



Brief Guide III

Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka

April 2020

Curfews, which are generally understood to be a government regulation requiring people to remain indoors during specified hours, are a means of restricting the fundamental freedom of free movement, in view of a greater public aim such as ensuring public health, national security, public safety and such purposes. Whilst such restrictions are permissible, they must adhere to the principles of legality and proportionality. In Sri Lanka the power of imposing curfew has been exercised by the Executive President and the Police.

On 20th March 2020, the Government of Sri Lanka made a public announcement of imposing 'curfew'. Whilst the reason for imposing such restrictions on movement due to the public health emergency is not questioned, the Government has failed to provide the legal framework used to provide for such 'curfew' and with it raising questions of its legality.¹ The following is a brief timeline relevant to the present 'curfew'.

¹The press release issued by the Acting Inspector General of Police, stated that 'Police Curfew' has been imposed for the whole island with a view to prevent violation of provisions and regulations of the Quarantine and Prevention of Diseases Ordinance imposed for prevention of COVID19. However the legal basis for imposition of such curfew has not been cited.

See, 'Press Release 2020.03.20' (*Department of Government Information*, 2020)

<<https://www.dgi.gov.lk/news/press-releases-sri-lanka?start=5>> accessed 15 April 2020.

- **18 March 2020** : Police curfew in the Puttalam District and Kochchikade Police Division in Negombo until further notice.²
- **19 March 2020**: Police curfew in Puttalam, Chilaw, Negombo-Kochchikade to be temporarily lifted while curfew imposed within the Ja-Ela and Wattala Police Divisions.³
- **20 March 2020**: Island-wide curfew imposed till 23 March 2020.⁴
- **23 March 2020**: Curfew imposed in the country temporarily lifted for a period of 8 hours except for 8 districts.⁵
- **24 March 2020**: Curfew imposed in 8 districts temporarily lifted for a period of 8 hours. Colombo, Gampaha and Kalutara districts were identified as high risk areas for COVID-19 and the curfew imposed on those districts was to be continued until further notice.⁶
- **30 March 2020**: Curfew temporarily lifted in all but 6 districts.⁷
- **6 April 2020**: Curfew temporarily lifted for 8 hours in all but 6 districts.⁸
- **7 April 2020**: President's Media Division (PMD) announced the publishing of circular specifying new regulations for issuing curfew passes.^{9,10}
- **9 April 2020**: Curfew in 19 districts temporarily lifted.¹¹
- **16 April 2020**: Curfew in 19 districts temporarily lifted.¹²
- **19 April 2020**: Government decides to relax the ongoing curfew in several districts and police divisions¹³
- **20 April 2020**: Curfew which was set to be lifted on the 22nd of April (in 4 districts) extended until the 27th of April¹⁴.

²Police Curfew To Be Imposed In Puttalam, Chilaw&Negombo-Kochchikade' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61497>> accessed 14 April 2020.

³Police Curfew In Puttalam, Chilaw, Negombo-Kochchikade To Be Temporarily Lifted' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61526>> accessed 14 April 2020.

⁴Island-Wide Curfew To Be Imposed Until Monday' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61577>> accessed 14 April 2020.

⁵Curfew Temporarily Lifted Except For 8 Districts' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61707>> accessed 14 April 2020.

⁶Colombo, Gampaha&Kalutara Districts Classified COVID-19 High Risk Zones; Curfew Until Further Notice' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61771>> accessed 14 April 2020.

⁷Curfew Temporarily Lifted In All But 6 Districts' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62017>> accessed 14 April 2020.

⁸Curfew In 6 Districts To Continue Until Further Notice' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62269>> accessed 14 April 2020.

⁹New Regulations For Issuing Curfew Passes Announced' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62368>> accessed 14 April 2020.

¹⁰Curfew_Pass_Instruction.Pdf' (*www.police.lk*, 2020)

<<https://drive.google.com/file/d/1pctm6WXXKu2FJaf7axPiQDs6KNErX4nmg/view>> accessed 9 April 2020.

¹¹Curfew In 19 Districts Temporarily Lifted' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62420>> accessed 15 April 2020.

¹²Curfew In 19 Districts Temporarily Relaxed Until 4Pm' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62672>> accessed 18 April 2020.

