

VIRAL LAW

A blog series on legal issues arising from the *Corona* pandemic

Civic Responsibility and Criminal Liability during the *Corona* pandemic

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The outbreak and spread of the novel *corona virus* in and across Sri Lanka has, in many ways, been a test for the Island's community at large. Over the past few weeks, Sri Lankans have had to demonstrate their capacity and commitment to abide by laws that are, more than ever, essential to our collective safety and well-being. Unfortunately, not everyone has stepped up to meet this challenge. Since the imposition of a curfew earlier this month, there have been numerous arrests and violations of the regulations adopted by this administration to combat the ongoing public health crisis. There is, however, also much to be said about the broader failings of our State and system to educate citizens on their respective duties and liabilities under the law. The purpose of this article, therefore, is to briefly set out and consider the primary laws and regulations that each of us, as citizens, should be aware of and adhere to in our communal effort to overcome this pandemic.

Before delving into the substance of these laws, however, it is useful, if not necessary, to reiterate that claiming ignorance of the law is not a valid excuse or defense (*De Zoysa v Inspector of Police 74 NLR 425*). As such, a person may not avoid liability for any act or omission merely on the basis that he or she was unaware that it constituted an offence under the law at the time.²

Sri Lanka's Existing Legislative Framework

Sri Lanka, as a jurisdiction, has been fortunate to have a pre-existing framework of laws and regulations within which combat the prevailing pandemic. Although originally adopted by the British to contain the outbreak of diseases such as cholera, smallpox and yellow fever in colonial Ceylon, such provisions of law have remained surprisingly relevant and adaptable for the better part of two centuries with little to no amendment. As such, when cases of *COVID-19* mushroomed in the middle of March, the authorities were able to respond swiftly within the existing legislative framework to curb further transmission.

¹ This article is intended for informational purposes only and **does not** constitute legal advice in any manner or form.

² While this may seem unreasonable and unfair (particularly given the sheer volume and complexity of laws and regulations in effect), it is an assumption which is practically necessary in order to ensure that liability isn't just avoided on the basis of willful or professed ignorance of the law.

Chief among these existing pieces of legislation is the Quarantine and Prevention of Diseases Ordinance (the “**Ordinance**”) which, as its name suggests, is specifically concerned with preventing the introduction and spread of contagious or infectious diseases in and outside of Sri Lanka. The Ordinance itself is structured for flexibility and empowers the relevant Minister to make *such regulations as may seem necessary or expedient* for preventing the introduction and transmission of a disease.

As illustrated in Section 3 (1) of the Ordinance, this may include, *amongst other things*, regulations for prohibiting or regulating the landing of persons or goods from aircrafts or boats; for placing such vessels and the persons or goods transported therein in quarantine; for isolating diseased persons and, where necessary, removing them to designated places for medical treatment; and for prescribing reporting requirements for medical practitioners and householders. In order to enforce and ensure compliance with such regulations, the Ordinance also makes it a punishable offence for any person, without lawful authority or excuse, to contravene any regulation promulgated under the Ordinance.³ Where a person is convicted of such an offence, the law provides for a Magistrate to sentence the guilty party to a term of rigorous or simple imprisonment not exceeding six months, to impose a fine, or to do both.

Correspondingly, Chapter XIV of the Penal Code of Sri Lanka (the “**Penal Code**”) also contains a number of offences that specifically affect and relate to *public health and safety*. For starters, the Penal Code makes it an offence to knowingly disobey any rule made and promulgated by the Government for regulating the *intercourse between places where an infectious disease prevails and other places*.⁴ As such, it would be a punishable offence, for example, to knowingly disobey the rules set by authorities, during the pandemic, prohibiting travel to and between districts across the Island.

The Penal Code also makes it an offence to unlawfully or negligently do any act which is, or which the offender knows or has reason to believe is, likely to spread the infection of *any disease*

³ Note that the burden of proving lawful authority or excuse shall lie with the person being charged.

⁴ Section 264 of the Penal Code (“Disobedience to a quarantine rule”)

dangerous to life.⁵ As a disease with a proven mortality rate, the scope of this offence in relation to the *COVID-19* virus is therefore broad and may include acts such as lying to officials about one's symptoms and travel history or attending public gatherings whilst symptomatic or after exposure to a confirmed carrier. Notably, when carried out with malicious intent, an act of this nature is treated with even greater severity under the law. As such, where a person is found to have maliciously transmitted the virus, for example, by purposefully spitting or coughing to spread an infection – the sentence imposed may be enhanced to two years of imprisonment.

Implementation during the *Corona* Pandemic

On the 20th of March 2020, the Hon. Minister of Health, using her powers under the Ordinance, declared by Extraordinary Gazette that the novel *corona virus disease* known as “*COVID-19*” would henceforth be deemed to be a “*quarantinable disease*” for the purposes of the existing Quarantine Regulations passed under the Ordinance in 1925 and 1960, respectively (the “**Regulations**”).⁶ In doing so, the Government initiated the process of utilizing these existing Regulations to empower the Director General of Health Services and other designated authorities to take necessary action in combatting the ongoing crisis. While the scope of these Regulations is extensive, there are a few provisions in particular that citizens should be aware of during this difficult time.

