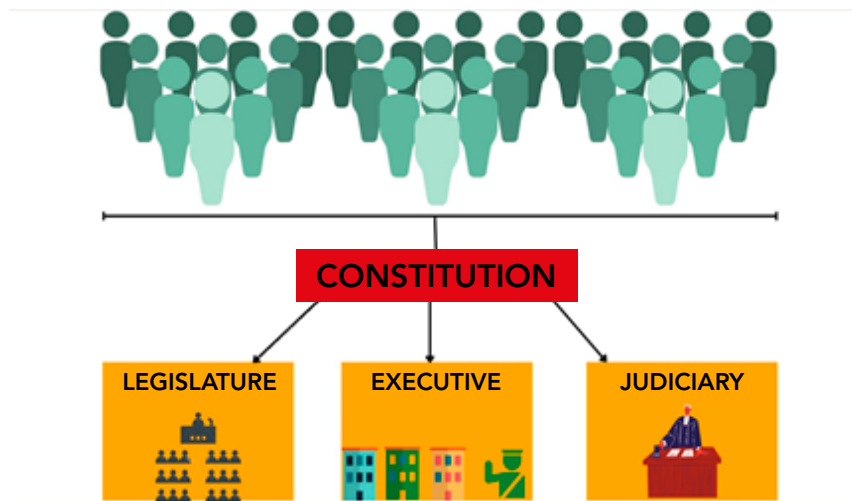
1.2 WHAT IS 'EXECUTIVE' POWER?

From the Gramasevaka Officer to the President of Sri Lanka, all persons holding a government job and engaged in administratively serving the people, are executive officials. They all exercise power because it has been given in trust by the people. They are controlled by the laws of the country. This is why citizens must make sure that there are proper and adequate laws to ensure that executive officials work for the benefit of the people. If they do anything illegal or violate any citizen's fundamental right, the courts have the power to say that the act is wrong, that the decision or action must be changed and sometimes even order compensation.

1.3 WHAT IS 'POLICE POWER'

The Sri Lanka Police is part of the executive. This means that it is the power given by the people that the police uses. Police officers must do their work according to the law (which the people have approved) and they cannot violate any fundamental rights of the people. There are two strong checks on the police - the law and the courts. It is important for citizens to demand that members of parliament improve laws about the police if there are concerns about them.

The Constitution says people give power to the Executive to work for the benefit of the people. The Sri Lanka Police is one institution of the Executive.



1.4 WHAT DOES THE SRI LANKA POLICE DO?

- The police deal with citizens. Their responsibilities are enforcing laws, investigating crimes, responding to emergencies of citizens, and providing support services to citizens. All citizens feel safe when there is a good police force.
- The Sri Lanka police says that their goal is “Towards a peaceful environment to live with confidence, without fear of crime and 10 violence”. This means that they must be respectful, non violent and ensure that all citizens have an environment in which they can live in without fear.
- They are not given power to punish anybody. Only a court can punish people.

Military forces are for times of war. They are trained to combat enemies of the country. It is not good practice for military forces to directly engage with citizens because their training is different.

2. SEARCH BY POLICE

2.1 DOES THE POLICE HAVE THE POWER TO SEARCH A PLACE?

Usually, the police require a search warrant that is issued by a Magistrate to give them power to search a place.



If the police do not have a search warrant, they need to obtain your permission to search you or any place.

- The police can search you or your place without a search warrant and without your permission only in the following situation:
- If they say they are searching the place because they suspect any act of terrorism and are acting under the powers given to them by the Prevention of Terrorism Act or sometimes certain Emergency Regulations. Such a search can only be done by an officer higher than Superintendent or if the Superintendent has given permission to a Sub Inspector or higher-ranking officer.

2.2 WHAT RIGHTS DO I HAVE WHEN A SEARCH IS BEING CONDUCTED ON MY PROPERTY?

- You have a right to be told the reasons for the search.
- You can be present on the property while the search is being done

2.3 DURING A SEARCH CAN ANYTHING BE TAKEN AWAY?

If the police find anything that is considered “evidence” of a crime, they may take it away. If it is not evidence, it is the responsibility of the police to return your belongings to you.

2.4 WHAT HAPPENS TO THE ITEM AND HOW DO I GET IT BACK?

If the item is evidence of a crime, then the police have to inform the Magistrate court that the item is part of the evidence and the police will keep the item in their custody till the trial.

If the item is not part of the evidence of the crime or has no connection to the crime, then you can ask for the item to be returned. If it is not returned, you may make a complaint at the same police station, preferably to the Officer in Charge or the Assistant Superintendent of Police for your area or the Inspector General of Police, stating that your personal items are being kept by the police for no reason. If there is a case against you, you can also ask your lawyer to make an application in Court, and ask the Court to make an order for the police to return your items.

2.5 CAN ONLY FEMALE OFFICERS SEARCH THE BODY OF A FEMALE?

The law says that a female has to be searched by a female officer with strict concern for decency.

3. ARREST

3.1 WHAT IS AN ARREST?

You have a fundamental right to personal liberty under the Constitution of Sri Lanka. But, this is not an absolute right, so you can be arrested if you commit a crime, provided the arrest is done legally. You also have a right not to be arrested without a legal reason and procedure.



