



## Disability Exclusion during the Coronavirus Pandemic (COVID-19) in Sri Lanka

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### ABSTRACT

The effects of the COVID-19 pandemic on persons with disabilities are beginning to emerge in the global south. This exploratory article documents and examines how the critical impacts of COVID-19 further restrict the mobility of persons with disabilities as they negotiate their survival through government and health restrictions. It draws on preliminary insights from two case studies of women with disabilities from different ethnic backgrounds, whose experiences are situated within a broader set of implications for persons with disabilities facing COVID-19. Specific challenges were the lack of access to essential services, the aggravated impact of the inability to work, obtain aid packages, and access to education and information. These experiences were heightened by their position as disabled, gendered, rural, low-income individuals who are at greater risk because of structural exclusion. They face a higher rate of poverty and exclusion that undermines government public health protections aimed at reducing the effects of the COVID-19 pandemic. They require, therefore, additional and more targeted forms of assistance. Our preliminary findings are located within a broader legal framework in order to open up the possibilities for advocacy on systemic change and real social inclusion that can have lasting effects on the everyday lives of persons with disabilities. The article argues that government responses to protect and uphold the dignity of the People, as stipulated in the Constitution, must include specific provisions for persons with disability to ensure their legal mobilization and advance universal disability rights.

### KEY WORDS:

COVID-19, Sri Lanka, disability, disability advocacy, constitutional crisis, disability welfare provisions

Suggested Citation: Perera, B., Kandasamy, N. & Soldatic, K. (2020). Disability Exclusion during the Coronavirus Pandemic (COVID-19) in Sri Lanka. *University of Colombo Review* (Series III), 1 (1), 47 - 59

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## Introduction: “Doubling of the Chaos”: COVID-19 during a Constitutional Crisis

Sri Lanka’s response to COVID-19 was embroiled with an imminent constitutional crisis that reinforced the legal limits on the island nation. The COVID-19 outbreak hit Sri Lanka during a period of political turmoil – national Parliament had been dissolved on 3 March 2020 with elections called for 25 April 2020, six months prior to the official end of the Government’s elected term (Parliament of Sri Lanka, 2020). As a result, the President, Gotabaya Rajapaksa, set out to respond to the public health emergency without democratic Parliamentary oversight (Peiris, 2020). The President imposed an island-wide curfew under an unclear legal basis, and those caught violating the said curfew were arrested (Official Website to Sri Lanka’s Response to COVID-19, 2020). When the legality of the arrests was questioned, the Magistrate Court of Gampaha upheld them in the case B1108/20 (11.05.2020) as being valid per a Regulation made under the Quarantine Ordinance. However, in *Thavaneethan V. Dayananda Dissanayake Commissioner of Election*, the Sri Lankan Supreme Court had held that freedom of movement can only be restricted by the Public Security Ordinance and Regulations made thereunder ([2003] 1 SriLR 74, p. 75).

The curfew was extended due to the continuing spread of the virus and the planned national parliamentary election of 25 April 2020 was not held within the constitutionally stipulated period of three months of the dissolution of Parliament (Kotelawala, 2020). The government held that the public health crisis caused by the COVID-19 pandemic was unforeseen within the constitution and that there was no other option but to hold the election as soon as possible. This position was challenged before the Supreme Court as a violation of fundamental rights, given the constitutional importance of the presence of a functioning parliament, especially during an emergency (New Media Unit, 2020). But these cases were dismissed by the Court (Daily Mirror, 2020). The date for parliamentary elections was set for 20 June 2020 and postponed again to August. It was finally held on 5 August 2020 under specific guidelines to protect public health.

The inevitable result of these events was a “doubling of the chaos” – the public health crisis was further compounded by the constitutional crisis, and undermined the political rights of marginalized communities who are also highly vulnerable to the worst outcomes of COVID-19, specifically, persons with disabilities and those living with chronic health conditions and illness.

