



LITIGATION HANDBOOK

— ON FREEDOM OF RELIGION OR BELIEF —

Litigation Handbook: on Freedom of Religion or Belief

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Introduction

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) affords broad protection for religious and non-religious belief. It provides that this right shall include 'freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching'. The protection afforded by article 18 extends to theistic, non-theistic, atheistic believers and those who do not profess any religion or belief.¹ It is said that this article contains two elements, (i) the *forum internum* (the right to have, change and adopt a religion or belief of choice) and (ii) the *forum externum* (the freedom to manifest a religion or belief).² According to a recent study, in Sri Lanka, the latter freedom in relation to religious minorities is viewed as a threat. For instance, the study analysed incidents of violence against Christians over a period of four years and found that 87 percent of non-physical incidents 'featured discriminatory action or practice, primarily targeting places of worship and pastors'.³ It also noted that the Muslim community has faced 'multiple episodic incidents of acute violence,' while the Hindus faced discrimination following reports of 'Sinhalisation/Buddhistisation' taking place in the North and East.⁴

There is a high probability that a considerable number of these incidents will be litigated before a court of law. Freedom of Religion or Belief (FoRB) cases are generally not classified as such. They may be litigated as matters relating to a violation of a fundamental right, a writ application, a criminal matter or a public nuisance matter.

Legal delays are a chronic, systemic problem that is yet to be addressed. According to a 2017 report by a special committee on amending the Penal Code and the Code of Criminal Procedure Act, the average length of time to conclude a criminal trial is 10.2 years. A further period of seven years is spent during the appeal process. The status of FoRB trials may remain 'ongoing' for a decade at the lower courts. On occasion, witnesses may give evidence, and other material evidence may be presented in court, years after the incident. The heavy reliance on manual case processing may also result in evidence being lost due to destruction or tampering. These are some of the institutional challenges that victims of violations of FoRB are likely to face. Timely challenge of violations of FoRB, forum selection and pre-trial preparation remain crucial to a Sri Lankan lawyer involved in litigating FoRB cases.

The objectives of this litigation handbook are: (i) to familiarise lawyers with the existing legal framework relating to FoRB; and (ii) to help lawyers identify and locate their cases within the FoRB framework, and litigate accordingly.

¹ Office of the High Commissioner for Human Rights, 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 18', at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23938&LangID=E>.

² Human Rights Council, 'Report of the Special Rapporteur on freedom of religion or belief' (23 December 2015) UN DOC A/HRC/31/18.

³ Verité Research and National Christian Evangelical Alliance Sri Lanka, 'Inaction and Impunity: Incidents of Religious Violence Targeting Christians, Muslims and Hindus, 2015-2019', at https://06c0dd8b-b6f3-41c4-99aa-25915d2024cf.filesusr.com/ugd/ff89a1_9c2ad191e3714fe491cf0ac1228452fc.pdf.

⁴ *ibid.* p. 6.

This handbook is presented in five sections. The first section explains the scope of this handbook, i.e. what constitutes a FoRB case. The second section identifies the legal framework, i.e. the key legal provisions applicable within the FoRB framework in Sri Lanka for reference purposes. The third section provides a set of general preparatory guidelines on the types of information and evidence that lawyers need to check the availability of, and secure, when preparing to represent their clients in a FoRB case. The fourth section will provide guidance to lawyers on how to navigate certain types of cases relating to FoRB. The concluding section will offer guidance on how to interact with the media with respect to a particular case.



HOW TO IDENTIFY A FORB VIOLATION?

1. How to identify a FoRB violation?

The Handbook will guide legal action in situations that meet the following criteria. This criteria has been formulated based on the relevant international human rights standards.⁵

- A. The situation must concern one of the following issues:
- (1) the violation of some aspect of FoRB; **and**
 - (2) discrimination on the grounds of religious identity; **or**
 - (3) violence on the basis of religious identity.

(1) **Aspects of FoRB** include:

- a. The freedom to have or to adopt a religion or belief of one's choice.
- b. The freedom to manifest religion or belief, including in worship, observance, practice, and teaching.

For the purpose of clarity, the following non-exclusive list of activities fall within the ambit of worship, observance, practice, and teaching respectively:⁶

- i. *Worship*: extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.
- ii. *Observance and practice*: include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.
- iii. *Practice and teaching*: include acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

⁵ See article 18 of the Universal Declaration of Human Rights; Article 18 of the International Covenant on Civil and Political Rights; Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Article 9 of the European Convention on Human Rights.

⁶ UN Human Rights Committee, 'General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993), CCPR/C/21/Rev.1/Add.4, para 4.

Notably, there is some overlap between these concepts, and in particular between observance and practice, and practice and teaching.

In the recent case of *Karuwalagaswewa Vidanelage Swarna Manjula et al v. Pushpakumara, Officer-in-Charge, Police Station, Kekirawa et al* (the Jehovah's Witnesses Case),⁷ the Supreme Court of Sri Lanka concluded that propagation did not fall within the protected scope of article 14(1)(e) of the Constitution.⁸

- (2) **Discrimination** may include a range of areas including socioeconomic discrimination (e.g. banning of certain economic activities or from market participation), political discrimination (e.g. banning of public gatherings), and discrimination in the application of law (e.g. discriminatory application of criminal law). The discriminatory act that the case is concerned with should directly or indirectly target the religious identity of a person or group.
 - (3) **Violence may** include physical (e.g. killings, assault, and destruction of property) or non-physical (e.g. threats, intimidation, coercion) acts. The violent act that the case is concerned with should directly or indirectly target the religious identity of a person or group. Violence that is directed at a person with a particular religious identity, but not directed **because** of such identity would not be considered relevant.
- B. The case must feature a Sri Lankan court or tribunal. Cases will typically be before a Magistrate's Court, High Court, Court of Appeal, or Supreme Court of Sri Lanka.

⁷ SC (F.R) No. 241/14. See Gehan Gunatilleke, 'The Jehovah's Witnesses Case', (2020) 25 *The Bar Association Law Journal* 440.

⁸ See NCEASL's 'analysis of FoRB cases in the e-portal' for more analysis on this case.



KEY LEGAL PROVISIONS

2. Key Legal Provisions

This section summarises key legal provisions relating to or potentially having an impact on FoRB in Sri Lanka.

Law	Article / Section No.	Section in detail
Constitution of Democratic Socialist Republic of Sri Lanka	Article 10	Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. ⁹
	Article 12	<p>Article 12(1) provides: 'All persons are equal before the law and are entitled to the equal protection of the law.'</p> <p>Article 12(2) provides: 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds'.</p> <p>Article 12(3) states that 'no person...on the grounds of religion...shall be subject to any disability, liability, restriction, or condition with regard to...places of worship of his own religion'.</p>
	Article 14 (1) (e)	Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.
	Article 15 (7)	The rights contained in articles 12 and 14(1)(e) can be subject to restrictions on certain grounds identified in article 15(7). This provision states that the fundamental rights recognised by <i>inter alia</i> articles 12 and 14 'shall be subject to such restrictions as may be

⁹ The Supreme Court recognised freedom of religion as an absolute right in the case of *Premalal Perera v. Weerasuriya* [1985] 2 Sri. L.R. 177. The Court, at p.192 of the judgment, held: 'Beliefs rooted in religion are protected. A religious belief need not be logical, acceptable, consistent or comprehensible in order to be protected. Unless the claim is bizarre and clearly non-religious in motivation, it is not within the judicial function and judicial competence to inquire whether the person seeking protection has correctly perceived the commands of his particular faith. The courts are not the arbiters of scriptural interpretation and should not undertake to dissect religious beliefs.'