A person can be arrested by:

- A police officer
- A private citizen ONLY if that person HAS good reason to believe that an offence has been committed and is detaining a person until the police arrive.

3.2 WHAT IS AN ARREST WARRANT?

An arrest warrant is a document issued by a judge to authorise an arrest. The arrest warrant includes the following information:

- The name of the Magistrate's Court that is issuing the warrant
- The name and designation of the person(s) who is to make the arrest
- Name and address of the person to be arrested
- Details of the incident surrounding the cause for his/her arrest
- The offence committed, the section and the Statute under which s/he is being charged
- Order made to arrest the person named in the warrant
- Date and signature of the judge issuing the warrant

3.3 CAN I BE ARRESTED WITHOUT AN ARREST WARRANT?

The only situations when the police can arrest you without a warrant is:

- If the police reasonably believe that you are the person against whom a warrant was issued, they can arrest you even if they don't have the warrant with them when they are arresting you.
- If the police can see that you are trying to commit an offence and the only way to stop you is to arrest you.
- If the offence is committed in the presence of a police officer and you refuse to give your name and address, or the police officer has reasons to believe that the information is wrong, then you can be arrested without a warrant to obtain your name and address.

- If a complaint has been made against you at the police station or there is extremely reliable information that you have committed an offence.
- If you are obstructing a police officer from doing his lawful job.
- If you have tried to hide your presence and it seems as if you hid yourself to commit an offence, you may be arrested.
- If you are living in Sri Lanka and you have done something which was an offence in another country as well as in Sri Lanka, you can be arrested and deported to the country where you committed the offence. This is so that you are charged and tried in the country you committed an offence.

If arrested, the police **MUST** produce you before a Magistrate usually within 24 hours. There are a few laws that allow the police to take more time before producing you before a Magistrate. See the following table for more information.

Law	Type of arrest/detention*	Period of time I can be held without being taken before a Magistrate
Criminal	Can be arrested with a warrant	Within 24 hours
	Can be arrested without a Warrant	without delays and within 24 hours
Prevention of Terrorism Act	Arrested for an offence of terrorist act	Within 72 hours
	Detention Order is issued by the Minister to arrest and detain.	No right to be brought before a Magistrate and can be held for 3 months. (Maximum period of detention 18 months)

3.4 WHAT CAN I ASK THE POLICE AT THE TIME OF ARREST?

You can ask the name, rank and police station to which the officer is attached.

- You can ask what the offence or crime that you are being arrested for is.
- You can ask that the crime that you are being suspected of is explained to you in a language you understand

3.5 WHAT SHOULD I DO IF THE POLICE ASKS ME TO GO TO THE POLICE STATION? DO I HAVE TO GO?

The police cannot ask you to go to the police station without giving you reasons as to why.

Only if you are under arrest can the police restrain you and take you.

If you not under arrest, you have a right to

- Ask the police for the reasons as why you are being requested to go to the police
- Decide on the time and date that you are able to go
- Decide to take someone or a lawyer to assist you at the police station at the time you go.

3.6 WHAT SHOULD I KNOW ABOUT MAKING A STATEMENT AT THE POLICE STATION?

- You can ask that the statement you give is written down in a language that you are able to understand. It is important that you are sure that the statement written down has exactly what you said when you place your signature at the end of the statement.
- You can ask that the statement is explained to you in a language that you understand even if it is written in another language.
- It is useful to take someone with you - a friend, family member or lawyer - who can speak and read the language that the statement is likely to be written in so that that person can check.
- If you have not made a statement, and you are being asked to sign a document, you have a right to ask what it is and if you are not agreeable to signing it, you can refuse to sign.
- You should not sign or place your thumb-print on blank sheets of paper.

3.7 WHAT ARE MY RIGHTS WHEN I AM ARRESTED AND IN THE CUSTODY OF THE POLICE?

If you are arrested, this means that you are suspected of a crime and the state has sufficient evidence to believe that you are responsible.

Suspects have a series of rights because until a court decides that they are guilty, they have to be treated as if they are innocent.

- You have a right not to be tortured or treated in an inhumane or degrading way. You cannot be punished in any way. Only a court can order punishment.
- You can be visited by your family.
- You have the right for a lawyer to visit, speak and advice you. This right should be available without any interference/monitoring from anyone.
- You have a right to be brought before a Magistrate.

4. DETENTION

4.1 WHAT IS DETENTION?

Detention is when you are kept in custody of the police or any other state official.



4.2 WHO CAN DETAIN ME?

From the time of arrest and until you are produced before a Magistrate, you can be detained in police custody (usually only for 24 hours). If the arrest is in relation to terrorism it can be much longer.

After being shown to the Magistrate, it is the responsibility of the Magistrate to see if there are reasons to keep you in further detention. If the Magistrate believes there is good reason to keep you in detention, it is likely that you will be remanded for 2 weeks for the police to do more investigations.

4.3 CAN I BE DETAINED ANYWHERE?

No. After the Magistrate makes an order to detain you, you have to be detained in a place that is under the Prison Department. You cannot be taken back into police custody.

