

## CHAPTER III

**FUNDAMENTAL RIGHTS AND FREEDOMS**

Inherent right to life.

**8.** (1) Every person has an inherent right to life and a person shall not be arbitrarily deprived of life.

(2) Any restriction shall not be placed on the rights declared and recognized by this Article.

Freedom from torture or cruel, inhuman or degrading treatment.

**9.** (1) A person shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(2) Any restriction shall not be placed on the rights declared and recognized by this Article.

Freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation, &c.

**10.** (1) A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.

(2) Save as otherwise provided by law, a person shall not be arrested except under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court in accordance with procedure prescribed by law.

(3) Any person arrested shall be informed, in a language which the person appears to understand, of the reason for the arrest and of the person's rights under paragraphs (4) and (5) of this Article.

(4) Any person arrested shall have the right to communicate with any relative or friend of the person's choice, and, if the person so requests, such person shall be afforded means of communicating with such relative or friend.

(5) Any person arrested shall have the right to consult and retain an attorney-at-law and such attorney-at-law shall be afforded all reasonable facilities by the State.

(6) Any person arrested shall not be detained in custody or confined for a longer period than under all the circumstances of the case is reasonable and shall, in any case, be brought before the judge of a competent court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to such judge, and a person shall not be detained in custody beyond such period except upon, and in terms of, the order of such judge made in accordance with procedure established by law.

(7) Any person detained in custody or confined who is entitled, under the provisions of any law, to be released on bail or on the person executing a bond, shall be so released.

(8) Any person suspected of committing an offence shall be charged or indicted or released without unreasonable delay, having regard to the facts and circumstances of the case.

(9) Any person charged with or indicted for an offence shall be entitled to be heard in person or by an attorney-at-law of the person's own choosing and shall be so informed by the judge.

(10)(a) Any person charged with or indicted for an offence shall be entitled to be tried -

(i) without undue delay ;

(ii) at a fair trial ;

(iii) by a competent court ; and

(iv) subject to sub-paragraph (b) of this paragraph, at a public hearing.

(b) A judge may, in the judge's discretion, whenever the judge considers it necessary, in proceedings relating to sexual matters or where the interests of juveniles so require or in the interests of national security or public order necessary in a democratic society or in the interests of order and security within the precincts of such court, exclude therefrom, persons who are not necessary for the purposes of those proceedings.

(11) (a) Every person shall be presumed innocent until the person is proved guilty.

(b) Anything contained in any law shall not be held to be inconsistent with sub-paragraph (a) of this paragraph to the extent that such law imposes upon an accused the burden of proving particular facts.

(12) A person shall not be compelled to testify against himself or herself or to confess guilt.

(13) (a) A person shall not be held guilty of, or punished for, an offence on account of any act or omission which did not, at the time of such act or omission, constitute an offence, except for any act or omission which, at the time it was committed, was criminal according to the principles of public international law.

(b) Any penalty more severe than the penalty in force at the time when an offence was committed shall not be imposed for such offence.

(14) Any person who has been convicted or acquitted of an offence in accordance with law by a competent court shall not be liable to be tried for the same offence save on the order of a court exercising appellate or revisionary jurisdiction.

(15)(a) A person shall not be punished with death or imprisonment except by order of a competent court made in accordance with procedure established by law.

(b) The arrest, holding in custody, detention or other deprivation of personal liberty of a person -

- (i) pending investigation or trial shall, if not unreasonable having regard to the circumstances, not constitute punishment;
- (ii) by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act or other such law as may be enacted in substitution therefor, shall not be a contravention of this paragraph.

(16)(a) Any restrictions shall not be placed on the rights declared and recognized by paragraph (9), items (ii) and (iii) of sub-paragraph (a) of paragraph (10), paragraph (13) and paragraph (15) of this Article.

(b) Any restrictions shall not be placed on the rights declared and recognized by paragraphs (1), (2), (3), (4), (5), (6), (7), (8), items (i) and (iv) of sub-paragraph (a) of paragraph (10) and paragraphs (11), (12) and (14) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Right to equality.

**11.** (1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) (a) Subject to sub-paragraphs (b) and (c) of this paragraph, a citizen shall not be discriminated against on the grounds of ethnicity, religion, language, caste, gender, sex, political or other opinion, national or social origin, place of birth, mode of acquisition of citizenship, marital status, maternity, parental status or any one of such grounds.

(b) It shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any national language as a qualification for employment or office in the service of the State or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of such employment or office.