		<p>prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.'</p>
	<p>Article 27</p>	<p>Article 27 (5): The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.</p> <p>Article 27 (6): The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.</p> <p>Article 27 (11): The State shall create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles.</p>
<p>Penal Code Ordinance, No. 2 of 1883 (as amended)</p>	<p>Section 290</p> <p>on Injuring or defiling a place of worship with intent to insult the religion of any class</p>	<p>Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class persons, with the intention of thereby insulting the religion of insult the any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.</p>
	<p>Section 290A</p> <p>Acts in relation to places of worship with</p>	<p>Whoever does any act, in or upon, or in the vicinity of, any place of worship or any object which is held sacred with intent to or in veneration by any</p>

	intent to insult the religion of any class.	class of persons, with the intention wounding the religious feelings of any class of persons or with the knowledge that any class of persons is likely to consider such act as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
	Section 291 Disturbing a religious assembly.	Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
	Section 291A Uttering words with deliberate intent to wound religious feelings.	Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both
	Section 291B Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs.	Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
	Section 292	Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any

	Trespassing on burial places	person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
	Section 483 Criminal Intimidation	Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
Police Ordinance, No. 16 of 1865 (as amended)	Section 79(2)	Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour which is intended to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence under this section.
Code of Criminal Procedure Act, No. 15 of 1979 (as amended)	Section 81	Whenever a Magistrate receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace within the local limits of the jurisdiction of the

		<p>court of such Magistrate, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the court thinks fit to fix.</p>
	<p>Section 98 (1)</p> <p>Conditional order for removal of nuisance</p>	<p>Whenever a Magistrate considers on receiving a report or other information and on taking such evidence (if any) as he thinks fit-</p> <p>(a) that any unlawful obstruction or nuisance should be removed from any way, harbour, lake, river, or channel which is or may be lawfully used by the public or from any public place;</p> <p style="text-align: center;">or</p> <p>(b) that any trade or occupation or the keeping of any goods or merchandise should by reason of its being injurious to the health or physical comfort of the community be suppressed or removed or prohibited;</p> <p style="text-align: center;">or</p> <p>(c) that the construction of any building or the disposal of any substance should as being likely to occasion conflagration or explosion be prevented or stopped;</p> <p style="text-align: center;">or</p> <p>(d) that any building or tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence its removal, repair, or support is necessary;</p> <p style="text-align: center;">or</p> <p>(e) that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,</p> <p>Such Magistrate may make a conditional order requiring that the person causing such obstruction or nuisance or carrying on such a trade</p>

		<p>or occupation or keeping any such goods or merchandise or owning, possessing, or controlling such building, substance, tree, tank, well or excavation shall within a time to be fixed by such order,</p> <ul style="list-style-type: none"> (i) remove such obstruction or nuisance; or (ii) suppress or remove such trade or occupation; or (iii) remove such goods or merchandise; or (iv) prevent or stop the construction of such building; or (v) remove, repair, or support it; or (vi) alter the disposal of such substance; or (vii) remove such tree; or (viii) fence such tank, well, or excavation as the case may be.
<p>Primary Courts' Procedure Act, No. 44 of 1970 (as amended)</p>	<p>Section 66 (1)</p> <p>(under part VII on inquiries into disputes affecting land where a breach of the peace is threatened or likely)</p>	<p>Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-</p> <p>(a) the police officer inquiring into the dispute-</p> <ul style="list-style-type: none"> (i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such court are held; or (ii) shall, if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose jurisdiction the land is situate to be dealt with according

		<p>to law and shall also at the same time file in that court the information regarding the dispute;</p> <p>or</p> <p>(b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on the day specified in the notice-such day being not later than two weeks from the day on which the information was filed.</p>
International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007	Section 3(1)	No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
Prevention of Terrorism Act, No. 48 of 1979 (PTA)	Section 2(1)(h)	Any person by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups...shall be guilty of an offence under this Act.
	Section 14(2)(a)(ii)	No person shall, without the approval in writing of a competent authority, print or publish in any newspaper any matter relating to... incitement to violence, or which is likely to cause religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups.
	Section 5(f)	For the purpose of achieving the objects referred to in section 4, the

<p>Sri Lanka Telecommunications Act, No. 25 of 1991 (as amended)</p>		<p>Authority shall have the following powers... (f) to take such regulatory measures as may be prescribed to comply with any general or special directions that may be given to it from time to time by the Government of Sri Lanka in the interest of national security, public order and the defence of the country.</p>
	<p>Section 58 Penalty for tendering obscene or indecent or sedition message</p>	<p>Every person who by himself or by his agent or servant tenders for transmission at any telecommunication office any message of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and such imprisonment.</p>
	<p>Section 69 Power of the Government to prohibit or restrict the use of telecommunication</p>	<p>If on the occurrence of any public emergency or in the interest of public safety and tranquillity, it is expedient or necessary that the transmission and reception of messages, by telecommunication should be prohibited or be subject to supervision and control, the Minister may, upon being satisfied of the above matter by Order made either generally and published in the Gazette or specially in writing in respect of any telecommunication service provided in any place in Sri Lanka or in any ship in the territorial waters of Sri Lanka or in any vehicle or aircraft in or over Sri Lanka or the territorial waters thereof, (a) where prohibition is expedient or necessary, prohibit the transmission or reception of messages by telecommunication either generally or at any specified person or class of person; or</p>

		<p>(b) where supervision and control are expedient or necessary,</p> <p>(i) prescribe the conditions and restrictions subject to which messages may be transmitted or received by telecommunication either generally or by an operator or person in charge of any specified telecommunication service; and</p> <p>(ii) make such provision as he may deem necessary for the interception or the censoring of all or any specified class or description of messages submitted for transmission by, or transmitted or received by telecommunication.</p>
Computer Crimes Act, No. 24 of 2007	Section 6 (1)	<p>Any person who intentionally causes a computer to perform any function, knowing or having reason to believe that such function will result in danger or imminent danger to</p> <p>(a) national security;</p> <p>(b) the national economy;</p> <p>or</p> <p>(c) public order,</p> <p>shall be guilty of an offence and shall on conviction be punishable with imprisonment of either description for a term not exceeding five years.</p>
Sri Lanka Press Council Law, No.5 of 1973 (as amended)	Section 15	<p>(1) Every person who publishes, or causes the publication of, in any newspaper,</p> <p>(a) any profane matter;</p> <p>or</p> <p><i>(b) repealed</i></p> <p>(c) any advertisement which is calculated to injure public morality; or</p> <p>(d) any indecent or obscene statement or matter, shall be guilty of an offence and shall, upon conviction, be liable to be punished with a fine not exceeding five thousand rupees, or with imprisonment of either description for a term not exceeding two years or with both such fine and imprisonment.</p>

		<p>(2) For the purposes of this section: (a) 'profane matter' means any matter which is intended to insult – (i) any religion or the founder of any religion; (ii) any deity or saint venerated by the followers of any religion; and (b) 'indecent or obscene statement or matter' shall be deemed to be any statement or matter which is likely to deprave and corrupt persons who may, having regard to all relevant circumstances, read or see that statement or matter.</p>
<p>Cemetries and Burials Ordinance, No. 9 of 1985</p>	<p>Section 9</p>	<p>The proper authority may authorize the erection of chapels and other buildings for the performance of burial services or cremation within the limits of a cemetery.</p>
	<p>Section 11</p>	<p>(1) The proper authority may sell a portion of any cemetery for the special use of the of any religious denomination applying for the same, and the portion so sold shall for the purposes of this Ordinance, but for no other purpose whatever, vest in the person or persons to whom such portion has been or may hereafter be conveyed by deed executed by the proper authority in trust for such denomination.</p> <p>(2) It shall be lawful for such person or persons acting as trustee or trustees to appoint, from time to time, a board of management consisting of three or more members; and such board, or a majority of the members thereof, may exercise any of the following powers in respect of such portion :-</p> <p>(a) power to appoint a caretaker, grave-diggers, and other servants necessary for the care and use of such portion of any cemetery; (b) power to grant the</p>

		exclusive right of burial in any plot or plots of land within such portion, or the right of one or more burials therein, or the right of placing any monument or gravestone over any grave, or any tablet or monumental inscription on the walls of any chapel or building within such portion; (c) power to prohibit cremation within any such portion.
	Section 13	Any clerk in holy orders, minister, priest, or other person may perform the services of his religion, at the request of the executor of the will of any deceased person, or at the request of any other person having the charge of the body of any deceased person.
Emergency Regulations (ERs) under the Public Security Ordinance, No. 25 of 1947 (PSO)	Section 5	The president has the power to make Emergency Regulations (ERs) if it appears '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'.
Regulations under the Quarantine and Prevention of Diseases Ordinance, 3 of 1987 (as amended)	Sections 2 & 3	A series of regulations have been issued to address the COVID-19 pandemic related issues. Given the continued presence of the pandemic, these regulations tend to be revised regularly. ¹⁰

Additionally, according to section 2 of Code of Criminal Procedure Act, No. 15 of 1979, if an offence is labelled as a 'cognizable offence', then a 'peace officer' (police officers and Grama Seva Niladharis appointed by a Government Agent in writing to perform police duties) may arrest perpetrators without a warrant. If an offence is considered a 'non-cognizable' offence, then a peace officer may not arrest without a warrant. The use of 'threatening, abusive or insulting words or behaviour which is intended to

¹⁰ See Extraordinary Gazettes, Department of Government Printing, at <http://documents.gov.lk/en/exgazette.php> for further details on these regulations.

provoke a breach of the peace' is a cognizable offence in terms of section 79(2) of the Police Ordinance.