For a terrorism related offence, the law allows persons who are detained in prison custody to be taken out by the police for investigation.

4.4 ARE THERE ANY SITUATIONS WHERE I CAN BE DETAINED WITHOUT BAIL?

If you are arrested for murder or for terrorism you can be detained without bail.

4.5 WHAT ARE MY RIGHTS IF I AM DETAINED?

When you are detained, and until the court case is over, you are a suspect. Suspects have several rights, because citizens must be treated as if they are innocent until they are proven to be guilty. These rights are as follows:

- Right to a lawyer
- Right to a fair trial
- Freedom from torture
- Freedom from degrading and inhumane treatment
- Freedom of thought and conscience
- Freedom to have and follow any religion

5. BAIL

5.1 WHAT IS BAIL?

Court can permit you to post bail, (i.e.: give a guarantee), and secure your release from remand prison. The guarantee you give to court is that you will be present for the trial.

Court may allow you to post bail in any of the following ways:

- Bond – Bond is a sum of money paid as a guarantee by a person on behalf of the accused person to be released on bail. If the person released on bail does not come to court, they forfeit that sum of money.
- Sureties - other persons take the responsibility of you coming to court.
- Other conditions

Court considers the following things before setting the bail conditions

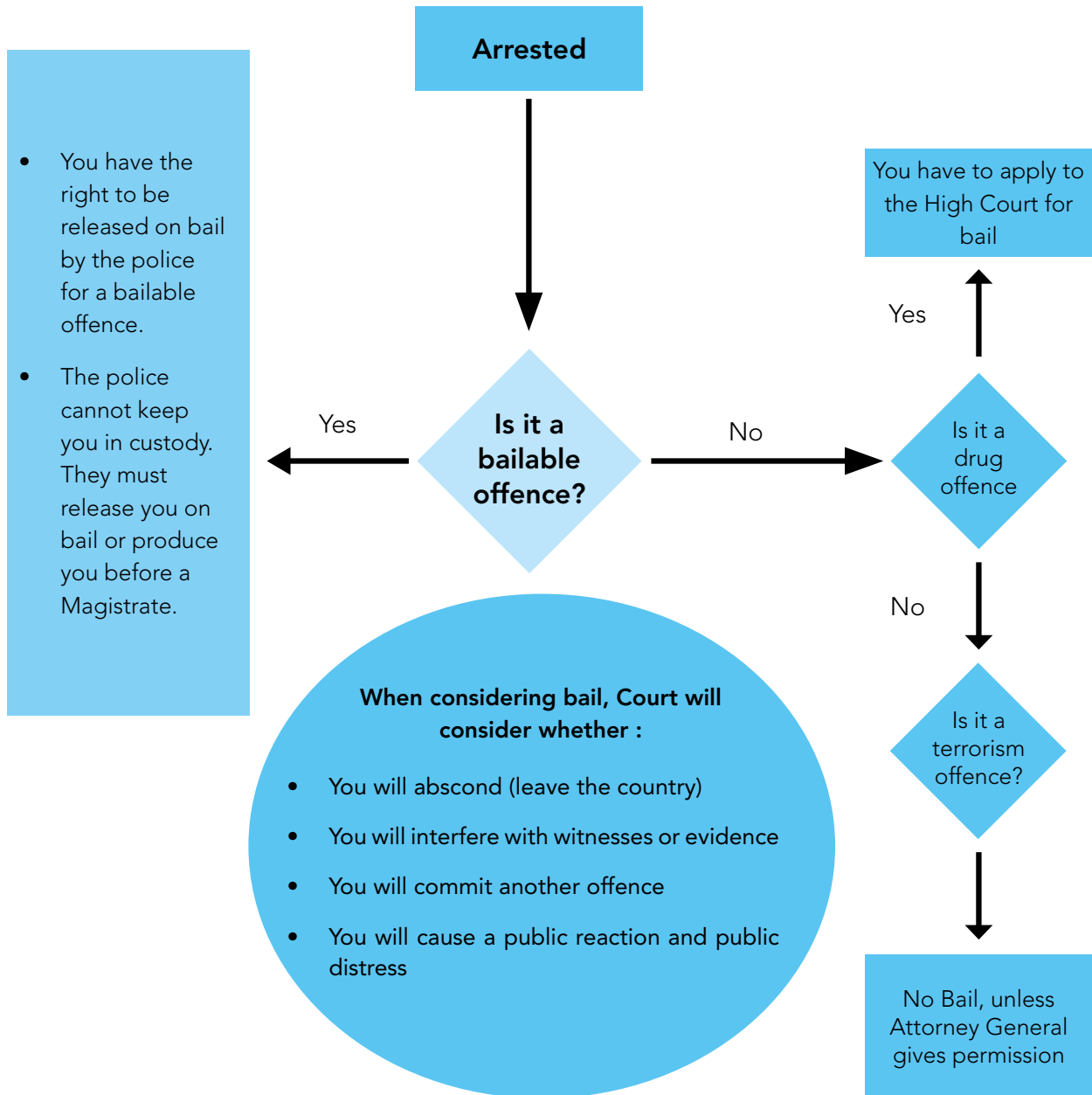
- the risk of the defendant not coming back to court,
- the type of crime alleged,
- the "dangerousness" of defendant, and
- the safety of the community.