¹³Curfew In Several Districts And Police Areas To Be Relaxed' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62771>> accessed 18 April 2020.

At the time of writing this guide, the Government has announced measures to relax the ongoing 'curfew' in some areas¹⁵, however there is still no information publicly available as to the legislative framework used when imposing the said 'curfew'. In the absence of this information, questions are raised as to whether the 'curfew' is legally valid. This will raise several difficulties for public officials if attempts are made to prosecute the 33,155¹⁶ persons arrested for violating the 'curfew' and raise further concerns if a need arises to continue/impose curfew in the coming weeks and months.

In this guide, the Centre for Policy Alternatives (CPA) briefly examines the legal framework relating to the imposition of curfew and related questions that require attention. Whilst CPA notes that some measures are needed to combat the COVID-19 pandemic including limiting movement, it is paramount that any steps taken are in adherence to the constitutional and legal framework.

Curfew imposed by Executive President

The power of the President to impose curfew has been laid out in the Constitution¹⁷ and the Public Security Ordinance¹⁸.

The Public Security Ordinance refers to the imposition of curfew as a 'Special Power of the President'.¹⁹ Section 16 of the Public Security Ordinance which expressly recognizes curfew, provides that the President may, by Order published in Gazette, prohibit persons in a specific area, to be in public places between such hours as may be specified, except under the authority of a written permit granted by such person as may be specified in the Order. This section clearly recognizes the power of the President to impose curfew upon fulfilling the procedural requirement of publishing such Order in the Gazette. The section further provides that the contravention of such Order is an offence punishable by fine and/or imprisonment.

¹⁴In all other districts, the curfew will be effective from 8.00pm to 5.00am till Friday, the April 24th.

See, 'Curfew In Colombo, Gampaha, Kalutara, Puttalam Districts Extended Till April 27' (*Adaderana.lk*, 2020) <<http://www.adaderana.lk/news/62818/curfew-in-colombo-gampaha-kalutara-puttalam-districts-extended-till-april-27>> accessed 20 April 2020.

¹⁵'Curfew Regulations Relaxed To Restore Normalcy In Civilian Life - President's Media Division' (*President's Media Division*, 2020) <<http://www.pmdnews.lk/curfew-regulations-relaxed-to-restore-normalcy-in-civilian-life/>> accessed 19 April 2020.

¹⁶ Total number of arrests made over curfew violations since 20th March 2020 (as at 6 a.m. on 19.04.2020) See, 'Sri Lanka : Police Arrest 1,475 People For Violating Curfew In Last 24 Hours' (*Colombopage.com*, 2020) <http://www.colombopage.com/archive_20A/Apr19_1587309025CH.php> accessed 20 April 2020.

¹⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978
Hereinafter referred to as 'The Constitution'

¹⁸Public Security Ordinance No 25 of 1947

¹⁹ Part III of the Public Security Ordinance No 25 of 1947

Section 16

(1) Where the President considers it necessary to do so for the maintenance of public order in any area, he may, by Order published in the Gazette, direct that, subject to such exemption as may be made by that Order or by any subsequent Order made under this section, no person in such area shall, between such hours as may be specified in the Order, be on any public road, railway, public park, public recreation ground or other public ground or the seashore except under the authority of a written permit granted by such person as may be specified in the Order.

(3) If any person contravenes an Order made under this section, he shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine.

Once an Order is published in the gazette as required, it shall be in operation for a period of one month from the date of its publication (in the Gazette). But the Order may be rescinded before the expiry of such period or a further Order may be made at or before the end of that period.²⁰

More importantly, subsection (2) of Section 21, provides that such Order needs to be communicated to the Parliament in the same manner a Proclamation of State of Emergency²¹ has to be communicated to the Parliament.

Section 21(2)

*(2) The provisions of subsection (3) of section 2 shall, mutatis mutandis, apply to an order made under section 12, **section 16** or section 17 in like manner as they apply to a Proclamation made under subsection (1) of section 2.*

Above provisions state that an Order to impose curfew by virtue of section 16, is required to follow the procedure (Section 2(3)) applicable to a Proclamation made when bringing Emergency Regulations in to operation.