Cognizable offences identified in the Penal Code include:

1. Injuring or defiling a place of worship with intent to insult the religion of any class (section 290)
2. Acts in relation to places of worship with intent to insult the religion of any class (section 290A)
3. Disturbing a religious assembly (section 291)
4. Trespass in any place of worship or on any place of sepulture (section 292)

Notably, an offence under section 3 of the ICCPR Act is 'cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances.

Non-cognizable offences in the Penal Code include:

1. Uttering words with deliberate intent to wound religious feelings (section 291A);
and
2. Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs (section 291B).



**GUIDELINES ON PREPARING
FOR A CASE**

3. Guidelines on Preparing for a Case

This section contains the types of information and evidence that lawyers need to check the availability of, and secure, when preparing to represent their clients in a FoRB case.

In order to provide the necessary legal assistance to the client as early as possible, a lawyer should ensure that the following steps are taken, and the relevant information is gathered.

Phase 1

1. Client bio data

1.1 Client background information: This may include name, address, date of birth, ties to the community (including period of time at current address, family relationships, educational history, employment history, criminal history, immediate medical needs, emergency contact information).

2. Information relating to the event

2.1 Preliminary information and documentation relating to the case. The following information (among others applicable to the facts of the case) should be gathered:

2.1.1 The circumstances leading up to the alleged event;

2.1.2 The details of the persons present during the event(s) – whether or not they participated in any of the alleged offence(s);

2.1.3 The exact role of each person and especially the nature of the offence;

2.1.4 Details of any witnesses who can testify as to the events;

2.1.5 Statements from potential witnesses;

2.1.6 Other evidence gathered during the interview with the client; and

2.1.7 Independent fact finding from secondary sources such as media reporting on the incident.

Phase 2

3. Examination of documents, persons and scene

3.1 Once the above data is gathered, inspect and examine fully all documents, exhibits and other materials made available.

3.2 If possible, interview eyewitnesses to the alleged event to obtain their version of the facts.

3.3 If possible, interview any other potential witnesses who may have information relevant to the case.

3.4 If possible or applicable, examine the scene of the alleged event.

4. Establishing a chronology

4.1 Ascertaining the client's version of the facts and events, and based on corroborating evidence, prepare a chronology (i.e. a detailed account of the timeline of the event, and the key facts leading up to the event).

Phase 3

5. Initiating preliminary legal steps

- 5.1 Take instructions from the client, for example, whether or not the client wants to institute legal action; if yes, then ascertain the course of legal action the client wishes to pursue.
- 5.2 Consider and initiate any preliminary legal steps that need to be taken in order to safeguard the best interests of the client.¹¹ This may include,
 - 5.2.1 making a request under the Right to Information Act No. 12 of 2016 for any information that is necessary (See Annex 1 for RTI request template),¹²
 - 5.2.2 if medical evidence is required, ensuring that injuries or treatment is properly professionally documented,
 - 5.2.3 sending a letter of demand to put the offending person or organization on notice that your client is asking for some specific action to be taken or
 - 5.2.4 if relevant ensuring that police complaints or complaints to the Human Rights Commission of Sri Lanka have been duly lodged.
 - 5.2.5 Obtaining Grama Sevaka certificates (if required).

6. Assessing relevant subsidiary legislation

When conducting the relevant research, ensure to assess the relevant subsidiary legislation issued under the Urban Development Authority Law, municipal laws, and land laws, such as the Land Development Ordinance, No. 19 of 1935, and the Mahaweli Authority of Sri Lanka Act, No. 23 of 1979.

7. Recording a victim impact statement (relating to the impact of the crime on such victim)

Such a statement may be called for in the High Court or the Magistrate's Court in arriving at a determination on the quantum of compensation under section 28 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No.4 of 2015 (VWP Act).

Under the VWP Act, protection measures are available:

- During and after the criminal investigation;
- Before, during and after the investigations by the Commission; and
- Before, during and after judicial proceedings.

¹¹ International Bridges to Justice, *Sri Lanka Criminal Defence Practice Manual*, at https://www.ibj.org/wp_main/wp-content/uploads/2020/04/English-4.pdf; DIGNITY and the Public Committee Against torture in Israel (PCATI), *Documenting Torture While Providing Legal Aid: A Handbook for Lawyers*, at <https://www.dignity.dk/wp-content/uploads/Documenting-torture-while-providing-legal-aid-A-handbook-for-lawyers-2016.pdf>.

¹² For more information on RTI templates and process see 'RTI Sri Lanka' at <https://www.rti.gov.lk/rti-forms>.

Section 22 of the Act provides for the types of assistance and protection including temporary accommodation, permanent relocation, and re-identification. Familiarity with this law may prove useful to a lawyer engaged in this area of litigation.

Note: There appears to be a dearth of information relating to the nature of the protection offered under the VWP Act. According to the 2019 Annual Report of the National Authority for the Protection of Victims and Witnesses, out of the total number of 252 complaints received by the Authority, the number of complainants who were provided with protection was fourteen.¹³ Therefore, where necessary, a lawyer must take all measures to ascertain the exact nature and effectiveness of the protection offered on behalf of the person they represent.

¹³ Annual Report-2019, National Authority for the Protection of Victims and Witnesses, at https://napvcw.gov.lk/img/gallery/publications/Annual_Report_2019_English.pdf



**NAVIGATING FORB
CASES**

4. Navigating FoRB Cases

This section offers guidance to lawyers on how to navigate certain types of cases relating to FoRB. The guidance is provided in relation to three steps:

- Step 1: How to determine a violation
- Step 2: How to select a forum
- Step 3: Filing the case

This section initially discusses the above steps in a general setting. Thereafter, these steps are applied to several thematic areas commonly encountered in FoRB litigation. These themes include:

1. Regulation of construction or maintenance of religious institutions
2. Restriction of a religious practice
3. Discrimination based on religious identity
4. Violence related to religious identity
5. Speech related offences

Illustrations are provided under each area to guide lawyers on the manner in which these illustrations should be approached.

a. General Steps

Step 1: How to determine a violation

Figure 1 offers guidance on how to determine whether a situation falls within the ambit of FoRB. The list of incidents is non-exclusive.

If yes, then it may be one of the following issues:

