

## 2021 February - Volume 02

The second issue of the monitoring report on Media Freedom covering February includes a brief report on the developments and follow up on the monthly incidents pertaining to Media Freedom as well as follow up on previously reported incidents. Brief comments and observations on these incidents are also contained in this issue. The incidents captured are in relation to

the freedom of expression of both the journalists and the citizens.

Four new developments and the progress and follow-up of the three previously reported incidents related to the scope identified by the Free Media Movement in the journey of media freedom landscape have been monitored in February 2021.

### New incidents reported during the month of February

1. The Kataragama local correspondent M. K. Nandasena of the Lankadeepa newspaper threatened over the phone by a Police officer in the Kataragama Police after reporting that the officer was infected with the coronavirus.
2. Marching forward safeguarding and protecting the right of assembly and expression despite court injunctions obtained by the police to prevent the protest campaign organized by civil society organizations and political parties in the North. (Police have also issued this order to three journalists in Batticaloa)
3. The Secretary to the Ministry of Mass Media and Information calling for ideas and suggestions of civil society, including journalists, in order to amend the Press Council Act of Sri Lanka to include regulation of electronic and new media.
4. The statement issued by the Information Commission on the completion of 4 years of the enactment of the Right to Information Act.
5. Police arrests a 25-year-old youth in the Wattala area for allegedly posting a video on TikTok social media site containing photographs of LTTE leader Velupillai Prabhakaran.

### Developments and follow-up on past incidents

1. The court acquitted and released author Shakthika Sathkumara from the case filed against him under the ICCPR Act based on a short story published on Facebook.
2. Winning two Fundamental Rights petitions filed in 2008 against the censorship of a discussion programme aired on national television

Table Number 01: Total Incidents Recorded - February 2021

No.	Components covered	Number of Incidents reported
01	Safety and security	02
02	Legal issues/Litigation	05
	<b>Total</b>	<b>07</b>

## The safety and security of journalists

An safe environment in which journalists are free to pursue their professional careers with physical and mental congruency is an essential criterion in media freedom. Two incidents challenging this basic freedom were observed in February. One is a new occurrence while the other incident is a positive outcome of a case involving a past incident. This past incident involved an author instead of a journalist. It was an incident when the freedom of publication was violated.

Table 2: February 2021: Safety and security of journalists - Incidents 02

No.	Incidents	Number of reported incidents
01	Threats	01
02	Violation of the freedom of publication	01
	<b>Total</b>	<b>02</b>

### New Incidents observed during the month:

- 1. The Kataragama local correspondent M. K. Nandasena of the Lankadeepa newspaper threatened over the phone by a Police officer in the Kataragama Police after reporting that the officer was infected with the coronavirus.**

Nandasena has been threatened following a report published in the Lankadeepa newspaper that a high-ranking officer of the Kataragama Police who had attended the Independence Day celebrations in Colombo had contracted coronavirus along with two other officers and that they were quarantined. Nandasena states that after the news was published, at 12.13 pm in the afternoon on 10.02.2021, the officer called him and asked, 'Why did you publish

this in the newspaper?' and had threatened saying "I will take care of you when I come back after my recovery". Nandasena had phoned and complained about the situation as well as submit a written complaint to the Kataragama OIC, the Assistant Superintendent of Police (ASP) and SSP Ravindra Ambepitiya in charge of the Tangalle Division.

The Lankadeepa website that carried this report had contacted the police officer concerned and inquired about the incident over the phone. He had stated that all he asked the journalist was why he had published the news without asking him and said that no threat had been made. Further investigations are being conducted into the journalist's complaint.

### Developments related to previous Incidents:

The court acquitted and released author Shakthika Sathkumara from the case filed against him under the ICCPR Act based on a short story published on Facebook.

On February 09, the Polgahawela Magistrate ordered the acquittal and release of Shakthika Sathkumara, an author charged under the ICCPR Act, in connection with a short story called 'Ardha' published on his Facebook account. The decision was based on the Attorney General informing the court that there was insufficient evidence to proceed with the case.

Author Shakthika Sathkumara faced many difficulties for more than two years based on this incident, and was

remanded for more than 4 months. He was out of work for more than 10 months.

The Free Media Movement's position from the outset of this incident was that it was an unfair arrest. The Free Media Movement issued a statement on April 2, 2019, expressing its displeasure over Shakthika's arrest while pointing out that this was contrary to the objectives guaranteed by Sri Lanka to the international community and the public by signing the International Covenant on Civil and Political Rights.