Section 2(3)

(3) Where a Proclamation is made under the preceding provisions of this section, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by that Proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

Accordingly, it becomes clear that the President's Order to impose curfew, is required to be published in the Gazette and subsequently communicated to the Parliament. However, there is no indication that such a step has been taken with regard to the 'curfew' imposed in March 2020.

²⁰ Section 21 of the Public Security Ordinance No 25 of 1947

²¹ Brought in to operation by Section 2 of the Public Security Ordinance No 25 of 1947

In addition to section 16 of the Public Security Ordinance, past governments have used Emergency Regulations as a means of restricting individual rights (including the right of free movement) during what is termed an emergency situation. The President is empowered to make Emergency Regulations which he opines are necessary or expedient in the interests of public security by virtue of the Constitution and the Public Security Ordinance.^{22 23}

Article 155 of the Constitution confers to the President, the power to issue Emergency Regulations as provided in the Public Security Ordinance. These regulations have the legal effect of over-riding, amending or suspending the operation of any law, except the provisions of the Constitution.²⁴ However such Emergency Regulations shall not come into operation, except upon the making of a Proclamation which brings in a State of Emergency in the country.²⁵

Article 155 (3)

The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of over-riding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.

Once such a Proclamation has been issued it needs to be communicated to the Parliament²⁶. Even if Parliament had been dissolved at the time of issuing such Proclamation, it should be summoned on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting²⁷. The Proclamation needs to be approved by a resolution of Parliament within fourteen days, failing which, it would render the Proclamation expired.²⁸ Once made, such proclamation shall be in operation for a period of one month unless the President revokes it earlier.²⁹

It is then clear that, for the President to impose curfew under Emergency Regulations, a State of Emergency is needed to be declared by Proclamation, which is subsequently approved by Parliament.

Since the Government has not taken such steps, the curfew imposed on the 20th of March 2020 cannot be premised on the President's power to issue emergency regulations.

²² Part II, Section 5 of the Public Security Ordinance No 25 of 1947

²³ Section 5(2) of the Public Security Ordinance refers to a list of regulations that may be made by the President. Although 'curfew' has not been expressly mentioned in the list, the section also provides that the list causes no prejudice to the generality of President's powers to make emergency regulations.

²⁴ Article 155(2) of the Constitution

²⁵ Article 155(3) of the Constitution

²⁶ Article 155(4) of the Constitution

²⁷ Article 155(4)(i) of the Constitution

²⁸ Article 155(6) of the Constitution

²⁹ Article 155(5) of the Constitution

Police Curfew

There is no express legal provision which statutorily empowers the Police to impose curfew. However the concept of Police Curfew has been often practiced in Sri Lanka during emergency situations. The Police Ordinance makes no express reference to the concept of police curfew. But Sections 261 and 262 in the Penal Code of Sri Lanka refers to 'Public Nuisances' which recognizes the public right to safety.

***Section 261.** A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.*

A public nuisance is not excused on the ground that it causes some convenience or advantage.

***Section 262.** Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

Given the highly contagious nature of the COVID-19 Pandemic, it can reasonably be concluded that remaining in public places may cause danger to the health/lives of others. But this cannot be construed as a power conferred to the Police to impose curfew. Although Section 56 of the Police Ordinance provides that it is every police officer's duty to *use his best endeavours and ability to prevent public nuisances*, the Ordinance does not make reference to powers to make regulations that may curtail the right of movement within an area.

In the absence of express powers conferred to impose curfew, the customary practice of 'police curfew' should be exercised with caution. Attention is required if the present 'curfew' is premised on this.

In the event the Public Security Ordinance has been used, a Police officer may arrest without warrant any person who is committing or has committed or whom he has reasonable ground for suspecting to be committing or to have committed an offence in violation of such Order.³⁰ But for this to be applicable, the steps provided in the Public Security Ordinance (discussed above) must be followed.

