

Freedom of Expression and New Media Culture

Issue Brief

December 2021



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Disclaimer

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Executive Summary

Over the past decade, Sri Lanka has witnessed a rapid growth in the digital media landscape through the popularity of social media platforms and other new media mediums¹. The COVID-19 pandemic has amplified the digital landscape across the world as there has been a higher engagement on social media, transformations into remote working, and an overall exponential increase in consumption of digital media as opposed to traditional “old media”. HELVETAS Intercooperation gGmbH in partnership with the Sri Lanka Development Journalist Forum (SDJF) is implementing the Incubator Space for Promoting Information Right and Freedom of Expression (InSPIRE) project funded by the European Union. Under this project a national comprehensive research was conducted on Freedom of Expression and New Media Culture in Sri Lanka .

The overall objective of the research titled: Freedom of Expression and New Media Culture in Sri Lanka is to obtain a comprehensive understanding on the use of new media, and new media landscape (culture) for promoting freedom of expression in Sri Lanka. In assessing the landscape of new media in Sri Lanka, the research gained a deeper understanding as to the key actors and stakeholders, the main consumers of new media outlets, user-behavior patterns, and the overall ecology of the freedom of expression in new media.

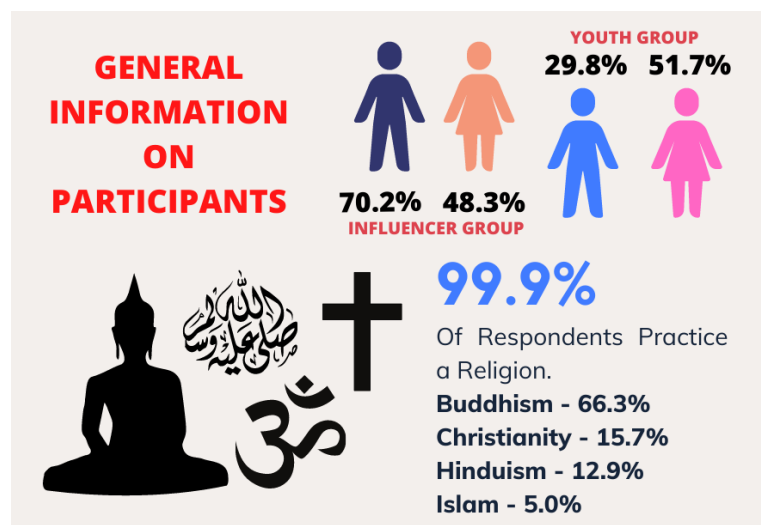


Figure 1: General Information on Participants

This study was conducted by Institute for Participatory Interaction and Development (IPID) throughout the island (all 9 provinces) with a specific focus on new media used by the youth between the ages 15 to 29. Moreover, an Influential Group (age 40 to 68) survey questionnaire was also administered to selected parents of those who categorized in the 15 to 19 years age range to obtain further analyses on their perception of new media usage and behavior on their children as well as their own involvement in engaging in the new media in Sri Lanka. Furthermore, an analysis of the legal framework pertaining to Freedom of Expression in Sri Lanka was conducted. The study took place from July 2021 to December 2021. Hence the findings of this research cover the period from July 2021 – December 2021.

A total number of 1365 questionnaires were administered and IPID purposively selected the Divisional Secretariat Divisions (DSDs) from each district for data collection and the minimum sampling number allocated for each DSD was 15. IPID was able to reach 100% of the proposed samples for almost all of the districts excluding Hambanthota, Batticaloa and Rathnapura districts. This was due to the strict travelling restrictions imposed by the Government due to the escalating situation of the COVID-19 pandemic of the specifically mentioned DSDs.

¹ Selvarajah Thuseethan & Shanmuganatha Vasanthapriyan (2015) Social Media as a New Trend in Sri Lankan Digital Journalism: A Surveillance

Main Findings of the Research

Internet Usage in Sri Lanka

When asked about Internet usage, 96% of those in the main survey sample of 15 to 29 age group responded that they use the internet while 65% of those in the Influential group category responded Yes. Moreover, 65.6% of those in the 15 to 29 age group stated that they use the Internet “several times a day”, 13.1% had stated they use it “once a day” and 18.3% indicated they use the Internet “2 to 3 times a week”.