A complaint was lodged with the United Nations Human Rights Commission on behalf of Shakti, and the 'Action Committee on Arbitrary Arrest', which investigated the

complaint, published its findings in December 2019. The findings suggested that Sathkumara’s arrest is part of a pattern of abusive application of the ICCPR Act that serves to suppress a large swath of legitimate forms of individual expression.

In a press release issued the day after the decision to release Shakthika (February 10, 2021), the Free Media

Movement urged the IGP to use this case as a precedent for the ICCPR Act and to prevent arbitrary arrests by the police. It specifically referred to the previous instructions given to the IGP by the Human Rights Commission of Sri Lanka regarding the application of the ICCPR Act.

## Legal conditions

During the month of February, five incidents were monitored which fall under the category of legal conditions related to media freedom. These events are further subdivided into legal action, restrictions on freedom of expression, censorship of media content, and the right to information. Four of the incidents are new incidents that took place during the month of February, while one is a development of an old incident.

Table 3: February 2021: Legal Terms – Events 05

No.	Incident	Number of Incidents reported
01	Legal action	02
02	Restrictions on freedom of expression	01
03	Censorship of media content	01
04	Right to information	01
	<b>Total</b>	<b>05</b>

## New Incidents during the Month:

1. **Safeguarding and protecting the right of assembly and expression despite court injunctions obtained by the police to prevent the protest campaign organized by civil society organizations and political parties in the North. (Police have also issued this order to three journalists in Batticaloa).**

Civil society organizations and political parties in the Northern and Eastern Provinces had organized a campaign from February 3 -6 to protest against the government on a number of issues. The Police intended to stop the protest by obtaining restraining court orders against various individuals including several TNA parliamentarians and civil society representatives.

The restraining order issued in the Kaluwanchikudi Magistrate's Court Case No. AR / 31/2021 states, **“Since this court is satisfied concerning the reasons given by the police to restrain the protest which includes the concern that this is a period of the rapid spread of coronavirus and this could cause racial and religious harmony by inciting**

**the people against the government. Therefore according to Section 106 (1) of the Criminal Procedure Code No. 15 of 1979, the request of OIC of the Kaluwanchikudi Police Station, Sub Inspector Upul Gunawardena is granted”** and a restraining order accordingly will be issued.

The restraining order is a violation of the right of the people to democratically assemble and protest and the order was also handed over to three journalists. It did not issue an injunction against reporting, however, it appeared that this was given since the three journalists were activists of the civil and political groups that organized the protest. Journalists Punyamoorthy Shashikaran, Nilandhan and Zion from Batticaloa were among those issued orders to refrain from conducting the protests. Shashikaran is a Batticaloa correspondent for Shakthi TV, Sirasa TV and Veerakesari, while Nilandhan Neelakan is a website journalist and Zion is a journalist for Batti News website. However, the protest was held in defiance of the enjoining order and reported by

journalists. This incident stands out as a significant instance when the public despite legal provisions challenged the action taken to restrict their freedom of expression.

When inquired into the reasons for handing over the enjoining order to the journalists, it was noted that the reason was their civil society role and political background of the these three journalists. In addition to working as a journalist, Shashikaran is also a coordinator of an NGO, and he and Zion have both contested elections as political candidates. The enjoining orders were issued in their personal names and the police state that the orders were issued because they were the organizers of the protest.

## **2. The Secretary to the Ministry of Mass Media and Information calling for ideas and suggestions of civil society, including journalists, in order to amend the Press Council Act of Sri Lanka to include regulation of electronic and new media.**

An announcement was issued by the Secretary to the Ministry of Mass Media and Information soliciting views and suggestions from Civil society including journalists to restructure the Press Council of Sri Lanka, established under the Press Council Act No. 5 of 1973, as a tribunal for journalists and media institutions covering electronic, print and new media.

According to this advertisement published on the website of the Government Information Department dated 07th February 2020 and in the newspapers, the relevant proposals have to be submitted before the 15th of March.

The Free Media Movement has long advocated the abolition of the Press Council, which was created as an entity as required by the state, with unfavourable laws relating to the media fraternity.

The Free Media movement has provided alternative proposals at different times.

Most media institutes do not subscribe to a regulatory system established by the state but would opt for a regulatory system developed based on the consensus of the media community. Meanwhile, an alternative proposal is being prepared to replace the government's efforts to further expand and strengthen the scope of the Press Council.