For example, the Regulations empower a proper authority to specify and implement a host of public health measures to curb transmission, including – burial procedures for persons who have died from a contagious or infectious disease, maximum occupancy rates for buildings to ensure adequate social distancing and directions to schools requiring them to close for a specified period of time.⁷ Likewise, where a proper authority, as defined by the Ordinance,⁸ has established and

⁵ Section 262 of the Penal Code (“Negligent act likely to spread infection of any disease dangerous to life”)

⁶ The Quarantine Regulations, Regulations relating to Storage of Grain and Regulations relating to Anchylostomiasis published in Gazette No.7481 of August 28, 1925 (the “**Quarantine Regulations 1925**”) and the Quarantine Regulations 1960 published in Gazette No. 12,125 of May 6, 1960.

⁷ Regulation 61, 65 and 73 of the Quarantine Regulations 1925, respectively.

⁸ Following recent amendments, a “proper authority” shall, in respect of the whole of Sri Lanka, mean the Director General of Health Services; and shall, in respect of a given area within the administrative limits of a Municipal Council, Urban Council or Pradeshiya Sabha, mean the respective Mayor, Chairman, Authority, Medical Officer or Additional Medical Officer of Health for such area.

designated a hospital or place of observation, the Regulations specifically require that no unauthorized person approach or come within one hundred yards of it.⁹ It would therefore be contrary to the Regulations and constitute an offence thereunder for the family members of a quarantined patient or any other unauthorized party to attempt to do so without permission.

Such Regulations also permit a proper authority to “*cause any person diseased, or suspected to be diseased,*¹⁰ *in any house or place to be removed to some public hospital or other place provided for the purpose, for such period as may be directed*”.¹¹ Therefore, to impede or obstruct, or assist in the impeding or obstructing, of appointed officers who are executing a task under and in accordance with the Regulations – for example, by resisting detainment and relocation for the purposes of quarantine, may also constitute an offence under the Ordinance.¹² A proper authority (or any person duly authorized by such authority) would equally be within its rights to enter a house or premises *for the purposes of ascertaining whether any of the occupants are suffering from any disease of a contagious, infectious or epidemic nature,*¹³ including by force, where necessary.¹⁴ Finally, where persons are engaged in particular types of business or activities, they may be subject to certain additional duties and obligations. For example:

For persons who own and operate lodging houses (for e.g. AirBnBs), hotels or clubs. The Regulations dictate that, where a person arrives at a lodging house, hotel or club from any diseased locality, the householder or person in charge of such hotel or club shall be required to report such arrival to the proper authority.

When using public conveyance¹⁵ (including taxis and ride-hailing options). The Regulations prohibit a person suffering from a contagious or infectious disease from entering such means of

⁹ Regulations 43 and 44 of the Quarantine Regulations 1925

¹⁰ Notably, this includes persons who are “suspected to be diseased”. During a recent incident in Mahiyanganaya, an individual who was asked to report for quarantine refused to do so on the basis that he was not symptomatic. This is not a valid reason for refusing to be quarantined both (a) because patients with the *COVID-19* virus can be asymptomatic; and (b) because the Regulations apply to persons who are also *suspected* to be diseased.

¹¹ Regulation 49 of the Quarantine Regulations 1925

¹² Section 4 (1) of the Quarantine and Prevention of Diseases Ordinance

¹³ There have, however, been reports of fraudsters seeking to gain entrance on such pretext and, as such, residents should ideally remain vigilant when complying with such a request for entry.

¹⁴ Regulation 66 of the Quarantine Regulations 1925

¹⁵ A *Public Conveyance* is broadly defined as any railroad car, street car, ferry, cab, bus, airplane or other vehicle which carries passengers for hire.

public transportation. They also forbid an owner or driver of a public conveyance from carrying such a diseased passenger, without the sanction of a proper authority.¹⁶

Medical Practitioners. The Regulations also make provision for any medical practitioner (or *person professing to treat disease*) who attends to a person suffering from any of the infectious diseases listed in regulation 45 thereof to forthwith give a proper authority written information on the name, race, sex, and age of the diseased person, his residence and the nature of the disease.¹⁷ This provision appears not to have been triggered as yet given that the *COVID-19* virus, although identified as a *quarantinable disease* by *Gazette* and implicitly falling within the definition of a *disease* as contemplated by the Ordinance, has not been included in the enumerative list set out in Regulation 45. If and when the *COVID-19* virus is included therein, medical practitioners should approach such obligations with great care and consideration as a failure to report such cases would constitute a contravention of the Regulations and an offence under the Ordinance. More importantly, such reporting requirements would be construed in accordance with a rebuttable presumption whereby the person in charge of a diseased person shall be deemed to know of the existence of such disease in such person, unless and until he satisfactorily shows that he did not have such knowledge, and could not have obtained such knowledge *with reasonable diligence*.¹⁸

Conclusion

While authorities are, no doubt, sympathetic to the extenuating circumstances under which certain violations are committed (including out of fear or financial desperation), it is important to understand that such motives do not absolve an offender of guilt in the eyes of the law, unless they fall within the scope of certain narrowly defined defences. Instead, once convicted, such circumstances may only, if at all, be taken into account during sentencing to potentially mitigate the punishment imposed. Regardless, it is incumbent upon each of us, as conscientious and civic-minded citizens, to act responsibly, to stay informed and to collectively abide by these laws and regulations in helping authorities help us to overcome this terrible pandemic.

¹⁶ Regulation 69 of the Quarantine Regulations 1925

¹⁷ Regulation 45 of the Quarantine Regulations 1925

¹⁸ Section 7 of the Quarantine and Prevention of Diseases Ordinance