

How a human rights law became a tool of repression in Sri Lanka

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The ICCPR Act, modelled on an international human rights treaty meant to prohibit national, racial and religious hatred, has been distorted in Sri Lanka to punish blasphemy and target minorities

The recent arrest of the YouTuber Sepal Amarasinghe has drawn attention to Sri Lanka's International Covenant on Civil and Political Rights (ICCPR) Act. Amarasinghe is accused of making disparaging comments about the Sacred Tooth Relic in Kandy, which many Buddhists venerate. His arrest is not the first time the ICCPR Act has been deployed to punish speech deemed to be offensive to Buddhism. In 2019, the writer Shakthika Sathkumara was similarly arrested for publishing a fictional short story titled '*Ardha*' ('Half'). The story was considered offensive to Buddhism and the Buddhist clergy as it depicted sexual abuse in Buddhist temples.

Both Amarasinghe and Sathkumara were arrested under Section 3 of the ICCPR Act, while also facing other charges. This section is modelled on Article 20 of an international human rights treaty bearing the same name, to which Sri Lanka is party. How did a law that was originally crafted to protect human rights become a repressive tool to punish blasphemy in Sri Lanka?

In the aftermath of the Second World War, member states of the United Nations made commitments to prohibit hate speech that incited violence against people on the basis of their identity. The Holocaust taught the world that hate and propaganda against a community could lead to terrible consequences, including mass expulsion and genocide. This experience formed the backdrop to Article 20 of the ICCPR.

Article 20 (2) obliges states to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In 2007, Sri Lanka attempted to fulfil its obligation as a signatory of the treaty by enacting Section 3 of the ICCPR Act. Despite being modelled on Article 20 (2), Section 3 of Sri Lanka's ICCPR Act contains serious weaknesses.

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First, it does not differentiate between the three types of incitement found in the international treaty. States are not necessarily expected to replicate the treaty and prohibit the different types of incitement in identical ways. For example, the penalty for inciting violence could include incarceration, whereas the penalty for inciting discrimination or hostility could be the revocation of a broadcast license or the restriction of a social media account. Yet, Section 3 (1) of Sri Lanka's ICCPR Act clumsily lumps each type of incitement defined in the international treaty into a common offence.

Second, Section 3 (4) of the ICCPR Act, allows for a person to be arrested for an alleged offence without a warrant. The same section also makes the offence non-bailable, meaning that only the

High Court, rather than a magistrate, may grant bail to anyone arrested. As a result, this section facilitates the arbitrary arrest and detention of an individual even without concrete evidence that the individual has committed an offence. Such detention can be prolonged until they are produced before a High Court judge. In effect, the section permits the state to punish individuals without ever prosecuting and convicting them.

Weapon against blasphemy

Blasphemy can be defined as an act that is sacrilegious or insulting towards a divine being or sacred object. The term “blasphemy” is not found in Sri Lankan law. Yet Section 290 of the Penal Code and Section 31 of the Antiquities Ordinance outline offences against objects and sites considered sacred by a faith group. Both Sathkumara and Amarasinghe were arrested on suspicion of committing offences under the Penal Code in addition to Section 3 (1) of the ICCPR Act. These offences operate on the basis that a physical or verbal attack against a sacred object or site can insult the faith concerned or offend the religious susceptibilities of the faith group. They clearly evoke a prohibition on blasphemy.

In Sri Lanka, pseudo-blasphemy laws have become majoritarian tools that are selectively applied to protect the country’s dominant faith. Buddhism, and Buddhist clergy, objects and sites are typically protected under these laws. Rarely do we encounter the enforcement of these laws when an object or site associated with another faith is attacked. For instance, no one involved in the destruction of the 200-year-old Pallakele Masjidhul Laafir Jumma Mosque during the 2018 anti-Muslim violence in Kandy District appears to have been prosecuted.

Not fit for purpose

The ICCPR Act has nothing to do with blasphemy. The offence of ‘incitement’ involves speech that targets a particular *person* or *group* on the basis of their identity. The prohibition of the advocacy of national, racial or religious hatred found in Section 3 of the Act clearly concerns an offence against human beings. It does not relate to speech that is disparaging of a faith or of a sacred object or site associated with a faith.

Yet, in addition to its myriad substantive and procedural weaknesses, it appears that Section 3 of the ICCPR Act is being abused to punish acts deemed blasphemous. Such abuse is evident in the cases of Sathkumara and Amarasinghe, and the bizarre arrest and detention of M R Mazahima.

Mazahima, a Muslim woman, was arrested in 2019 for allegedly wearing clothing perceived as offensive to Buddhism. She was later released when it transpired that her clothing depicted a ship’s wheel, which police officers mistook for a *dharmachakra* – a sacred Buddhist symbol.

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The charges against Sathkumara for his short story were eventually dropped when it became clear that his actions could not be legitimately prosecuted under Section 3 of the ICCPR Act. But the damage was done and the punishment already meted out, as Sathkumara was arrested without a warrant and held in remand custody for several months without bail. An identical scheme of punishment is now being imposed on Amarasinghe, who was arrested without a warrant and remains in custody until he is eventually produced in the High Court. In each case, the suspect was not accused of inciting discrimination, hostility or violence against the Buddhist community; they were instead accused of offending Buddhism itself or an object or symbol sacred to Buddhists.

Section 3 of the ICCPR Act is notionally designed to protect human rights and shield vulnerable

groups from incitement to violence. Yet, in the 15 years since its enactment, it has not led to the conviction of even a single instigator of anti-minority violence in Sri Lanka. The instigators of anti-Muslim violence in Aluthgama in 2014, Gintota in 2017, Digana and Ampara in 2018 and Gampaha and Kurunegala in 2019 are yet to face any form of accountability. In some cases, the alleged instigators were militant Buddhist monks. By contrast, Ramzy Razeek, a Muslim activist, was detained for five months in 2020 for criticising the government policy of mandating the cremation of persons who died from COVID-19 on Facebook. Razeek called for an “ideological jihad... using the pen and keyboard as weapons”, in response to this policy which effectively prevented Muslims from observing burial rites in Sri Lanka.

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In addition to such selective application, the ICCPR Act is being repurposed as an anti-blasphemy law. This distortion is precisely what prompted Ahmed Shaheed, a former UN Special Rapporteur on the Freedom of Religion or Belief, to comment in 2020 that Sri Lanka’s ICCPR Act has become “a repressive tool curtailing freedom of thought or opinion, conscience and religion or belief.”

In Sri Lanka, the ICCPR Act has mutated into an affront to the human rights norms it was meant to advance. Instead of protecting vulnerable communities from incitement, it is being abused to protect the dominant faith from insult. It is not fit for purpose and must either be radically reformed or repealed altogether.

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