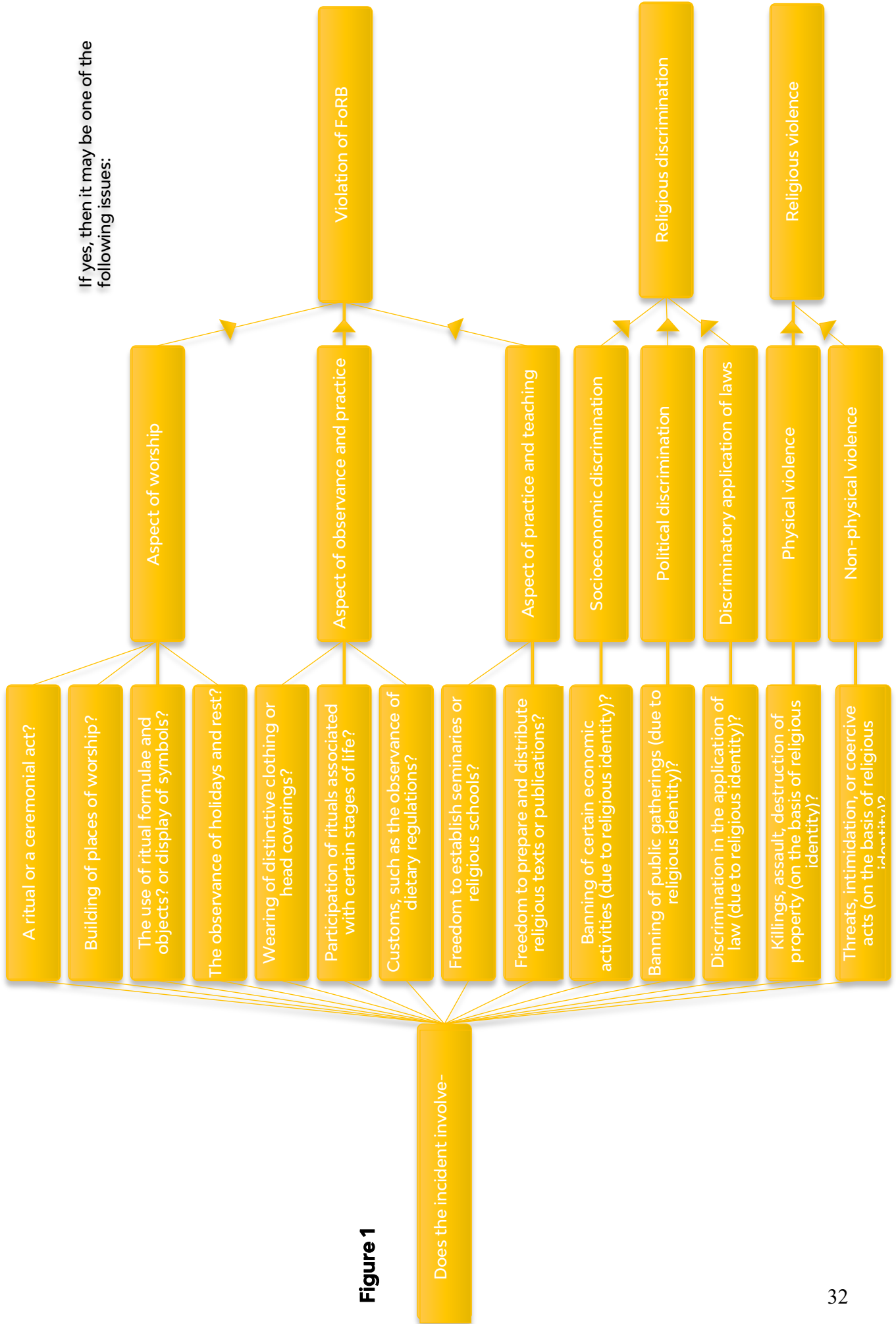


Figure 1

Step 2: How to select the forum

Once the violation is placed within the scope of FoRB, a lawyer may then proceed to choose the forum that is best suited to take up the matter. In doing so, they must bear in mind the best course of action for their client, based on the type of relief sought by the client, and select a forum that has jurisdiction to deliver justice.

The preliminary steps listed below would assist the lawyer in arriving at an informed decision when selecting a forum.

I.		
What is the nature of the violation?	A law, regulation or guideline	Y/N
	A verbal or written communication	Y/N
	Arrest or detention	Y/N
	An act of physical violence	Y/N
	An act of non-physical violence (threat or harassment)	Y/N

Once the nature of the violation has been identified, the responsible party should be identified in order to select the form.

II.		
Who is responsible or complicit in the violation?	State official(s)	Y/N
	Non-state actor(s) with cooperation or support of the state official(s)	Y/N
	Non-state actor(s) whether groups or individuals with state encouragement or tolerance	Y/N

Based on the responses to the above questions, a lawyer may select a forum from the options presented below.

Option No.	Forum	Key Information
1.	The Supreme Court Articles 118 and 126 of the Constitution	<ul style="list-style-type: none"> The highest and final superior court of record in the Republic. Sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by <u>executive or administrative action</u> of any fundamental right or language right. The Supreme Court shall have power to <u>grant such relief or make such directions as it may deem just and equitable</u> in the circumstance in respect of any petition.

		<ul style="list-style-type: none"> • The final court of civil and criminal appellate jurisdiction for and within the Republic of Sri Lanka for the correction of all errors in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance, tribunal or other institution and the judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters. • <u>Fundamental rights application to the Supreme Court to be made within one month</u> by any person alleging that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action. An exception to the one month is provided for in the Human Rights Commission of Sri Lanka Act No, 21 of 1996. • The Supreme Court primarily requires the person whose rights are violated to petition court by themselves or their attorney at law. Standing of petitioners in matters where the petitioner shares the interest with others, or the public at large has been recognized.¹⁴
<p>2.</p>	<p>The Court of Appeal</p> <p>Articles 138, 139, 140 and 141 of the Constitution</p>	<ul style="list-style-type: none"> • Appellate jurisdiction for the correction of all errors in fact or in law. • The Court of Appeal may affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or it may give directions to such Court of First Instance, tribunal or other institution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit. • Full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari,¹⁵ prohibition,¹⁶ procedendo,¹⁷ mandamus¹⁸ and quo warranto¹⁹ against the judge of any Court of First Instance or tribunal or other institution or any other person. • The Court of Appeal may grant and issue orders in the nature of writs of habeas corpus.²⁰

¹⁴ See *Bulankulama and Others v Secretary, Ministry of Industrial Development and Others (Eppawela Case)* [2000] 3 SLR 243.

¹⁵ Writ of certiorari is a writ to quash or set aside that which is invalid or illegal and ultra vires. See *Harjani v Indian Overseas Bank* [2005] 1 SLR 167 for more information.

¹⁶ Writ of prohibition is a writ to prohibit acts which would be in excess of jurisdiction.

¹⁷ Writ of procedendo is a writ to order valid exercise of power.

¹⁸ Writ of mandamus is a writ to compel a public authority to perform a public duty. See *Karunathilaka v Dayananda Dissanayake, Commissioner of Elections* [1999] 1 SLR 157, *Podimhatmaya v. The Land Reform Commission* [1990] 2 SLR 416 at 419, *Rashid v. Rajith Senaratne, Ministry of Lands and others* [2004] 1 SLR 312 for more information.

¹⁹ Writ of quo warranto is a writ to challenge the authority of a person holding public office. See *Dilan Perera v Rajitha Senaratne* [2000] 2 SLR 79 for more information.

²⁰ Writ of habeas corpus is a writ to obtain the production of a body of a person for a determination on the legality of his custody or detention.

<p>3.</p>	<p>The High Court</p> <p>Article 154P of the Constitution; Section 9 of the Judicature Act, No.2 of 1978 (as amended)</p>	<ul style="list-style-type: none"> • Original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province. • Appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province. • Jurisdiction to issue, according to law – (a) orders in the nature of writs of habeas corpus, in respect of persons illegally detained within the Province; and (b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under – (i) any law; or (ii) any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List. • The High Court shall ordinarily have the power and authority and is hereby required to hear, try and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of: <ul style="list-style-type: none"> (a) any offence wholly or partly committed in Sri Lanka; (b) any offence committed by any person on or over the territorial waters of Sri Lanka; (c) any offence committed by any person in the air space of Sri Lanka; (d) any offence committed by any person on the high seas where such offence is piracy by the law of nations; (e) any offence wherever committed by any person on board or in relation to any ship or any aircraft of whatever category registered in Sri Lanka; or (f) any offence wherever committed by any person, who is a citizen of Sri Lanka, in any place outside the territory of Sri Lanka or on board or in relation to any ship or aircraft of whatever category.
<p>4.</p>	<p>Magistrate’s Court</p> <p>Section 30 of the Judicature Act, No.2 of 1978 (as amended)</p>	<ul style="list-style-type: none"> • Every Magistrates Court shall have and exercise all powers and authorities and perform all duties which Magistrates’ Courts are empowered and required to have, exercise and perform by virtue of the provisions of the Penal Code or the Code of Criminal Procedure Act. or of any other enactment for the time being in force in any way empowering or requiring them in that behalf.

<p>5.</p>	<p>Magistrate's Court</p> <p>Private plaints</p> <p>Section 136(1)(a) of the Code of Criminal Procedure Act, No. 15 of 1979 (as amended)</p>	<ul style="list-style-type: none"> • On a complaint being made orally or in writing to a Magistrate of such court that an offence has been committed which such court has jurisdiction either to inquire into or try, provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant. • Once a complaint has been filed under this provision, the Attorney-General, Solicitor-General, a State Counsel or pleader generally or specially authorised by the Attorney General shall, not have the right to appear for the complainant without his consent, except where such complaint has been filed against an officer or employee of the State in respect of a matter connected with or relating to the discharge of the official duties of such officer or employee.
<p>6.</p>	<p>Human Rights Commission of Sri Lanka</p> <p>Sections 10 and 14 of the Human Right Commission of Sri Lanka Act, No. 21 of 1996</p>	<ul style="list-style-type: none"> • The Commission may, on its own motion or on and complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, investigate an allegation at the infringement or imminent infringement of a fundamental right of such person or group of persons caused. • Where an investigation conducted by the Commission under section 14 discloses the infringement or imminent infringement of a fundamental right by executive or administrative action, or by any person, the Commission, following the consideration of the option of conciliation or mediation, may: <ul style="list-style-type: none"> (i) recommend to the appropriate authorities, that prosecution or other proceedings be instituted against the person or persons infringing such fundamental right; (ii) refer the matter to any court having jurisdiction to here and determine such matter in accordance with such rules of court as may be prescribed therefore, and within such time as is provided for invoking the jurisdiction of such court, by any person; (iii) make such recommendations as it may think fit to the appropriate authority or person or persons concerned, with a view to preventing or remedying such infringement or the continuation of such infringement.