5.2 CAN THE BAIL GRANTED TO ME BE REVOKED?

The order to release you on bail can be cancelled if you have broken any of the terms of releasing you on bail or if you fail to attend court as promised.

5.3 WHEN CAN I GET BAIL?

When and how you can get bail depends on whether the offence you are charged with is a bailable or non bailable offence. See the chart for details.



5.4 WHAT HAPPENS IF I AM NOT PERMITTED TO POST BAIL?

You will be kept in remand custody. This means you will be held in a prison until your next court date.

5.5 WHAT HAPPENS AFTER I GET BAIL?

You will be released from remand prison after you post bail (sign a bond or present sureties) and you have to appear in court whenever you are asked to.

6. TORTURE

6.1 WHAT IS TORTURE?

Under the Constitution, all State officials have an obligation to ensure that all persons in Sri Lanka are free from torture and inhuman and degrading treatment.



Torture is any act by a state official which causes severe pain, whether physical or mental, to any other person, done to obtain information or a confession from someone, to punish someone for a suspected act, to intimidate or coerce someone or to discriminate someone because of their identity.

Examples of physical torture: slapping, beating, kicking, trampling, rape, sexual abuse and harassment, causing pain by using things such as batons, sticks, firewood, poles or wickets, wires, and metal chains, beaten on feet, being hung by thumbs, wrists or ankles, burns, asphyxiation, using chillie powder or petrol to cause a stinging sensation and electric shocks.

Examples of psychological torture: harsh language causing fear or pain of mind, derogatory words, harassment, threats, insults, removal of clothing, sexual harassment.

The above are only examples. Depending on the circumstances and nature of the treatment, if it causes severe pain, other acts can also be torture.

6.2 WHAT IMMEDIATE STEPS CAN I TAKE IF I EXPERIENCE TORTURE?

- You may need to immediately seek medical treatment for your injuries.
- You should keep all the evidence of what happened - photographs of injuries, medical evidence, details of witnesses, etc.
- Immediately make a complaint to the National Human Rights Commission (HRC).

6.3 WHAT LEGAL REMEDIES ARE AVAILABLE TO ME?

There are 4 types of legal remedies that you can take.

(i) Report it to the police.

Torture or inhuman and degrading treatment by a state official is a criminal offence. State officials who are found to be guilty by a court can face between seven to ten years of simple or rigorous imprisonment. When you make a police complaint of torture, you will have to participate in the investigation by giving a statement and give evidence at a trial in court.

(ii) File a case in the Supreme Court

- Torture and inhuman and degrading treatment is a violation of our Constitution. You have to file a case within 30 days of the incident. The only exception is if you have filed a complaint to the HRC before 30 days and your case is pending before the HRC.
- The Supreme Court can hear your case and if it decides that torture has taken place, the court will give a decision officially recognizing that the persons responsible have violated your rights. The court can also grant a consolatory sum of compensation to be paid by those responsible and the state to you.

(iii) Make a complaint asking for disciplinary action against person responsible.

- Lodge a complaint with the Human Rights Commission of Sri Lanka.
- If the person responsible for the torture or ill treatment is from the police, you can also file a complaint with the National Police Commission.

(iv) File a civil action (for compensation)

- A case may also be filed against the State officials responsible for torture or ill treatment in the District Court where the state official/s reside. You must file this case before two years passes after the incident.
- You can claim compensation for any loss or damage caused to you as a result of torture or ill treatment, and the psychological and physical suffering. You will need to get the assistance of a lawyer to file this. If you cannot afford a lawyer, you may need to get legal aid either provided by the state or some non-governmental organizations.

(This handbook has more information on filing police complaints, supreme court cases, and complaints at independent commissions in the last section).

7. FREEDOM OF ASSOCIATION

7.1 WHAT IS FREEDOM OF ASSOCIATION?

Our Constitution gives us the right to:

- form or join an association or trade union,
- conduct peaceful assembly
- Associate with others in private or public to follow your religion
- Associate with others in having a lawful job or business



This includes the freedom to gather in a group in private or public, the right to protest peacefully, have religious gatherings and socialise with other people in a group.

7.2 WHEN CAN MY FREEDOM OF ASSOCIATION BE RESTRICTED?

There are some situations where this freedom can be restricted. The restriction must be legal. Usually the reason for the restriction is that without the restriction harm may be caused to others.

Eg: There is a criminal offence called “unlawful assembly”. This is where 5 or more people gather together to commit certain types of acts. For example:

- intimidate the government,
- stop the law from being enforced,
- trying to forcefully take over someone’s property,
- having training in using arms other than what is authorised by the government.