Our rapid case study interviews with persons with disabilities in Sri Lanka reveal the pervasive impacts of Sri Lanka’s political turmoil during COVID-19, and identifies heightened challenges to accessing essential services, engaging in work, accessing education and information, and receiving aid packages. The lived experiences of persons with disabilities during COVID-19 continues to remind us of the implications of the state’s lack of commitment to actioning legal and policy developments relating to disability rights (Samararatne, 2012).

Despite the Sri Lankan government’s measures to control COVID-19, the constitutional crisis remained a significant barrier to protecting citizens, particularly those who have long suffered from exclusion and marginalization. More problematic, however, is that the limits of the Sri Lankan legal framework continue to facilitate the weakening of

disability rights, thereby also undermining disability rights advocacy. However, despite their heightened levels of economic, social and cultural marginalization during the “doubling of the chaos”, persons with disabilities with whom we spoke had continued to mobilize collectively by building informal support networks and solidarity to propel their rights.

This article seeks to assess the impacts of Sri Lanka’s COVID-19 response upon persons with disabilities within this political climate of turmoil and constitutional uncertainty, while highlighting the informal strategies that persons with disabilities undertook to survive within the limitations of this socio-legal context. It is based on rapid case study interview responses of two women with disabilities from diverse ethno-religious backgrounds (Tamil and Muslim), and documents analysis of newspaper articles and official government statements that were collected since the outbreak of the COVID-19 pandemic in Sri Lanka. To understand how the Constitution fuels the current political turmoil, the article begins by examining the historical limits of Sri Lanka’s legal framework in relation to disability rights.

### The Constitution and the Challenge to Disability Rights

Legal and policy development relating to disability in Sri Lanka is still in its infancy and the State’s responsibility towards persons with disabilities remains weak (Peiris-John et al., 2013). The main legislation pertaining to the rights of persons with disabilities in Sri Lanka is the *Protection of the Rights of Persons with Disabilities Act (1996)*, which falls short of the Convention on the Rights of Persons with Disabilities (CRPD) standards (Jiffry & Perera, 2017). This Disabilities Act is supplemented by the National Policy on Disability of 2003, which establishes a progressive policy framework for upholding the rights of persons with disabilities in the Sri Lankan context. The National Action Plan for Disability 2013 proposed by the Ministry of Social Services also lays out mechanisms for implementing these rights. Rights of persons with disabilities are further mentioned in the National Human Rights Action Plans of 2011-2015 and 2016-2020. However, as Samararatne and Soldatic (2015) have noted, none of these have been implemented satisfactorily.

Global efforts to address the rights of persons with disabilities have been widespread since the international ratification of the CRPD in 2008. Sri Lanka has been slow to embrace these global trends. For example, it was the 162<sup>nd</sup> State to ratify the international convention, almost eight years after international ratification. Some scholars argue that one of the key concerns in relation to the CRPD is the principle of “progressive realization” for many of the disability rights within the convention. Some have argued that this can either excuse States from implementation or enable them to argue justifiably for the slow translation and implementation in law and policy alongside appropriate programming and funding (Jiffry & Perera, 2017). Soldatic and Samararatne (2021) further note that the several laws related to disability fail to adopt a rights-based approach, particularly for women with disabilities from ethno-religious minority groups. The *Protection of the Rights of Persons with Disabilities*, for instance, prohibits discrimination on the basis of disability only in the context of employment and access to public spaces. This distinctly “Sri Lankan

approach” to disability through the equitable access and delivery of public services, and, the more recent legal and policy frameworks have been shaped and influenced by 500 years of colonial rule and liberal Western frameworks instigated by the United Nations (Campbell, 2009). Despite the country’s ongoing alignment with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities as well as the CRPD, the lack of a grounded understanding of disabled person’s needs, desires and aspirations undermines disability rights progress (Samararatne & Soldatic, 2015).