Step 3: Filing the case

Once the lawyer has evaluated all information presented above, they may engage in the exercise illustrated below to select the best forum for the case. The table below

synthesises the information presented so far by setting out the type of relief and forum. It is not an exhaustive compilation of all possible options, but a visualisation of the most common options along with the relevant actors and the suitable forum.

No.	Actor	Alleged Conduct	Relief	Forum
1.	State official	Not taking required action under the law	Writ of Mandamus	Court of Appeal
2.	State official	Taking action that is not permitted by law	Writ of Certiorari / Prohibition	Court of Appeal
3.	State official	Placing unreasonable conditions that are not in the law	Writ Certiorari / Prohibition	Court of Appeal
3.	State official	Failure to take action regarding a complaint your client made	Writ of Mandamus / FR / HRCSL Complaint	Court of Appeal / Supreme Court / HRCSL
4.	State official	Preventing your client from exercising their right to express themselves, share information etc.	FR / HRCSL Complaint	Supreme Court / HRCSL
5.	State official	Preventing your client from gathering and collaborating on religious activities together	FR / HRCSL Complaint	Supreme Court / HRCSL
6.	State official	Preventing your client from carrying out a religious ritual or practice	FR / HRCSL Complaint	Supreme Court / HRCSL
7.	State official	Treatment of one group of people differently from your client because your client's religious identity	FR / HRCSL Complaint	Supreme Court / HRCSL
8.	Non-state actors with cooperation or support of the state officials	Killings, assault, destruction of property, threats, intimidation, incitement to violence	Criminal cases filed under sections 290-294, 340-349,	High Court
		Alleging that your clients' activities are causing a public nuisance (your client maybe a defendant in this case)	408-421, 483-487 of the Penal Code or sections 81 or 98 of the Code of Criminal Procedure Act or section 3 of	Magistrate's Court

			the ICCPR Act	
9.	Non- state actors (groups or individuals) with state encouragement or tolerance	Killings, assault, destruction of property, threats, intimidation, incitement to violence	Criminal case filed under sections 290-294, 340-349, 408-421, 483-487 of the Penal Code or sections 81 or 98 of the Code of Criminal Procedure Act or section 3 of the ICCPR Act	High Court
		Claiming that your clients' activities are causing a public nuisance (your client maybe a defendant in this case)		Magistrate's Court

In instances of police inaction in response to the complaint, a lawyer may also consider the option of filing a private plaint under section 136(1)(a) of the Code of Criminal Procedure Act (discussed above). However, a lawyer should take cognizance of the potential challenges that may be faced in gaining access to key reports with evidentiary value. A private party might not have the same access that the state machinery does to certain resources (such as the Judicial Medical Officer or Government Analyst for forensic analysis if required).

b. Thematic Areas of Litigation

There are several themes that are common to FoRB litigation. The following subsections take closer look at each of these thematic areas, and offer guidance on litigation in each area through the use of illustrations.

(1) *Regulation of construction or maintenance of religious institution*

Generally, the violations under this area may arise due to suspension or denial of building permits for a place of worship or other religious institution, forcible 'registration' of a place of worship, public nuisance cases filed against an ongoing construction activity or the maintenance of a religious institution.

Case Study A

X, the head of a religious group, applied to the Pradeshiya Sabha for a development plan to put up a two-story centre to conduct religious teaching events. The plan was approved accordingly. Once the ground

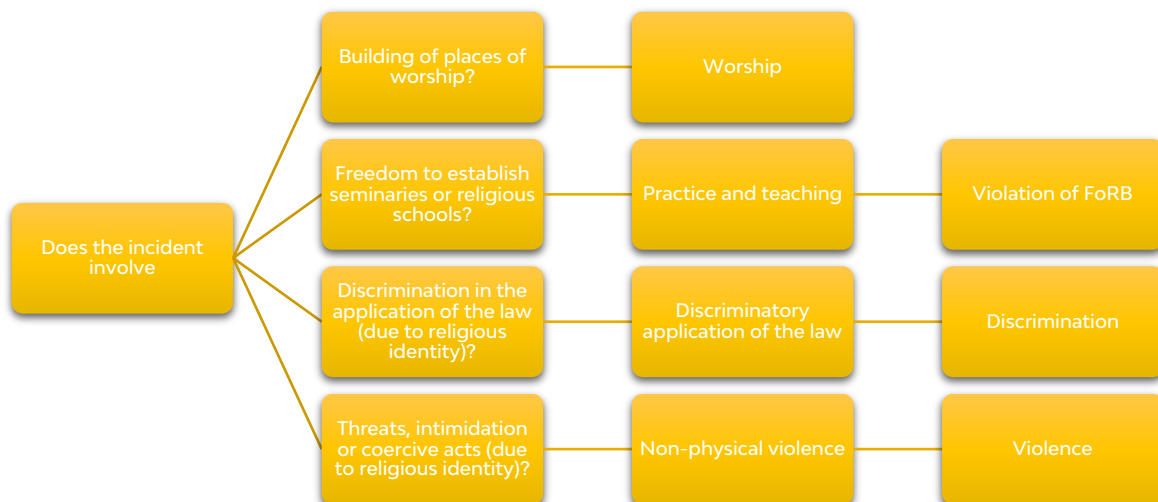
floor was completed, X commenced teaching activities. A few years later, X commenced the construction of the first floor, but was asked to suspend the construction by the Pradeshiya Sabha through a letter served by a senior police officer due to protests by the residents and the local Buddhist monk. X was also requested to present the approval he obtained from the Religious Affairs Ministry as per Circular No. MBRA/2-SAD/10/Con.Gen/2013.

Navigating Case study A

Step 1: Determining the violation

In this illustration, similar to the facts noted in *M.J.M. Faril et al v. Bandaragama Pradeshiya Sabha et al*,²¹ X legally acquired the permit to build the religious centre. According to the section on determining a violation, this incident involved X's freedom to manifest their religion, and X was discriminated in the application of law, i.e., receiving a letter to suspend construction because of their religious identity. A lawyer may also consider the act of having the letter delivered through a senior police officer as a threat or an intimidation technique. Figure 2 below assesses all possible violations relating to this incident and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 2



The lawyer must determine the precise act that caused the violation of FoRB, discrimination, or violence.

Step 2: Selecting the forum

²¹ SC (F.R.) No. 92/2016.

I. What is the nature of the violation?	A law, regulation or guideline	N
	A verbal or written communication	Y
	Arrest or detention	N
	An act of physical violence	N
	An act of non-physical violence (threat or harassment)	N

II. Who is responsible for or complicit in the violation?	State officials	Y
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encourage or tolerance of activities?	N

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Discrimination	State official	Not following the law (issuing instructions suspending construction without stating reasons and protests by a group)	Writ of Certiorari	Court of Appeal
2.	Violation of FoRB; Discrimination	State official	Treatment of one group of people differently from your client because of your client's religious identity	FR (articles 12, 14(1)(e)) / HRCSL Complaint	Supreme Court / HRCSL

Further illustrations on regulation of construction or maintenance of religious institution:

Illustration 1

Y is a pastor of a small Christian church and intends to use their private residence for worship activities. Y obtains a Building Plan approved for residential premises under section 8J(1) of the Urban Development Authority Act. The construction is then suspended by the approving authority, as the residents of the area complain that the activities and rituals in the premises constituted a public nuisance. Y then seeks a legal remedy (Also see Case Study C).