7.3 CAN I ORGANISE OR PARTICIPATE IN A PUBLIC PROTEST?

- Yes, organizing or participating in public protests is one way in which you as a citizen can express your views, your dissatisfaction or bring important issues to the notice of the public or decision makers.
- You can conduct a protest in any public space. If you are using a private space you will need to make sure you have permission of the owner of the private space.
- If you are conducting a march along a public roadway, you must inform the local police so that adequate arrangements for security and traffic management are taken. The police are under a duty to facilitate your right to peacefully protest.

- You must ensure that the protest is not advocating a crime and is not violent.
- As responsible citizens, you can also take measures to
 - Ensure the safety of those participating and the public
 - Keep public places clean and not cause damage

8. FREEDOM OF EXPRESSION

8.1 WHAT IS FREEDOM OF EXPRESSION?

Freedom of expression means that as citizens we all have the freedom as an individual or a group to express our beliefs, thoughts, ideas, and emotions about different issues, without government censorship or restriction. This is a basic right of citizens because it allows citizens to tell the government what is working, what is not working and what their needs are. This basic freedom is protected by the Constitution.



The freedom of expression includes the right to

- speak and express ourselves by publishing or broadcasting information in any form of media,
- public performances and public non violent protests.
- receive information in the form of any media.

8.2 CAN MY FREEDOM OF EXPRESSION BE RESTRICTED?

Yes, there are instances when the use of your freedom of expression may cause harm and in those situations there are some laws that restrict your freedom.

The Constitution says that this freedom can be restricted by a law for reasons like:

- national security (for example emergency regulations by President)
- Public order
- Public health and morality (for example laws such as the Quarantine law may restricts persons from sharing information that may cause a risk to public health)
- Racial and religious harmony (for example the ICCPR law restricts persons from advocating national, racial, or religious hatred in a way that encourages discrimination of others or violence.)

8.3 WHAT ARE THE OTHER RESTRICTIONS THAT I NEED TO BE MINDFUL OF?

- **Defamation**

Any person can file a defamation case against you if you publicly say something to cause that person's reputation to be harmed. The reason they can file a case is because this has caused them harm or loss. The person harmed must show court the harm that was caused. You have a right to say things about another person if it is true and it is in the public interest to share this information publicly. A defamation case cannot result in the person accused of defamation going to jail, it can only demand compensation.

- **Hate speech which incites violence**

Your freedom of expression can also be restricted if it is speech that

- (a) promotes war
- (b) promotes national, racial or religious hatred in a way that it encourages or persuades others to discriminate or cause violence.

The ICCPR Act in Sri Lanka makes hate speech a criminal offence, which can be punished with imprisonment upto ten years. If someone is arrested for this offence under the ICCPR Act they will have to apply to the High Court for bail, because the Magistrate cannot grant bail in this case.

- **Contempt of Court**

If there is a case pending before a court, you can only publicly share information about what exactly happened in court. It is not permitted for a person to publicly make comments that affect a fair trial.

9. CRIMINAL LAWS PROTECTING WOMEN

If any of the following crimes happen to women, it is an offence under the Penal Code of Sri Lanka of 1883 and you can report it to the police. The police have to investigate and if there is enough evidence will file a criminal case against the person who is reasonably suspected to be the offender.



Offence and Penal Code Section	Description	Punishment in Penal Code
Murder (Sections 293, 294 & 295)	Killing or causing a woman or girl child to die.	Death Penalty
Assault (Section 342)	Causing fear that force or violence will be used.	<ul style="list-style-type: none"> • Maximum of 3 months imprisonment • Fine - Rs 50
Hurt	Causing bodily pain, disease or weakness to any person	
Causing hurt by dangerous weapons (Section 317)	Causing hurt by means of weapons considered dangerous. Such as using fire or any other heated material, explosive or harmful material or by using any animal.	<ul style="list-style-type: none"> • Maximum 10 years imprisonment • Fine
Causing hurt to extort property (Section 318)	Causing hurt to illegally or forcefully obtain property or valuable security.	<ul style="list-style-type: none"> • Maximum of 10 years imprisonment • Fine
Causing hurt by poison (Section 319)	Causing hurt by giving poison or any other substance extremely harmful to health.	<ul style="list-style-type: none"> • Maximum of 10 years imprisonment • Fine
Grievous hurt (Section 311) was redefined in 1995 to include wider categories of injuries. (S. 311 repealed and redefined by Penal Code Amendment 1995).	<p>Some forms of grievous hurt are:</p> <ol style="list-style-type: none"> Permanent loss or disability to sight Permanent loss or disability to hearing Loss of any part of the human body Destruction or loss of powers of any part of the human body Permanent scarring of face or head Cut or fracture of any bone, cartilage or moth, or dislocation of bone, joint or tooth Any injury that cause the victim to be in severe bodily pain or disturbs his ordinary daily activities for 20 days 	<ul style="list-style-type: none"> • Maximum of 7 years imprisonment • Fine