A progressive realization of disability rights also remains weak because it is located within a contested constitutional framework which remains historically problematic for the rights and aspirations of all minority groups. For instance, the Sri Lankan Constitution’s specific affirmation of the State’s obligation to foster Buddhist doctrine while safeguarding other religions (Sri Lankan Constitution, 1978, Articles 9, 10 & 14) entrenches the entitlement complex of the Sinhala-Buddhist majority that continues to erupt in ethno-religious violence against minority Tamil and Muslim groups even in the post-war era (Gunatilleke, 2018). Like many conflicts around the world – for example, Israel/Palestine and Bosnia – the intertwining of ethnic and religious dimensions within the Sri Lankan Constitution makes it difficult to resolve internal conflicts (Smock, 2008). The non-neutrality of the Constitution therefore begins to explain the unevenness of rights afforded in the protections of minority groups such as persons with disabilities.

The Sri Lankan Constitution (2015) contains a chapter on Fundamental Rights (Chapter 3). Article 12(2) under this chapter which guarantees that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion and any other such ground”, does not expressly mention “disabled” or any related variation such as “disability” or “disabilities.” The only reference to disability in relation to the right to equality is in Article 12(4) wherein it is stated that this right “shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.” The rights of persons with disabilities are upheld by judicial interpretation of Article 12(1) that everyone is entitled to the “equal protection of the law”. This is affirmed in *Perera v Minister of Social Services* (SC FR No 221/2009 SC Minutes 27 April 2011) and *Perera v Minister of Social Services* (SC FR Application No. 273/2018 (18.04.2019)). However, in its absence of recognizing disability as an express ground for non-discrimination, the Constitution falls short of the CRPD standard that State parties must expressly prohibit all discrimination on the basis of disability although Sri Lanka ratified the CRPD in 2016 (Daily News, 2016).

Disability rights advocates continue to seek stronger representation and inclusion in constitutional processes and amendments relating to persons with disabilities, for example through the establishment of an independent Disability Rights Commission (Disability Organizations Joint Front, 2017). Moreover, given the lack of specific provisions for the rights of disabled persons within the Constitution, the general significance of constitutional values, particularly within the concept of “People’s sovereignty”, casts a responsibility on the State to protect persons with disabilities (Sri Lankan Constitution, 1978, Articles 3 & 4). The constitutional and government responses to protect and uphold the dignity of the People

must include specific provisions for disabled persons to ensure their legal mobilization and advancement of universal disability rights (Samararatne, 2012).

### **Governing and Militarization: Impacts of Executive-Led Militaristic Approaches to COVID-19**

The construction of a long-lasting Security State that is committed to the protection of dynastic politics also takes place within the global intensification of neo-liberal developments that further erodes the relationship between the state and civil society (Kadirgamar, 2013). The COVID-19 crisis entered Sri Lanka at a time of constitutional crisis under a neo-patrimonial authoritarian regime characterized by the intensification of militarization and neo-liberalization. The government approached the COVID-19 pandemic through a majoritarian and militaristic viewpoint, unchecked by the political process due to the absence of a functioning parliament (Uyangoda, 2020).

The Sri Lanka military is gradually taking over civil administration to respond to the COVID-19 outbreak, rather than providing support to civilian administration services (Uyangoda, 2020). The armed forces have been deployed to track and apprehend individuals testing positive for COVID-19 with minimal protective gear, which resulted in a wave of infections within the Sri Lanka Navy (Economy Next, 2020). These actions depict an ableist approach to the handling of public health measures. Persons with disabilities in Sri Lanka generally face discrimination due to institutional, infrastructural and attitudinal barriers that actively deny or undermine their fundamental rights (Jiffry & Perera, 2017). A militarized national response to COVID-19 that ignores the necessity for implementing stringent public health protective strategies reaffirms the marginalization of persons with disabilities, as it places them at greater risk of susceptibility to the virus, as described by the interviewees.

### **Impacts of COVID-19 on Persons with Disabilities**

Before we present insights from two women with disabilities who were interviewed for this paper, we provide an overview of the specific disadvantages facing persons with disabilities during COVID-19 in Sri Lanka.

