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இலங்கைச் சட்டத்தரணிகள் சங்கம்
BAR ASSOCIATION OF SRI LANKA

11th June 2021

**STATEMENT BY THE EXECUTIVE COMMITTEE OF THE BAR ASSOCIATION OF SRI LANKA ON THE
POLICE MEDIA RELEASE ON CIRCULATION OF FAKE NEWS, PHOTOGRAPHS, VIDEOS CAUSING
DISUNITY, HATE AND OBSTRUCTING THE COVID-19 PROGRAMME**

The Executive Committee of the Bar Association of Sri Lanka (BASL) notes with concern the contents of the recent media release issued by the Sri Lanka Police titled “circulation of fake news, photographs, videos causing disunity, hate and obstructing the Covid-19 programme”.

The said circular contains a warning that the Criminal Investigation Department and the Computer Crimes Division of the Sri Lanka Police will be conducting investigations by monitoring the internet for violators, in order to enforce the law. The circular warns the public to refrain from spreading fake news and aiding or abetting the same.

Whilst the BASL has no objection to enforcing laws relating to hate speech and incitement to violence, it is important to ensure that authorities do not use such laws to stifle genuine expressions of dissent and criticism.

Furthermore the BASL is apprehensive of members of the executive including the police being allowed to decide on what is or is not fake news and on the basis of their subjective decisions to cause arrests and detention of persons.

The BASL is deeply concerned that the provisions of the laws mentioned in the circular, could be misused by police officers in order to stifle the freedom of speech and expression which is a fundamental right enshrined in the Constitution. At the time where the country remains under travel restrictions as a result of the Covid-19 pandemic it is essential that the freedom of speech and expression of the people and their right to dissent and disagree are protected.

The BASL wishes to draw attention to the judgments of the Supreme Court in this regard :-

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In the most recent case of U. N. S. P. Kurukulasuriya, Convenor, Free Media Movement, and J. K. W. Jayasekara, V Sri Lanka Rupavahini Corporation SCFR 556/2008 and 557/2008 decided on 17.02.2021, His Lordship Justice Aluwihare with two other judges of the Supreme Court agreeing has held as follows:

“The judgements of the Supreme Court constitute a body of jurisprudence that has evolved over the years, and the Supreme Court has recognized that the right to comment on public issues and criticize public officials and public institutions is essential for the exercise of civil and political freedoms so valued by democratic society”

The court quoted with approval the following passages found in several decisions of Sri Lankan courts:

“The right to support or to criticise governments and political parties, policies and programmes is fundamental to the democratic way of life; ...and democracy requires not merely that dissent be tolerated, but that it be encouraged”

“Criticism of the Government, and of political parties and policies, is per se, a permissible exercise of the freedom of speech and expression under Article 14 (1) (a).”

Given that the very prospect of being arrested for expressing harsh criticism or dissent can itself have a chilling effect that would erode the citizens' freedom to openly share critical views or freely comment on important matters as members/stakeholders of society, utmost care and restraint should be exercised in causing the arrest of any person for an offence pertaining to alleged 'fake news' prior to a full investigation of any complaint.

Furthermore, it would be consistent with due respect for democratic values and freedoms, for any decision to arrest without warrant to be resorted to keeping in mind the spirit of preserving fundamental freedoms and the need to avoid suppressing or oppressing the right to free expression of views. In our view this would be better achieved, if any decision to arrest or charge any person is taken only after careful due consideration and professional assessment that there is a real and reasonable prospect of an alleged offence in law being committed, with advice from the Attorney General as may be warranted in the relevant context.

Needless to say, enforcement of the law must be fair, even-handed and non-selective in its application, the importance of which we urge you to consistently uphold.



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These concerns of the BASL have been brought to the attention of the Inspector General of Police by letter dated 10/06/2021.

The BASL will continue to monitor any violations of the Fundamental Rights and the Rule of Law in respect thereof and will make further legal interventions where necessary.

Thank you,

Rajeev Amarasuriya
Secretary
Bar Association of Sri Lanka.