Illustration 2

Kovil A has been in existence in a village in the Northern Province for centuries. The kovil land contains ancient monuments that are under the

authority of the Archaeology Department. Officers of the Archaeological Department visit an archaeological site on which the kovil A is located. There are long-standing disputes over sacred space between the Hindu and Buddhist communities in the area. The officers claim that the site belongs to the Buddhist community, and that an ancient Buddhist shrine existed on this site. They claim that the kovil is an intrusion into Buddhist sacred space, and that excavation activities would need to begin in order to restore the shrine. The project would require the removal of part of the existing structure of the kovil. The Hindu area residents protest the removal of the part of the kovil and seek a legal remedy.

(2) Restriction on religious practice

Specific examples of 'restriction on religious practice' include bans on religious attire, prohibitions on religious rites such as funeral rites, prohibitions on religious teaching, and regulation of religious ceremonies, gatherings and festivals.

Case Study B

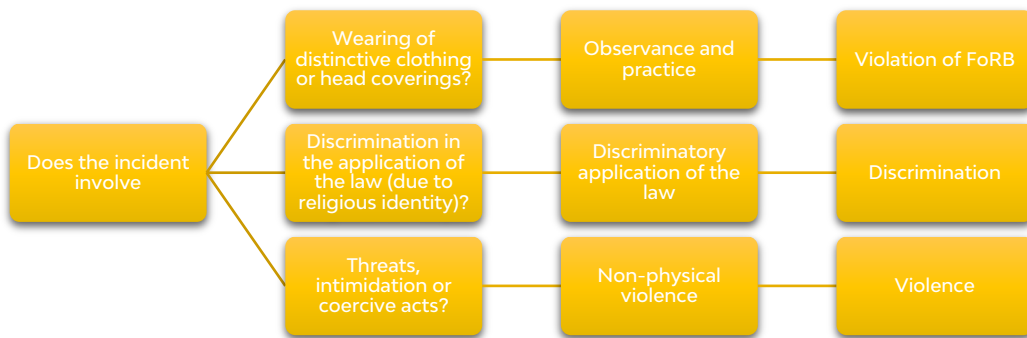
Following a terrorist attack by an Islamist militant group, the government declares a state of emergency and introduces Emergency Regulations (ERs). One of the regulations provide: 'No person shall wear in any public place any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person.' Z, a Muslim woman, is stopped at a checkpoint while wearing *niqab*. She is threatened and harassed at the checkpoint.

Navigating Case Study B

Step 1: Determining the violation

In this illustration, the ER uses neutral language. It does not contain a reference to women or to Islam. Yet, given the context in which this ER was issued, it is in practice deployed to prohibit the practice of full face covering by some women who practice Islam. Therefore, it could be argued that the ER has the effect of indirectly targeting a specific religious practice. Z was threatened and harassed due to her religious identity. Figure 3 below assesses all possible violations relating to this incident, and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 3



The lawyer must determine the precise act that caused the violation of FoRB, discrimination, or violence.

Step 2: Selecting the forum

I. What is the nature of the violation?	A law, regulation or guideline	Y
	A verbal or written communication	N
	Arrest or detention	N
	An act of physical violence	N
	An act of non-physical violence (threat or harassment)	Y

II. Who is responsible for or complicit in the violation?	State officials	Y
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encourage or tolerance of activities	N

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Violation of FoRB; Discrimination	State official	Differential treatment of your client because of her religious identity	FR (articles 12, 14(1)(e)) / HRCSL Complaint	Supreme Court / HRCSL

Case Study C

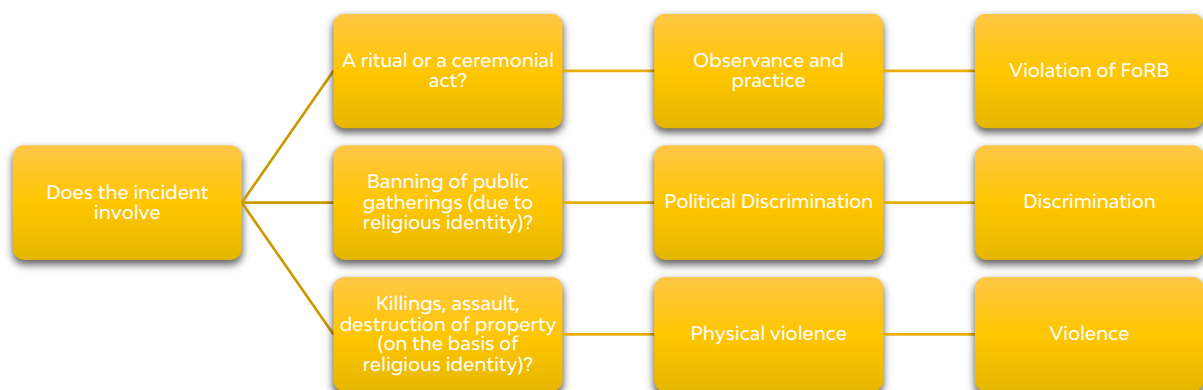
Q is a pastor in a rural village. Q began to hold daily services in his residence. The residents of the village complain to the police that a large number of people were congregating at Q's residence. They allege that these gatherings were causing a nuisance and harassment to the residents of the area. On several occasions, the area residents were seen to have pelted Q's house with stones in an attempt to disturb the daily services. Upon the matter being taken up before the Magistrate's Court, the Magistrate issues an interim order under section 98 of the Code of Criminal Procedure Act temporarily suspending Q's activities.

Navigating Case Study C

Step 1: Determining the violation

In this illustration, the complainant's house has been pelted with stones during service times. However, Magistrate's Court has issued an interim order under section 98 of the Code of Criminal Procedure Act to temporarily suspend the Q's activities. Figure 4 below assesses all possible violations relating to this incident, and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 4



The lawyer must determine the precise act that caused the violation of FoRB, discrimination, or violence.

Step 2: Selecting the forum

I. What is the nature of the violation?	A law, regulation or guideline	N
	A verbal or written communication	Y
	Arrest or detention	N
	An act of physical violence	Y
	An act of non-physical violence (threat or harassment)	N

II. Who is responsible for or complicit in the violation?	State officials	Y
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encourage or tolerance of activities	Y

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Given the interim order by the Magistrate, the complainant could be advised to appeal the said order.			Revision Application	High Court
2.	Religious Violence	Non-state actors (groups or individuals) with state encouragement or tolerance	Assault, destruction of property, threats, intimidation	Criminal case filed under sections 340-349, 408-421, 483-487 of the Penal Code or sections 81 or 98 of the Code of Criminal Procedure Act or section 3 of the ICCPR Act	High Court or Magistrate's Court
3.	Violation of FoRB; Discrimination	State official	Differential treatment of your client because of his religious identity	FR (articles 12, 14(1)(e)) / HRCSL Complaint	Supreme Court / HRCSL

Further illustrations on restriction on religious practice

Illustration 3

The complainants (members of an area mosque) are refused a loudspeaker permit under section 80 of the Police Ordinance. The permit was requested for the unrestricted use of the loudspeakers in the call to prayer from the Mosque. The police authorities claimed that the unrestricted use of loudspeakers makes captive listeners of people of other faiths and has health implications due to the excessive noise emitted from loudspeakers.

Illustration 4

D belongs to Jehovah's Witnesses faith. The tenets of Jehovah's Witnesses require them to engage in house-to-house visits for the purposes of propagating their faith. D enters a house as part of her missionary work in a village in Anuradhapura and disseminated religious material. Several Buddhist monks and other villagers then enter the house and accuses D of attempting to forcefully convert persons. D is then taken to the area Police Station and berated by the several Buddhist monks and the OIC of the police station. D is arrested and kept in custody overnight on suspicion of criminal intimidation and criminal trespass. Following the conclusion of investigations, no case is filed against D. D then seeks a legal remedy.

Illustration 5

R, a Christian, died due to a sudden illness and his family decides to bury his body in the public cemetery. While the funeral was taking place, a mob of around 100 people disrupt the proceedings, stating that Christians cannot be buried in that cemetery. The mob then assault those who had gathered for the funeral. The police at the scene is unable to bring the situation under control. Several hours later, due to the pressure exerted by the villagers (who have sided with the mob) R's family is forced to conduct the funeral in an area 15 km away under police protection.

(3) Discrimination based on religious identity

Examples of discrimination based on religious identity include denial of access to basic services on the ground of religion, discrimination in employment, and discrimination in school admission.

Case Study D

The complainant is a teacher in a government school. Her employment is terminated because she chose to wear the abaya to school. The employer claims that he wanted to maintain a neutral environment in the school, and when teachers wear the abaya, it may influence the students and affect their right or ability to practice their respective religions.