#### ***Lack of Access to Essential Services Resulting from the Curfew***

The curfew and the resulting limitations on freedom of movement compelled people to rely on the delivery of essential services to their homes. While the government initially arranged for ad hoc delivery of food and gas through lorries, accessing these was a challenge for persons with disabilities. Furthermore, the country's online infrastructure providing access to food, pharmaceutical and medical care, alongside banking and finance, was overwhelmed by the sudden skyrocketing of public demand (de Silva, 2020). Regional disparities were significant in both online and essential service infrastructure. Access to medicine through online orders, delivery restrictions faced by rural communities, and long waiting lists during the curfew also aggravated the consequences of COVID-19 for persons

with disabilities who require prescribed medicine and pharmaceutical products (Ubeyratne, 2020). These particular and specific needs to date, have not received government attention and in turn, persons with disabilities have to either place themselves at risk of the virus through attending external medical appointments, or endure without these necessary interventions, making them vulnerable to secondary health effects. Persons with disabilities also faced heightened risks because they could not obtain the medical tests required for their personal medical purposes due to delays in providing these services by hospitals.

For districts defined as high-risk, the curfew was perpetual from March to May 2020, while other districts were allowed several hours per day to access essential services (Hamza, 2020). However, these short windows of time resulted in extreme congestion in accessing supermarkets, general markets, and pharmacies, making these essential services dangerous for at-risk populations including persons with disabilities who are more susceptible to transmission given their high levels of restricted mobility (Gunawardhana, 2020; The Sunday Morning Web Desk, 2020). Governmental policy, unlike in other countries such as Australia and the UK where dedicated hours are provided to highly vulnerable populations, has not recommended any specific mechanisms to enable readily available access to essential services for persons with disabilities that would maximize their protection from community transmission. The government's mechanism of allowing persons to go out on different days of the week based on the last digit of their National Identity Card Number (New Media Unit, 2020) has also overlooked the fact that the majority of persons with disabilities require mobility assistance and support due to inaccessible infrastructure of the built environment ). Therefore, persons with disabilities were not able to access these services and had to rely on their friends and families for the purchasing of essential goods, products, and services.

### ***Aggravated Impact of the Inability to Engage in Work and Difficulty in the Receipt of Aid Packages***

While restrictions on movement to prevent community transmission of COVID-19 have generally affected employment, self-employed persons with disabilities are among the most vulnerable. Even after the curfew is lifted, their businesses are unable to function for long hours for safety reasons. Persons with disabilities also face restrictions in engaging in their work in a context where transportation means are limited. The government has promised a single cash payment of LKR 5000 (USD 25.00) for persons who are earning a low income affected by COVID-19 (BusinessNews, 2020). Persons with disabilities are included if they register for the payment. This payment, however, is the same as the current disability income payment and therefore, does not provide additional assistance to account for the loss of top up earnings when in work that many people with disabilities rely upon to meet the costs of living. Further, the process of registering and receiving the payment is in itself difficult due to the COVID-19 disruptions in public administration and the associated mobility issues that arise when attempting to register for the payment.

### **Access to Education and Information**

With the COVID-19 outbreak, as elsewhere, education has been transferred to online platforms wherever possible. Online distribution of information has also become even more significant in a context of stringent state policing of mainstream media. However, these developments create inequalities due to language and digital inequities including inaccessible online formats alongside the unequal distribution of, and access to, internet facilities and technology. Persons with disabilities who live in poverty and/or are reliant on alternative accessible formats have extremely limited access to general information, much of which is necessary to ensure that they remain protected from potential communal transmission of the virus and receive up-to-date information on curfews etc. Even where persons with disabilities do have access to technology, they have had issues in handling complex online procedures and difficulties in following information posted in English. The low literacy levels of persons with disabilities resulting from their lack of access to education also aggravate their disadvantage. These leave persons with disabilities particularly vulnerable to potential arrest if they break the curfew without knowing of its imposition (particularly in a context of militarization) whilst trying to maintain their health, wellbeing, and livelihoods.