<p>Kidnapping (Section 357, 358 of the Penal Code)</p> <p>Abduction (Section 353)</p>	<p>Unlawful transportation , a) From Sri Lanka or b) From lawful guardianship</p> <p>Abduction is inducing a person to go from any place using force, lies, abuse of authority or any other.</p>	<ul style="list-style-type: none"> • Maximum of 7 years imprisonment • Fine
<p>Wrongful restraint (Section 330).</p>	<p>Obstructing a person from moving from one place to another where he has the right to be & wants to go. (Eg - A has obstructed Z's pathway)</p>	<ul style="list-style-type: none"> • Simple Imprisonment of a maximum of 1 month • Fine - Rs 50
<p>Wrongfully confining a person (Section 331)</p>	<p>A person wrongfully restrained from go from certain restricted limits (Eg - B has locked Y in a room)</p>	<ul style="list-style-type: none"> • Simple Imprisonment of a maximum of 1 month • Fine - Rs 50 • A maximum of 1 year imprisonment • Fine - Rs 100 • 1-2 years Imprisonment (if 3 days or more) • 3 years Imprisonment (if 10 days or more)
<p>Rape (Section 363)</p>	<p>Sexual Intercourse without consent</p> <p>** In the event of children below 16 years of age even if there is consent, it is still a criminal offence.</p>	<ul style="list-style-type: none"> • Rigorous imprisonment (7 – 20 years) • Fine • Compensation to victim

<p>Aggravated Rape</p>	<p>Rape under aggravated circumstances</p> <ul style="list-style-type: none"> a) Public Officer b) Women / Child caring institution c) Management/ Staff of a hospital d) Pregnant woman e) Child under 18years of age f) Mentally/ Physically challenged person g) Gang rape 	<ul style="list-style-type: none"> • Rigorous Imprisonment (10 - 20 years) • Fine • Compensation to the victim
<p>Grave Sexual abuse</p>	<p>Using genitals or any part of the human body or any instrument on any orifice (opening) or part of body for sexual satisfaction, without consent</p>	<ul style="list-style-type: none"> • Rigorous Imprisonment (5 - 20 years) • Fine • Compensation to the victim • If the victim is below 18 years of age, • Rigorous Imprisonment (7 - 20 years) • Fine • Compensation to the victim
<p>Sexual Harassment (Section 345)</p>	<p>Using assault or criminal force to sexually harass another verbally, physically or to cause sexual annoyance.</p>	<ul style="list-style-type: none"> • Maximum of 5 years imprisonment • Fine
<p>Criminal Intimidation (Section 483)</p>	<p>Threatens with injury to one's reputation or property or any other in whom she's interested in, with intent, to cause that person to act illegally or to omit from acting legally.</p>	<ul style="list-style-type: none"> • Maximum of 2 years imprisonment • Fine

10. DOMESTIC VIOLENCE

10.1 WHAT IS DOMESTIC VIOLENCE?

Domestic violence is any form of violence, whether physical or verbal, by someone in a close relationship to you.

Physical acts of domestic violence

- Murder or attempting to murder
- Causing hurt, bodily pain or
- disablement (slapping, beating, pinching, kicking, use of any
- instrument such as a broom, wooden pole, wires or belts, or any
- household item, burning)
- Causing grievous hurt resulting in injuries to the body
- Causing hurt by use of dangerous weapons
- Causing hurt to force someone to give money or property
- Causing hurt by poison
- Forcefully preventing a person from moving
- Forcefully preventing a person from leaving the home or any other place.
- Using force against a person
- Using force to cause fear
- Hitting or kicking a person
- Taking a child or person away by force without consent
- Rape
- Threatens a person's body, reputation or property

Verbal forms of domestic violence

- unreasonably control or emotionally cause hurt or pain (eg: regularly insulting, blaming, ridiculing),
- unreasonable accusations,
- Uses verbal intimidation to prevent a person from contact with others,
- causing humiliation.

10.2 WHO CAN I GET A DOMESTIC VIOLENCE PROTECTION ORDER AGAINST?

- My husband or wife,
- My ex-husband or ex-wife,
- A person that I live with,
- A father, mother, grandfather, grandmother, stepfather, stepmother,
- A son, daughter, grandson, granddaughter, stepson, stepdaughter,
- A brother, sister, half-brother, half-sister, step brother, step sister,
- Aunts or uncles
- Nieces or nephews
- Cousins

10.3 WHAT KINDS OF PROTECTION CAN I GET?

The Court can give orders for the person causing violence to you to :

- a. Stop committing any act of domestic violence.
- b. Not enter and be in the place that you are staying at even if it is your matrimonial home
- c. Not enter your residence, workplace, or school
- d. Not enter any shelter or temporary place you are staying in for safety
- e. Not access children unless supervised or ordered by Court
- f. Not take any money, jewellery or any other valuable thing or property which both you and the person causing violence have used (for example house, vehicles, furniture, household appliances) ;
- g. Not contact or follow you;
- h. Not commit any act of violence against anyone assisting you such as counsellors, School teachers, Social workers, Lawyers.
- i. Any conduct which in Court's opinion is detrimental to the safety, health or well being of the aggrieved person or any other person who in Court's opinion may require a protection order against the perpetrator,
- j. Stop the person from selling or transferring the matrimonial home in order to place the aggrieved person in a destitute position.