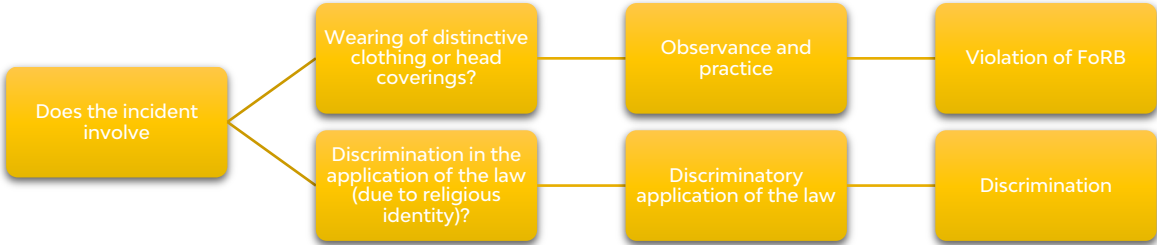
Navigating Case Study D

Step 1: Determining the violation

In this illustration, the termination of the complainant's employment was directly connected to her decision on wearing the abaya to work. It can be viewed as a denial of the right of the complainant to wear attire that gives expression to her religious beliefs. Except for the subject of religion, the state curriculum is secular. Therefore, a lawyer can argue that the attire of a teacher should not have a substantive effect on the students and their ability to practice their respective religions. Figure 5 below

assesses all possible violations relating to this incident, and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 5



The lawyer must determine the precise act that caused the violation of FoRB or discrimination.

Step 2: Selecting the forum

I. What is the nature of the violation?	A law, regulation or guideline	N
	A verbal or written communication	Y
	Arrest or detention	N
	An act of physical violence	N
	An act of non-physical violence (threat or harassment)	N

II. Who is responsible for or complicit in the violation?	State officials	Y
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encourage or tolerance of activities	N

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Violation of FoRB; Discrimination	State official	Differential treatment of your client because of her religious identity	FR (articles 12, 14(1)(e)) / HRCSL Complaint	Supreme Court / HRCSL

Further illustrations on discrimination based on religious identity

Illustration 6

The complainant is a Buddhist and wishes to admit her child to an assisted (i.e. 'semi-government') catholic school in close proximity to her residence. The child is denied school admission to Grade 1 due to the school's quota for Buddhist students being exceeded by the number of applications by Buddhist parents. The complainant claims that the school failed to implement clause 3.2 of the School Admission Circular issued by the Ministry of Education. This clause states that due consideration should be given to the proportion of children belonging to different religions at the time of vesting the school to the government.

(4) Violence related to religious identity

Violence related to religious identity would include incidents of violence against persons or property and also state inaction to intervene in violence.

Case Study E

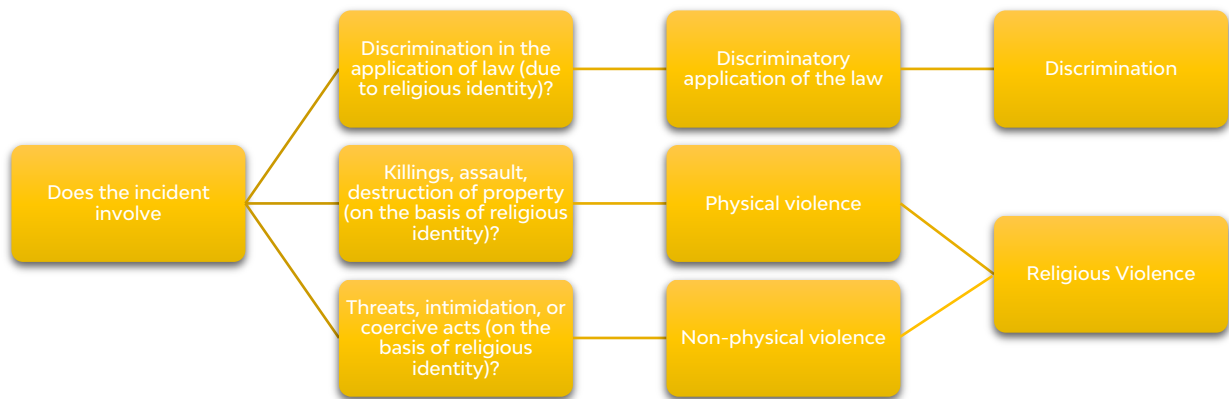
Mobs attacked Muslim-owned businesses, and places of worship across several towns in District X reportedly as a reprisal for the death of a Sinhalese man who succumbed to his injuries after being assaulted by four Muslims following a traffic incident. The violence is instigated by anonymous users on social media claiming that the death of the Sinhalese man needs to be avenged. The mob loot the Muslim-owned businesses and set fire to them. Some Muslim shopkeepers are assaulted by the mob. Some of the violence takes place in full view of police officers, who fail to intervene.

Navigating Case Study E

Step 1: Determining the violation

In this illustration, the perpetrators appeared to have committed several offences ranging from assault, arson, theft, destruction of property, criminal trespass, and breach of peace. Figure 6 below assesses all possible violations relating to this incident and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 6



The lawyer must determine the precise act that caused the violation of FoRB or violence.

Step 2: Selecting the forum

I. What is the nature of the violation?	A law, regulation or guideline	N
	A verbal or written communication	N
	Arrest or detention	N
	An act of physical violence	Y
	An act of non-physical violence (threat or harassment)	N

II. Who is responsible for or complicit in the violation?	State officials	Y
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encouragement or tolerance of activities	Y

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Religious Violence	Non-state actors (groups or individuals) with state encouragement or tolerance	Assault, arson, theft, destruction of property, criminal trespass, breach of peace, and incitement to violence	Criminal case filed under sections 340-349, 366-371, 408-421, 427-434, 483-487	High Court or Magistrate's Court

				of the Penal Code or sections 81 or 98 of the Code of Criminal Procedure Act or section 3 of the ICCPR Act	
ii.	Religious discrimination	State actor (police)	Inaction of the police	FR (article 12) / HRCSL Complaint	Supreme Court/ HRCSL

Further illustrations on violence relating to religious identity

Illustration 7

A female pastor and several others are attacked by a mob inside a house while engaged in an evening prayer service. Serious damage is caused to the furniture and interior of the house as well. Afterwards they were dragged out of the house and made to kneel outside. Thereafter, they were made to walk to the police station while the perpetrators publicly claimed that pastor was a prostitute. The pastor had received threats prior to the attack and had lodged a complaint with the area police.

(5) Speech related offences

The ICCPR Act in particular may be invoked in cases where persons incite violence against religious minorities. However, in practice, Sri Lanka has witnessed a trend where cases are filed under the PTA, ICCPR Act, Penal Code, Police Ordinance, and Computer Crimes Act to target religious minorities for their speech.

5.1 Speech related offences (where the client is the respondent)

Illustration 8

Q who is a poet, writes a poem and posts it on Facebook. The fictional poem is centred on an incident relating to sexual abuse involving a member of the Buddhist clergy. Following a complaint by a group of Buddhist monks, Q is arrested under section 3 of the ICCPR Act and section 291 of the Penal Code.

Illustration 9

R, a Muslim woman, is arrested for wearing a dress decorated with the logo of a ship's helm on it. According to the arresting officer the logo resembled a sacred Buddhist symbol ('Dharmachakraya') and appeared to cause public disquiet.

5.2 Speech related offences (where the client is the complainant)

There may be instances where a client may be a victim of incitement due to a certain publication or information via print, electronic or social media, or speech made at public gatherings.