### **Case Studies: Nisha and Kasturi<sup>1</sup>**

We draw upon two narrative case studies of women with disabilities from diverse ethno-religious backgrounds to elucidate the unique difficulties faced by women with disabilities who are from ethno-religious minority backgrounds during COVID-19 restrictions. Their narratives add greater nuance to understanding how generalized restrictions that appear neutral may, in fact, create increased risks, exclusion and marginalization for persons with disabilities who live with social stigmatization and distrust because of their gender and their ethno-religious backgrounds. As Sayer (1992) suggests, narrative case studies provide the researcher with the opportunity to investigate the phenomena under study in all of its particularities, complexities and consistencies. Furthermore, the narrative case study approach provides the researchers an opportunity to explore issues that are often consistent across broader vulnerable and marginalized populations that are often not in a position to give voice to their experiences due to a range of gatekeepers that monitor and surveil their engagement with researchers (Sayer, 1992, p. 56). While this does not suggest that in-depth narrative case studies are reflective of all persons within the broader group, they provide researchers insight into the day-to-day experiences of highly marginalized persons who have few opportunities to express their everyday experiences (Punch, 2005). The richness of the data that comes through such a process therefore increases our capacity for understanding implications at the level of broader macro structures of everyday practices of power, subjugation, and marginalization (Yin, 2003). Such data permits the identification of general potential trends, as well as those that can be distilled and mapped out to include deeper nuances, contingencies, and tendencies across a range of spheres for a particular population group (Soldatic, 2019).

The insights presented in this section reveal the experiential understanding of the specific circumstances in which persons with disabilities find themselves in the rapidly changing contexts prior to, during and after the pandemic. At the time of writing, the longer-term impacts of COVID-19 are immediately visible. The interviewees live in urban and rural parts of Sri Lanka and face unique challenges to their survival due to their gender, religion, rurality, age, and ethnicity. Nisha is an advocate for the rights of persons with disabilities and the President of one of the local Disabled Peoples' Organizations (DPO). Resident in Kandy, she runs a watch repair business in the Kandy town to support herself financially and provides additional financial support to her family. The COVID-19 curfews suspended her business activities and forced her to remain at home for several months, after which period she re-opened her business. While the business is currently operating within government guidelines, Nisha's concerns have turned to the broader challenges facing persons with disabilities collectively such as their limited access to health care, infrequent public transport, and technological illiteracy.

Kasturi is the second woman with disabilities whose experiences are presented in this article. Kasturi lives in a rural town near Jaffna and her statements echo Nisha's sentiments about the disadvantages facing women with disabilities during COVID-19 due to their highly stigmatized and marginalized status in society. Kasturi relies on her family to support her financially as she has been unable to access government assistance, despite being previously employed. The experiences of Nisha and Kasturi provide preliminary insights into the lived experiences of women with disabilities which can be situated within the broader conditions of persons with disabilities affected by COVID-19. Their insights follow our ongoing research pursuit within critical disability studies, and is consistent with disability and feminist epistemological standpoints that prioritize the political ethic of participation and recognition (Soldatic & Meekosha 2012; Soldatic & Samararatne, 2021).

Kasturi lives in a rural area where the lack of access to essential services has intensified since nation-wide restrictions were announced by the government due to COVID-19. Kasturi described how the inaccessible built environments, in addition to extensive travel restrictions, impede the mobility of many persons with disabilities and their access to communal and village-based resources in rural areas. During the government-imposed restrictions, Kasturi has been unable to visit her regular doctor who is based at a distant hospital where she has been receiving ongoing treatment for her physical impairments. Instead, she visits a nearby hospital that does not hold her medical histories and is providing her conflicting advice about her treatment plan. Additionally, with the extensive mobility restrictions in place with the curfew, women with disabilities are forced to rely on family members for personal hygiene products. Thus, women with disabilities face further difficulties in obtaining the provisions necessary to protect their sanitation needs and menstrual hygiene (Handunnetti, 2020).

Similarly, Nisha explains how she could not access any of the shops during those extremely short periods when the curfew was lifted because of the long queues when the need was for swift movement. Nisha is a wheelchair user and even prior to the COVID-19 curfew, faced numerous obstacles regarding safe mobility due to the inhospitable streetscape.