## **3. Emphasis on the statement issued by the Right to Information Commission on the occasion of the completion of 4 years since the enactment of the**

## **Right to Information Act in Sri Lanka.**

The Right to Information Commission organized a series of programs in January and February to mark the 4th anniversary of the enactment of the Right to Information Act in Sri Lanka on February 03. The statement comments on those programs whilst identifying the future steps of the Commission.

The Commission stated that it will pay close attention to the delays caused by the public authorities in providing information under the Act and will take legal action against the officials who are found to be responsible for ignoring their official duties under the Act and cause deliberate delays. The Commission emphasized that it will not hesitate to issue summons and pursue criminal action against such parties in accordance with the statutory powers conferred by the Act.

## **4. The arrest of a 25-year-old youth for allegedly posting a video on social media- 'Tiktok' containing photographs of Velupillai Prabhakaran, the leader of the LTTE, a banned organization in Sri Lanka.**

The youth was arrested by the Terrorism Investigation Division (TID) in Wattala on the 22nd. According to the police media spokesperson DIG Ajith Rohana, the youth was born in Mullaitivu and is currently a resident of Hatton. He added that this video was promoting LTTE and that a detention order had been obtained from the court under the Prevention of Terrorism Act and further investigations were being carried out.

Arresting of people who have posted various content on social media have been reported from time to time in various parts of the island. However, in the current context, it is challenging to ascertain information about such incidents from independent sources.

<https://bit.ly/3bWDcfF> (Statement by DIG Ajith Rohana on Ada Derana)

## **Developments related to previous incidents:**

### **Winning two fundamental rights petitions filed against the censorship of a talk show aired on national television in 2008.**

The verdict of two fundamental rights petitions (Nos. 556/2018 and 557/2018) pending for over 12 years was announced on February 17. These two cases were

against the sudden censorship of the live talk show 'Ira Anduru Pata' which was telecast on November 4, 2008.

The fundamental rights petitions were filed by Uvindu Kurukulasuriya, the convener of the Free Media Movement at that time, Jayasiri Jayasekara, a former feature editor of the Ravaya newspaper and a member of the Free Media Movement.

Uvindu Kurukulasuriya, who was an invitee to the forum, had stated in his petitions that the censorship violated his right to freedom of expression while Jayasiri Jayasekara stated that his freedom to receive information as a viewer of the television programme was violated. President's Counsel J.C. Weliamuna appeared as counsel for the petitioners.

The Supreme Court ruled that the fundamental

rights of the petitioners had been violated due to the relevant censorship and ordered the Rupavahini Corporation to pay the petitioners Rs. 30,000 each and Prof. Ariyaratne Athugala, the then Chairman of the Rupavahini Corporation to pay Rs. 50,000 each for the petitioners.

The ruling includes a number of important excerpts on the right to freedom of expression, the right to criticize the government and the president, contempt of court, the right of the audience and the right to information. In particular, it emphasizes that expressing critical comments about the government should not be a reason for censorship, and focused on clauses in the Television Act regarding the quality of programs. This ruling reaffirms the viewer's right to information.

**Footnote:** The Free Media Movement recognizes that media freedom is a human right, in line with civil society aspirations, national and international judgments, and international conventions.

Everyone has the fundamental right to the freedom of thought, conscience and religion and the basic right to know the views of others without a hindrance. On this basis, the Free Media Movement considers media freedom to be a collection of the following ten components. (1) Freedom of thought (2) Freedom of opinion (3) Freedom of speech (4) Freedom of expression, including peaceful assembly (5) Freedom of information (6) Freedom of maintaining audio, video recording and record keeping (7) Freedom of publication (8) Freedom of the press (9) Freedom of the electronic media (10) Freedom of the Internet.

There is a symbiotic relationship between these components and the Free Media Movement recognizes that the limitations imposed on one component invariably restrict the freedom enjoyed through the other components of media freedom. The Free Media Movement also emphasizes that using these freedoms irresponsibly and in hatred is not a beneficial use in practice.

These monthly reports are prepared by analyzing media reports and further information available to the free media movement. In this analysis, the Free Media Movement uses selected criteria through seven internationally recognized components that cover the aforementioned tenfold media freedom components.

Media Freedom Rights Monitoring Desk Supported by Program on Independent Journalism



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