Case Study F

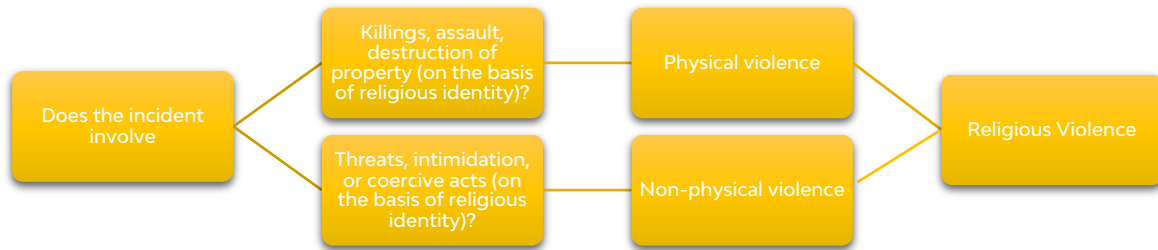
A dispute between a Muslim shopkeeper and Sinhalese customer resulted in the latter violently assaulting the Muslim shopkeeper. The Sinhalese customer was then arrested for causing grievous hurt to the Muslim shopkeeper. Soon after, a militant ethno-religious organisation circulated a rumour via WhatsApp that an innocent Sinhalese man was arrested for questioning the fraudulent business practices of Muslims. A large crowd gathered outside the area police station the next day, and demanded the release of the Sinhalese customer. The leader of the said militant organisation addressed the gathering at the police station, and called on 'all patriots to take action to end fraudulent Muslim businesses'. Soon after, the crowd moved through the town and began to attack identifiable Muslim-owned businesses. Several Muslim-owned businesses were set on fire, a mosque was damaged, and several Muslim individuals were hospitalised due to assault and injuries sustained by the arson. The complainant is a member of the area Muslim community who has suffered injuries and damage to his business. He seeks redress specifically against the instigation of violence.

Navigating Case Study F

Step 1: Determining the violation

In this illustration, the perpetrators appeared to have used a trigger event (the altercation between the Muslim shopkeeper and the Sinhalese consumer) as an opportunity to launch a violent campaign against Muslim-owned businesses in the area. They appear to have caused destruction of property and assault. Figure 7 below assesses all possible violations relating to this incident and maps them out for both the lawyer and client to decide which avenue to proceed with.

Figure 7



The lawyer must determine the precise act that caused the violation of FoRB or violence.

Step 2: Selecting the forum

I. What is the nature of the violation?	A law, regulation or guideline	N
	A verbal or written communication	Y
	Arrest or detention	N
	An act of physical violence	Y
	An act of non-physical violence (threat or harassment)	Y

II. Who is responsible for or complicit in the violation?	State officials	N
	Non-state actors with cooperation or support of the state officials	N
	Non-state actors whether groups or individuals with state encouragement or tolerance of activities	Y

The lawyer may present the following options when obtaining instructions from their client:

No.	Type of violation	Actor	Alleged Conduct	Relief	Forum
1.	Religious Violence	Non-state actors (groups or individuals) with state encouragement or tolerance	Incitement to violence resulting in assault, arson, theft, destruction of property, criminal trespass, and breach of peace	Section 3 of the ICCPR Act	High Court

c. Appearing for the Accused or Respondent

If a lawyer is appearing for the accused or respondent party, then the forum would have already been decided by the other party. However, based on the nature of the complaint, a lawyer may still conduct an assessment on to determine whether there is a violation of FoRB (as discussed above) or an act of religious discrimination, and file counter claims accordingly.

If the case filed has no basis in law, and your client has been acquitted or discharged, a lawyer may consider filing a civil case for malicious prosecution and issue a letter of demand to this effect.

Malicious prosecution in Sri Lanka is governed by the principles of *actio injuriarum* under Roman Dutch Law. In the case of *Silva v Silva*,²² the Supreme Court held that the onus of proof is on the plaintiff (i.e. the former accused), and that the plaintiff must prove the following requirements on a preponderance of evidence or on a balance of probabilities (Note: lawyer should consider whether the following requirements are met in order to assess whether a valid claim can be made):

- i. Was your client acquitted or discharged from the case?
- ii. Was there was a prosecution on a charge that was false?
- iii. Was the prosecution instituted maliciously or with *animo injuriandi* and not with a view to vindicate public justice?
- iv. Was there a want of reasonable or probable cause for such action?

In order to succeed in a claim of malicious prosecution, the plaintiff must prove that he is in fact and in law entitled to the relief claimed.²³

²² [2002] 2 SLR 29.

²³ See *Karunaratne v Karunaratne* 63 NLR 365; *Kalu Banda v Rajakaruna* [2002] 3 SLR 44; *Saravanamuttu Vs Kanagasabai* 43 NLR 357; *Hendrick Appuhamy Vs Matto Singho* 44 NLR 459; *Pathirage Don Abeyratne v Gamage Don Chandradasa, C.A. No. 818/97 (F) decided on 23 June 2011*; *Tewari Vs Bhagat Singh* 24 TLR 884. For further reference see 'Text of The Law of Delict' by R.G. McKerron at p.246.



**HANDLING THE
MEDIA**

5. Handling the Media

This section offers guidance on how to interact with the media with respect to a particular FoRB case.²⁴ The list below points out some typical *Dos* and *Don'ts* when dealing with the media.

Dos

- Engage with media personnel: There is a high likelihood that the courtroom reporter will write about the case without your input.
- Prepare ahead of the court date, and formulate your media quote before engaging the media (media statements are usually given immediately after the courtroom proceedings)
- Opt to provide written quotes if possible. This option would allow you or your team to contemplate your responses and also control how the case is reported in the media. Responding with written quotes would also provide you with the opportunity to ensure that you have time to include all the information you need to, and avoid errors on the part of the journalist.
- Discuss with your client the engagement with media prior to engagement to ensure that your client is aware of any media engagement or interest and to ensure that such engagement will advance your client's interests.

Don'ts

- Do not violate ethical standards. For instance, as per the rules set out in the Supreme Court (Conduct of and Etiquette for Attorney-at-Law) Rules 1988,
 - An Attorney-at-Law shall act with 'complete frankness and honesty in advice to and in all dealings with his clients'.²⁵
 - An Attorney-at-Law should 'never act in a manner detrimental and/or prejudicial to his client'.²⁶
 - An Attorney-at-Law shall 'keep in strict confidence all information whether oral or documentary acquired by him from or on behalf of his client in any matter in respect of and concerning the business and affairs of his client'.²⁷
 - The duty of an Attorney-at-Law 'to refrain from disclosing such confidential information lies not only during the existence of his professional relationship with the client but indefinitely thereafter even after the said Attorney-at-Law has ceased to act for the said client and after the death of the clients as well'.²⁸

²⁴ These guidance points have been extracted from the following sources: William Vogeler, 'Lawyer Tips: Do's and Don'ts of Speaking to Reporters', 30 May 2017, <https://www.findlaw.com/legalblogs/strategist/lawyer-tips-dos-and-donts-of-speaking-to-reporters/>; Nicola Kenyon, 'Dealing with the Press: What Lawyers Need to Know', 29 April 2020, <https://www.lawyer-monthly.com/2020/04/dealing-with-the-press-what-lawyers-need-to-know/>.

²⁵ Rule 18, Supreme Court (Conduct of and Etiquette for Attorney-at-Law) Rules 1988, at <http://www.supremecourt.lk/images/scrules.pdf>.

²⁶ *ibid.*, Rule 18 (a).

²⁷ *ibid.*, Rule 31.

²⁸ *ibid.*, Rule 33.

- An Attorney-at-Law 'owes a duty to Court, Tribunal and other institution created for the Administration of Justice before which he appears to assist it in the proper administration of justice without interfering with the independence of the Bar'.²⁹
- An AAL shall not question or make any statements merely to insult, or degrade the opposite party or a witness or any other person.³⁰
- Do not make statements to the media that will prejudice a judicial proceeding.³¹

²⁹ *ibid.*, Rule 50.

³⁰ *ibid.*, Rule 53 (i).

³¹ American Bar Association, Rule 3.6: Trial Publicity, at

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_6_trial_publicity/.

6. Annex 1

Application to receive Information

Information Officer,

01. Name of Requestor -
02. Address -
03. Contact No. (if any) -.....
04. Email Address (if any) -
05. Details about Information requested
 - I. Specific Public Authority
 - II. Information requested
.....
.....
 - III. Specific period information is requested (if applicable).....
06. Manner in which information is requested-
 - i. inspect relevant work, documents, records
 - ii. Take notes, extracts or certified copies of documents or records
 - iii. Take certified samples of material
 - iv. Obtain information in the form of CD/DVD/storage media/tapes/video cassettes/ any other electronic mode/ printouts where such information is stored in a computer or in any other device.
07. Language in which requestor prefers access:
08. Does the information request concern the life and personal liberty of a citizen?
(Yes/No)
If Yes, give reason for belief -
.....
.....
09. Any other details-
10. Relevant documents attached (If any)
 - I.
 - II.
 - III.
11. Is the requestor a citizen of Sri Lanka? (Yes/No)

Date: -

Signature:-