She stated that it was hard for her to do the necessary shopping with the combined factors of crowded streets, long queues of competing shoppers, and dangerous streetscapes for wheelchair users. Even after the curfew was more relaxed, she had to continue to rely on her family and friends to access basic, essential services. This is because the social distancing requirements in place alongside the infrastructural environment do not facilitate independent movement for persons with disabilities, resulting in further restrictions on her freedom of movement and autonomy.

Nisha further noted that she opens her shop in line with the legal requirements for social distancing and sanitary hygiene. Her working hours are also dependent upon the availability of the trishaw she has arranged to travel back and forth from her home to the city and therefore, her personal self-care must be planned meticulously around the trishaw's availability, rather than her own bodily needs. She explains that public transport is generally hostile towards persons with disabilities and that it is virtually impossible to rely on public transport during this period of restricted mobility. As a Muslim woman living with disability, Nisha explains that she also feels there is a risk of heightened threats in resuming her work due to the racialization of public discourse in community transmission that has been spurred on by majoritarian politics.

Even after registering for government payments in support of COVID-19 related loss of income some recipients are uncertain about when they will receive the payments. Despite registering at multiple locations, Kasturi has not received the government subsidies for which she is eligible and registered. This uncertainty about the receipt of payments has affective dimensions, further undermining her health and wellbeing. This is heightened by her inability to engage in her employment, making it increasingly difficult for her to pay for basic necessities such as food and medicine. Similarly, Nisha states that many persons with disabilities in her advocacy network have difficulties in reaching out to government officials and that their mobiles are most often unresponsive. There were difficulties in receiving the allocated aid due to shortcomings in communication and coordination. Nisha specifically referred to the issues faced by persons with visual and hearing impairments. She noted that persons with disabilities had, therefore, to rely on their DPOs for assistance, for taking collective action and for coordinating with administrative officers.

Nisha also stated that many persons with disabilities had to convince the officials of the Department of Social Services that the medical payments they receive are not sufficient to meet their needs during the COVID-19 pandemic crisis. One reason for this is because the government hospitals do not have all the prescribed medicine, which compels them to buy them through private pharmacies at a significantly higher cost. Additionally, they do not adequately address the higher costs of living with disability with the increased level of inaccessibility, more expensive food items, and higher travel costs that they face with the implementation of restrictions.

## Conclusion

Over recent years, the lack of international recognition, rights and respect afforded to persons with disabilities has become a major concern (Soldatic & Samararatne, 2021).

Activist research in the global south has documented the agency of persons with disabilities as they rebuild their lives through networking, solidarity and the forming of coalitions as both a mode of social mobilization to transform their status of marginalization and exclusion, and as a collective strategy of survival against ongoing discrimination and social neglect. Global campaigns to enshrine the rights of persons have reverberated across the world and, in turn, States are being held to account for their failures to respond to the rights of persons with disabilities during the COVID-19 pandemic and the dominance of State ableist responses. For example, in Australia, a Royal Commission has undertaken intensive investigation into ableist COVID-19 policy and supports that have placed Australians with disabilities at heightened risk of contracting the virus. Thus, some of the issues in Sri Lanka are both in line with global failures in state responses to COVID-19 and are also unique to the lack of social, political, and cultural power of persons with disabilities despite the Sri Lankan government's ratification of international disability rights law. Some of these issues would not have emerged had there been substantive realization of disability rights immediately following CRPD ratification. As this article identifies, there is an urgent need to fully incorporate the rights and needs of disabled persons across all areas of social, political, and economic life. The COVID-19 pandemic has highlighted the fact that persons with disabilities require appropriately designed, targeted forms of assistance to ensure that they are included in the raft of state responses. This includes States recognizing that persons with disabilities already face higher risk of poverty and exclusion from government public health protections and that these will only become entrenched in such a global crisis.

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1. Kasturi is a pseudonym to ensure that the participant remains anonymous, whereas Nisha explicitly requested that her name be used throughout the article.

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