(c) It shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

(3) A person shall not, on the grounds of ethnicity, religion, language, caste, gender, sex, political or other opinion, national or social origin, place of birth, or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of such person's own religion.

(4) Anything in this Article shall not prevent special measures being taken by law, subordinate legislation or executive action where necessary for the sole purpose of the protection or advancement of disadvantaged or underprivileged individuals or groups including those that are disadvantaged or underprivileged because of ethnicity, gender, sex, age or mental or physical disability.

(5) Any restrictions shall not be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or the protection of public health or for the purpose of securing due recognition and respect for the rights and freedoms of others.

**12.** (1) Every person lawfully resident within the Republic is entitled to the freedom of movement within the Republic and of choosing such person's residence within the Republic.

Freedom of movement.

(2) Every person shall be free to leave the Republic.

(3) Any restrictions shall not be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security or public order or national economy or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or for the extradition of persons from the Republic.

**13.** Every citizen shall be entitled to return to the Republic.

Freedom to return to Sri Lanka.

**14.** (1) Every person has the right to respect for such person's private and family life, home, correspondence and communications and shall not be subjected to unlawful attacks on such person's honour and reputation.

Right to private and family life.

(2) Any restrictions shall not be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or national economy or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or for the enforcement of a judgment or order of a competent court.

Freedom of thought, conscience and religion.

**15.** (1) Every person is entitled to freedom of thought, conscience and religion including the freedom to hold opinions and to have or to adopt a religion or belief of the person's choice.

(2) Any restriction shall not be placed on the rights declared and recognized by paragraph (1) of this Article.

(3) Every person is entitled to the freedom, either alone or in association with others, and either in public or in private, to manifest the person's religion or belief in worship, observance, practice and teaching.

(4) Any restrictions shall not be placed on the rights declared and recognized by paragraph (3) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Freedom of speech and expression including publication and freedom of information.

**16.** (1) Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium.

(2) Any restrictions shall not be placed on the right declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, the protection of public health or morality, racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement of an offence or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Freedom of peaceful assembly.

**17.** (1) Every person is entitled to the freedom of peaceful assembly.

(2) Any restrictions shall not be placed on the exercise of the right declared and recognised by this Article other than such restrictions prescribed by any law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, the protection of public health or for the purpose of securing the due recognition and respect for the rights and freedoms of others.

Freedom of association.

**18.** (1) Every person is entitled to the freedom of association.

(2) Every citizen is entitled to the freedom to form and join a trade union.

(3) Any restrictions shall not be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, national

economy or for the purpose of securing due recognition and respect for the rights and freedoms of others.

**19.** (1) Every citizen is entitled alone or in association with others to enjoy and promote such citizen's own culture and to use such citizen's own language.

Right to enjoy and promote culture and use of language.

(2) Any restrictions shall not be placed on the exercise of the right declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others.

**20.** (1) Every citizen is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise.

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

(2) Any restrictions shall not be placed on the exercise of the rights declared and recognized by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of the national economy, national security, public order, protection of public health or morality, the environment or for the purpose of securing due recognition and respect for the rights and freedoms of others or in relation to -

- (a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of the person entitled to such fundamental right ; and
- (b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise, whether to the exclusion, complete or partial, of citizens or otherwise.

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

Right to ownership of property.

(2) Any person shall not be deprived of the person's property except as permitted by law.

(3) Any property shall not be compulsorily acquired or requisitioned save for a clearly described public purpose or for reasons of public utility or public order and save by authority of law which provides for the payment of fair compensation.

Special rights of children.

**22.** (1) Every child has the right –

(a) to a name from birth;

(b) to be protected from maltreatment, neglect, abuse or degradation; and

(c) to have an attorney-at-law assigned to the child by the State, and at State expense, in criminal proceedings affecting the child, if substantial injustice would otherwise result.

(2) Every child has the right –

(a) to family care or parental care or to appropriate alternative care when removed from the family environment; and

(b) to basic nutrition, shelter, basic health care services and social services.

(3) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (2).

(4) In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interest of the child shall be of paramount importance.

(5) Every child shall have the right to grow up in an environment protected from the negative consequences of the consumption of addictive substances harmful to the health of the child and, to the extent possible, from the promotion of such substances.

(6) Every child between the ages of five and fourteen years shall have access to free education provided by the State.

(7) A child shall not be employed in any hazardous activity.

(8) The rights recognized by this Article shall be in addition to any other right to which a child is entitled as a citizen or person under this Chapter.

(9) For the purposes of this Article “child” means a person under the age of eighteen years.

Freedom from forced labour.