10.4 HOW CAN I GET THESE PROTECTION ORDERS?

IMMEDIATELY following an incident of domestic violence, and if you believe you need protection orders from a Court, you must:

- Make a complaint at the local police station. Obtain a certified copy of the complaint.
- If you have any injuries, you must get a medical examination at a government hospital and report your injuries to a Judicial Medical Officer.
- If there are visible injuries, you must get photographic evidence of the injuries. Someone you trust can help me take the photographs and it should be possible to identify yourself in the photographs and clearly see the injuries as well.
- You must write down everything that happened or as much as you can remember. You can get a friend to help me with this.
- Only the police or a lawyer can make an application for protection orders. You can ask the police to make an application to court and you can also consult a lawyer. You must inform a lawyer who is willing to take your case, of the details of your case including any related history of violence. You must also find out from your lawyer what relief you can get and what you should do next.

10.5 WHAT IS THE PROCESS IN THE MAGISTRATE COURT?

- File the Application (can be filed by Police or a lawyer on my behalf).
- Immediate orders may be given as soon as the application is filed.
- Inquiry into the application must begin within 2 weeks.
- After the inquiry, if Protection Orders are given by court, they are valid for one year.
- If there is continued threat after one year, you can ask court to extend or file a new application

11. LEGAL REMEDIES

This section discusses different legal remedies available to members of the public against the actions (or lack of action) by public officials. The section discusses 4 main remedies:

- Police complaints
- Fundamental Rights applications
- Writs
- Complaints to special independent authorities



Public officials are subject to the criminal and civil law of the country, just as any other citizen. Additionally public officials are also subject to Public Law. This includes the law relating to Fundamental Rights and Writs.

11.1 MAKING A POLICE COMPLAINT

WHERE SHOULD I MAKE A POLICE COMPLAINT?

Complaints may be recorded at the police station of your choice. It is easiest to file a police complaint at the police station closest to you or closest to where the incident took place. This is the most practical because this will make it possible for the police station to carry out an investigation.

No police station can refuse to take your complaint. If you do not feel safe making a complaint at a particular police station, you can even make it at another police station or at the Police Headquarters.

CAN MY LAWYER BE PRESENT?

If one chooses to, one can have one's lawyer present when a police complaint is made and later, during the inquiry.

CAN I MAKE A COMPLAINT IN ANY LANGUAGE I CHOOSE?

A police complaint can be made in the language of one's choice. A person cannot be forced to make or sign a police complaint filed in a language they do not understand. If the police station is unable to write the complaint in a language you understand, the content of the written complaint must be clearly explained to you before you place your signature on it.

CAN I WRITE MY COMPLAINT MYSELF AND PASTE IT IN THE POLICE COMPLAINT BOOK?

Yes, you can write or type out your complaint, take it to the relevant police station, and

request that this complaint be pasted as in the information book of the police station. Remember to write your full name, your national identity card number, your address and your telephone number in the first line. At the end of your written complaint write the date and place your signature or thumbprint.

WOMEN AND CHILDREN'S BUREAU

Complaints specifically involving victims who are women and children can be made at the Women and Children's Bureau of the relevant police station.

11.2 TAKING A CASE TO COURT

In the following instances, you may consider filing a case against the relevant institution or official to correct the situation or get some relief:



- When your rights are violated
- if a state institution or official has done something illegal,
- if a state institution or official has done something without having power to do it,
- if a state institution or official is refusing to do something that is within their power to do without good reason, or
- if a state institution or official has taken a decision that affects you without giving you an opportunity to be heard,

THE LAW DOES NOT TOLERATE DELAYS IN FILING CASES

It is important not to delay filing a case.

The law is very specific about cases within certain time periods or at least within a reasonable time. The law expects people to act immediately. If for whatever other reasons you delay filing your case it may be seen as if you were not interested or not diligent about complaining about what has happened.

IMPORTANT FIRST STEPS

- to contact a lawyer **IMMEDIATELY** after the incident. Get advice from your lawyer to find out the most appropriate means to obtain relief in your case. If you are unable to get advice from a lawyer you can also get help from the Legal Aid Commission. You can call the main Legal Aid Commission office at 0112 433 618 and ask for the number of the branch office closest to you.
- Submit a written complaint to the National Human Rights Commission within 30 days of the incident or any communication you receive that lets you know that you have been aggrieved. Make sure that you obtain the receipt/acknowledgement of the complaint, and know the reference number of this complaint. The National

Human Rights Commission has branches all over the country and you may be able to get information about the branch closest to you by calling the main office at 0112 505 575.

- Send a written complaint to the head of the state institution that is responsible for the public officer or state institution that has violated your rights or has done something wrong.
- Obtain and safely keep all evidence relating to the violation or wrongdoing. (Eg: documentation, photographs, audio or video evidence etc.) Make sure you keep a record of dates and times of all relevant incidents, complaints you made, names of the persons you spoke to about the complaint and their responses. Where possible obtain full names and designations of all persons involved.

WHAT TYPES OF CASES CAN I FILE AGAINST STATE ACTION?