³⁰ Section 18 of the Public Security Ordinance No 25 of 1947

Impact on rights by other laws during COVID-19

In addition to the above, other laws may inhibit individual rights in the situation of a public health crisis such as COVID-19. The Quarantine and Prevention of Diseases Ordinance provides that the relevant Minister may make, revoke or vary regulations as may seem necessary for the purpose of preventing the introduction or spread of any disease in Sri Lanka³¹. Section 3 of the Ordinance lists the matters in respect of which regulations may be made by the Minister. However, nothing in the list grants any power to impose curfew or restrict the freedom of movement of the general public. Therefore imposition of curfew cannot find any legal basis within the Quarantine and Prevention of Diseases Ordinance.

Present Status

While certain measures are required to combat the pandemic, it is important to question if the 'curfew' was imposed lawfully. At the time of writing, the President has not taken steps to bring into operation any emergency regulations as per Article 155 of the Constitution nor issued a Gazette in accordance with section 16 of the Public Security Ordinance. Thus, questions must be posed as to the legal basis of the curfew imposed on the 20th of March 2020 and subsequently extended. It must also be noted that in the absence of a legal basis for the 'curfew', the legality of action taken on reliance of the said 'curfew' will also put into question. With significant ramifications, it is prudent for the Government to publicly state the basis for the 'curfew' and ensure curfew and all other action needed to combat COVID-19 are taken in adherence to the Constitutional and legal framework in Sri Lanka.

³¹ Section 2 of Quarantine and Prevention of Diseases Ordinance No 3 of 1897

The following table lays down the statutory provisions which are applicable in understanding the legal basis of the curfew imposed in view of COVID-19.

Source	Relevant Legal Provision
The Constitution	<p>Article 76 (2)</p> <p><i>76. (1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power.</i></p> <p><i>(2) It shall not be a contravention of the provisions of paragraph (1) of this Article for Parliament to make, in any law relating to public security, provision empowering the President to make emergency regulations in accordance with such law.</i></p>
	<p>Article 155</p> <p><i>(1) The Public Security Ordinance as amended and in force immediately prior to the commencement of the Constitution shall be deemed to be a law enacted by Parliament. (2) The power to make emergency regulations</i></p> <p><i>(2) The power to make emergency regulations under the Public Security Ordinance or the law for the time being in force relating to public security shall include the power to make regulations having the legal effect of over-riding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution.</i></p> <p><i>(3) The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of over-riding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.</i></p> <p><i>(4) Upon the making of such a Proclamation, the occasion thereof shall, subject to the other provisions of this Article, be forthwith communicated to Parliament and accordingly –</i></p> <p><i>(i) if such Proclamation is issued after the dissolution of Parliament such Proclamation shall operate as a summoning of Parliament to meet on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting which shall not be less than three days from the date of the Proclamation; and the Parliament so summoned shall be kept in session until the expiry or revocation of such or any further Proclamation or until the conclusion of the General Election whichever event occurs earlier and shall thereupon stand dissolved ;</i></p> <p><i>(ii) if Parliament is at the date of the making of such Proclamation, separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days.</i></p> <p><i>(5) Where the provisions of any law relating to public security have been brought into operation by the making of a Proclamation under such law, such Proclamation shall, subject to the succeeding provisions of this Article, be in operation for a period of one month from the date of the making thereof, but without prejudice to the earlier revocation of such Proclamation or to the making of a further Proclamation at or before the end of that period. (6) Where such provisions as are referred to in paragraph (3) of this Article, of any law relating to public security, have been brought into operation by the making of a Proclamation under such law, such Proclamation shall expire after a period of fourteen days from the date on which such provisions shall have come into operation, unless such Proclamation is approved by a resolution of Parliament: Provided that if - (a) Parliament stands dissolved at the date of the making of such Proclamation ; or (b) Parliament is at such date separated by any such adjournment or prorogation as is referred to in paragraph (4)(ii) of this Article ; or (c) Parliament does not meet when summoned to meet</i></p>