**23.** (1) A person shall not be required to perform forced labour.

(2) For the purposes of this Article, forced labour does not include -

- (a) any labour required as a result of a lawful sentence or order of a competent court;
- (b) any services of a military character, or in the case of a person who has conscientious objections to service as a member of the armed forces, any labour which that person is required by law to perform in place of such service;
- (c) any service that may be reasonably required in the event of an emergency or calamity that threatens the life and well-being of the community; or
- (d) any labour reasonably required as a part of normal civil obligations.

**24.** (1) Every person has the right to safe conditions of work.

Right to safe conditions of work.

(2) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (1).

**25.** (1) Every citizen has the right to have access to –

Social rights.

- (a) health-care services including emergency medical treatment;
- (b) sufficient food and water; and
- (c) appropriate social assistance.

(2) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of the rights guaranteed by paragraph (1).

(3) A person shall not be evicted from the person's home or have the home demolished, except as permitted by law.

**26.** The exercise and operation of the fundamental rights declared and recognized by Articles 10, 11(1), 12, 14, 15(3), 16, 17 and 18 shall in their application to the armed forces, the police force and other forces charged with the maintenance of public order be subject to such restrictions as may be prescribed by or under any law in the interests of the proper discharge of their duties and the maintenance of discipline among them.

Operation of certain fundamental rights in their application to the armed forces to be subjected to restrictions prescribed by law.

**27.** (1) Where a Proclamation has been duly made pursuant to the provisions of Chapter XXIII, and subject to paragraph (2) of this Article, measures may be prescribed by law derogating from the exercise and

Derogation in times of public emergency.



operation of the fundamental rights declared and recognized in this Chapter to the extent strictly required by the exigencies of the situation and necessary in a democratic society, provided that such measures do not involve discrimination solely on the grounds of ethnicity, class, religion, gender, sex, language, caste, national or social origin and for the purpose of this Article “law” includes regulations made under the law for the time being in force relating to public security.

(2) In prescribing measures under paragraph (1) of this Article, there shall be no derogation -

(a) from any of the rights declared and recognized by Articles 8, 9, 10(1), 10(2), 10(9), 10(10)(a)(ii), 10(10)(a)(iii), 10(13), 10(15), 13 and 15;

(b) from the right declared and recognized by Article 10(6) unless at the same time legal provision is made requiring -

(i) the Magistrate of the area in which such arrest was made to be notified of the arrest ; and

(ii) the person arrested to be produced before any Magistrate,

within such time as is reasonable in all the circumstances of the case.

Existing written law and unwritten law.

**28.** (1) All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the provisions of this Chapter.

(2) (a) Within three months of the commencement of the Constitution, the President shall establish a Commission consisting of not more than five persons, appointed under the hand of the President, who have distinguished themselves in the fields of law or human rights, of whom one shall be appointed Chairperson, to examine all existing written or unwritten law and report to the President as to whether any such law is inconsistent with the provisions of this Chapter.

(b) In appointing the members of such Commission, the President shall have due regard to the necessity of ensuring the representation of the three major communities on the Commission.

(c) The Commission shall submit its report to the President within a period of three years from the date of its establishment and the President shall, as soon as practicable, cause such report to be placed before Parliament.

(3) The subjection of any person on the order of a court to any form of punishment recognized by any existing written law shall not be a contravention of the provisions of this Chapter.

**29.** In this Chapter “law” includes a Statute of a Regional Council.

Interpretation of law.

**30.** (1) Subject to paragraphs (2) and (3) of this Article, every person shall be entitled to apply to the Supreme Court as provided by Article 171 or to the Court of Appeal as provided by Article 182, in respect of the infringement or imminent infringement, by State action, including executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter.

Remedy for the infringement of fundamental rights by State action.

(2) Where the person aggrieved is unable or incapable of making an application under Article 171 or Article 182 by reason of physical, social or economic disability or other reasonable cause, an application may be made on behalf of such a person, by any relative or friend of such person, if the person aggrieved raises no objection to such application.

(3) An application under this Article may be made in respect of any group or class of persons affected, in the public interest, by any person in that group or class or by any incorporated or unincorporated body of persons, acting *bona fide*.

(4) For the purposes of this Article and Articles 171 and 182, “State action” does not include legislative or judicial action

**31.** A person who, not being a citizen of any country, has been permanently and legally resident in the Republic at the commencement of the Constitution and continues to be so resident, shall be entitled to all the rights declared and recognized by this Chapter, to which a citizen of Sri Lanka is entitled.

Rights of non-citizens permanently and legally resident.