There are 2 kinds of cases that may be filed when complaining about State action/ inaction. They are:

- Fundamental Rights applications (details given in the table below)
- Writ applications (details given in the table below)

FUNDAMENTAL RIGHTS

<p>What are my Fundamental Rights?</p>	<p>Fundamental Rights are Human Rights recognized and protected under the Sri Lankan Constitution. Violations of Fundamental Rights only occur as a result of State action or inaction. Our law and Constitution recognize the following fundamental rights:</p>
	<ul style="list-style-type: none"> - Freedom of thought and conscience - Freedom of religion (i.e.: the freedom to have and adopt a religion) - Freedom from torture and degrading treatment - Right to be treated as innocent until proven guilty - Right to defend yourself if charged with an offence - Right not to be arrested without a legal reason and procedure - Right of detainees to be brought before a Court according to the law

	<ul style="list-style-type: none"> - Right not to be held in further custody UNLESS there is a Court order authorizing this. - Right not to be punished without a legal reason, according to a legal procedure - Right to equal protection of the law (i.e.: to be treated equally before the law) - Right to equal treatment, without discrimination based on race, religion, language, caste, sex, political opinion, place of birth etc. - Freedom to assemble peacefully Eg: right to peaceful protest and demonstration, meetings etc - Freedom to speak and express ourselves. This includes the right to receive information as well. Eg. To both publish/broadcast AND receive information via newspapers, electronic media, independent radio or television public performances, public non violent protests - Freedom to form and join a trade union - The freedom to practice or teach religion - Freedom to promote your language and culture - Freedom to return to Sri Lanka - Freedom of Association - i.e.: right to associate with other individuals, groups etc. - Freedom to move around and choose a residence in Sri Lanka - Freedom to engage in any lawful occupation - Right to vote - Right to life
<p>Restrictions on Fundamental Rights</p>	<p>A person's fundamental rights can only be restricted for the reasons in the Constitution. Some fundamental rights cannot be limited for any reason whatsoever. These are:</p> <ul style="list-style-type: none"> - Freedom of thought and conscience - Freedom of religion (i.e.: the freedom to have and adopt a religion) - Freedom from torture and degrading treatment

Who can file a Fundamental Rights (FR) application?	An FR application must generally be made by the victim of the violation. There are very few exceptions to this rule.
Where should an FR application be filed?	The Supreme Court of Sri Lanka which is in Colombo 12.
When should I file and FR application?	An FR application generally must be filed within 30 days of the violation/incident.
What kinds of relief can i get?	<p>The remedy in the Supreme Court is a declaration by the Court that the victim's fundamental right has been violated by the Respondent (the person against whom the case has been filed).</p> <p>Financial compensation may be granted, but this is generally not a very significant amount.</p>
Can I file an FR application without the help of a lawyer?	If the victim has no access to a lawyer, an application can also be made by a letter (preferably by registered post) addressed to the Chief Justice.

WRIT APPLICATIONS

<p>What are Writs?</p>	<p>Writs are applications challenging government action or inaction that is</p> <ul style="list-style-type: none"> - unlawful (the law does not permit it), - unreasonable or - arbitrary (based on individual preference, convenience or favouritism; not a fair decision) <p>Examples of Writs:</p> <ul style="list-style-type: none"> - An Order may sought for a person who has been disappeared or is in incommunicado detention to be produced before Court - If a public official took a decision without any legal authority to do so, the decision can be challenged and cancelled. - If a public official has the power to take a decision but took a decision that was not fair or was unreasonable, or did not consider all the relevant facts, the decision can be challenged and cancelled. - A person may ask that a benefit (such as a promotion) be given to him/her on the basis that s/he is entitled to it according to the law. - If a person has not been properly appointed to a public office, his holding of the public office can be challenged.
<p>Who can file a writ application?</p>	<p>Persons affected by the decision, action or inaction of the public official or state institution can make an application to Court. Sometimes, a person can file an application in the interest of the general public.</p>

Where should I file a writ application?	In the Court of Appeal which is Colombo 12 or in the Provincial High Court of the relevant Province.
When should I file a writ application?	The case must be filed within a reasonable time following the wrongdoing. Court will decide if the case has been filed in time or not. It is thus very important that the case is filed as soon as possible.

11.3 INDEPENDENT COMMISSIONS/AUTHORITIES

Individuals can also file complaints at the relevant Independent Commissions/ Authorities. These include:

- the Human Rights Commission (HRC) for violations of fundamental rights and other human rights.
- the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) for incidents of bribery or corruption
- the National Police Commission for complaints made against actions or inactions of police officers.
- the National Child Protection Authority (NCPA) for complaints concerning violations against children by state officials.

Things to remember

- Always make sure you get a reference number or receipt acknowledging your complaint from the Commission.
- You can take someone with you when you go to make a complaint. You can be accompanied by a lawyer if you so wish.

REMEMBER THAT THIS HANDBOOK IS A SIMPLE AND GENERAL EXPLANATION OF LAWS, LAWS CAN CHANGE AND THERE CAN BE MORE COMPLEXITIES WHICH CANNOT BE ADDRESSED BY THE LIMITED INFORMATION IN THIS THIS HANDBOOK. IF YOU HAVE A LEGAL ISSUE PLEASE GET APPROPRIATE LEGAL ADVICE.