	<p><i>as provided in paragraphs (4)(i) and (4)(ii) of this Article, then such Proclamation shall expire at the end of ten days after the date on which Parliament shall next meet and sit, unless approved by a resolution at such meeting of Parliament. (7) Upon the revocation of a Proclamation referred to in paragraph (6) of this Article within a period of fourteen days from the date on which the provisions of any law relating to public security shall have come into operation or upon the expiry of such a Proclamation in accordance with the provisions of paragraph (6), no Proclamation made within thirty days next ensuing shall come into operation until the making thereof shall have been approved by a resolution of Parliament.</i></p> <p><i>(9) If the making of a Proclamation cannot be communicated to and approved by Parliament by reason of the fact that Parliament does not meet when summoned, nothing 114[contained in paragraph (6) or (7), of this Article], shall affect the validity or operation of such Proclamation : Provided that in such event, Parliament shall again be summoned to meet as early as possible thereafter.</i></p>
Public Security Ordinance	<p>Section 5</p> <p><i>(1) The President may make such regulations (hereinafter referred to as "emergency regulations" as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community.</i></p> <p><i>(2) Without prejudice to the generality of the powers conferred by the preceding subsection, emergency regulations may, so far as appears to the President to be necessary or expedient for any of the purpose mentioned in that subsection-</i></p> <ul style="list-style-type: none"> <i>(a) authorize and provide for the detention of persons;</i> <i>(b) authorize- (i) the taking of possession or control, on behalf of the State, of any property or undertaking; (ii) the acquisition on behalf of the State of any property other than land;</i> <i>(c) authorize the entering and search of any premises;</i> <i>(d) provide for amending any law, for suspending the operation of any law and for applying any law with or without modification;</i> <i>(e) provide for charging, in respect of the grant or issue of any license, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;</i> <i>(f) provide for payment of compensation and remuneration to persons affected by the regulations;</i> <i>(g) make provisions for the apprehension and punishment of offenders and for their trial by such courts, not being courts martial, and in accordance with such procedure, as may be provided for by the regulations, and for appeals from the orders or decisions of such courts and the hearing and disposal of such appeals.</i> <p><i>(3) Any emergency regulation may be added to, or altered or revoked by resolution of Parliament or by regulation made under the preceding provisions of this section.</i></p> <p>Section 16</p> <p><i>(1)Where the President considers it necessary to do so for the maintenance of public order in any area, he may, by Order published in the Gazette, direct that, subject to such exemption as may be made by that Order or by any subsequent Order made under this section, no person in such area shall, between such hours as may be specified in the Order, be on any public road, railway, public park, public recreation ground or other public ground or the seashore except under the authority of a written permit granted by such person as may be specified in the Order.</i></p> <p><i>(3) If any person contravenes an Order made under this section, he shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine.</i></p>

	<p>Section 18</p> <p><i>18. Any police officer may arrest without warrant any person who is committing or has committed or whom he has reasonable ground for suspecting to be committing or to have committed any offence under section 16 or section 17.</i></p>
	<p>Section 21(2)</p> <p><i>(2) The provisions of subsection (3) of section 2 shall, mutatis mutandis, apply to an order made under section 12, section 16 or section 17 in like manner as they apply to a Proclamation made under subsection (1) of section 2.</i></p>
Police Ordinance	<p>Section 56</p> <p><i>56. Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka, It shall be his duty</i> <i>(a) to use his best endeavours and ability to prevent all crimes, offences, and public nuisances</i> <i>(b) to preserve the peace ;</i> <i>(c) to apprehend disorderly and suspicious characters ;</i> <i>(d) to detect and bring offenders to justice ;</i> <i>(e) to collect and communicate intelligence affecting the public peace ; and</i> <i>(f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.</i></p>
Quarantine and Prevention of Diseases Ordinance.	<p>Section 2</p> <p><i>2. The Minister may, from time to time, make, and when made revoke or vary, such regulations as may seem necessary or expedient for the purpose of preventing the introduction into Ceylon of any disease, and also preventing the spread of any disease in and outside Ceylon.</i></p>
	<p>Section 3</p> <p><i>3(2) Provided always that nothing in this section contained shall in any way restrict or be construed to restrict the generality of the powers conferred on the Minister by section 2, but such powers shall extend to all matters, whether similar or not to those in this section mentioned, as to which it may be expedient to make regulations for the better carrying into effect of the objects of this Ordinance.</i></p>
Penal Code	<p>Section 261</p> <p><i>261. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.</i> <i>A public nuisance is not excused on the ground that it causes some convenience or advantage.</i></p>
	<p>Section 262</p> <p><i>262. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.</i></p>