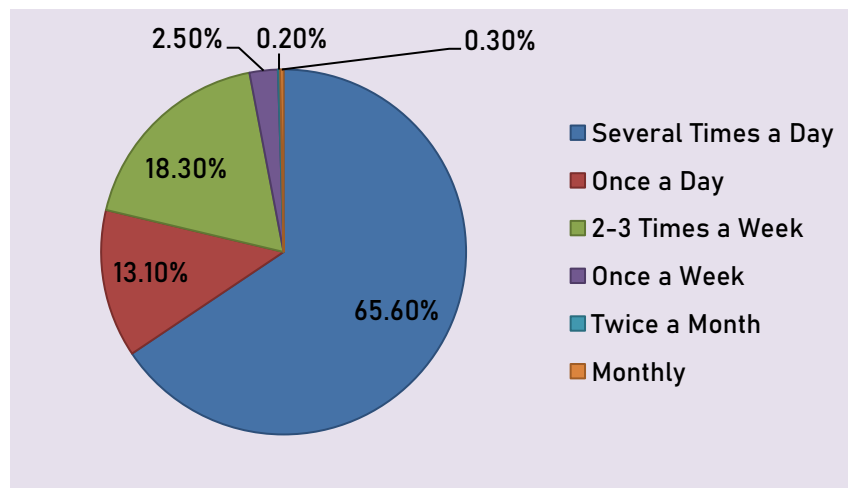


Figure 2: How often do you use the Internet (15-29 years)?

A considerable majority of those in 15 to 29 age group (78.7%) therefore can be considered as active users as they indicate daily usage of the Internet. In mapping the new media landscape in Sri Lanka, this demonstrates a high engagement of the Internet and new media outlets by the youth in Sri Lanka (15 to 29 years) which signifies an active digital presence of Internet users in the country.

In terms of access to the Internet, 69.4% of youth access the Internet through their own smart phones and an additional 26.9% share a smart phone with someone else.

When it comes to initial exposure of the Internet, 78.5% of youth stated that they learned how to

use the Internet by themselves and that when it comes to accessing content and engaging on the Internet, 64.5% always access the Internet by themselves with no external influences. This sheds valuable insight on the youth’s willingness to be expressive or transparent online as it is important to know how much power or security individuals have when engaging online.

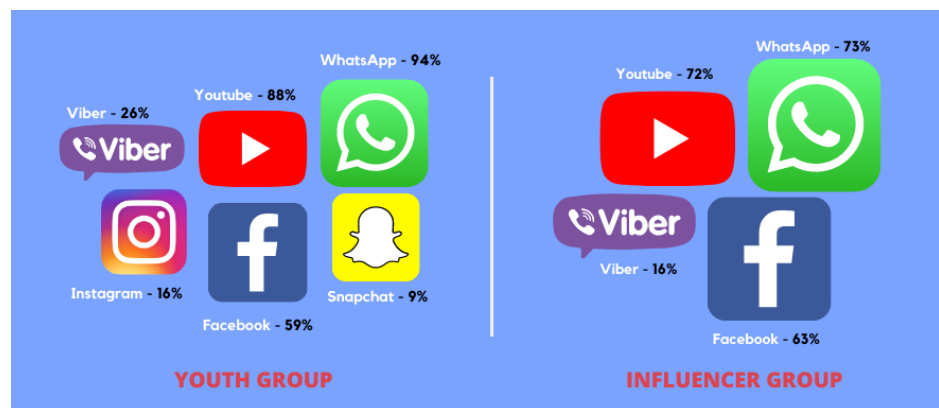


Figure 3: Most Used Social Media Platforms

In relation to purposes of Internet usage, majority (55.6%) from the 15-29 year age group indicated that they use internet to access social media platforms. Of them, 32.1% reported that they use social media daily with 23.5% stating that they use social media “more than 1 time per day”. Of the social media platforms used, Facebook, WhatsApp and YouTube were used the most by those in both the 15 to 29 age group as well as the Influential group. The 15-19 years age group reported of using a wide range of social media platforms namely: Instagram, TikTok, Snapchat and Viber.

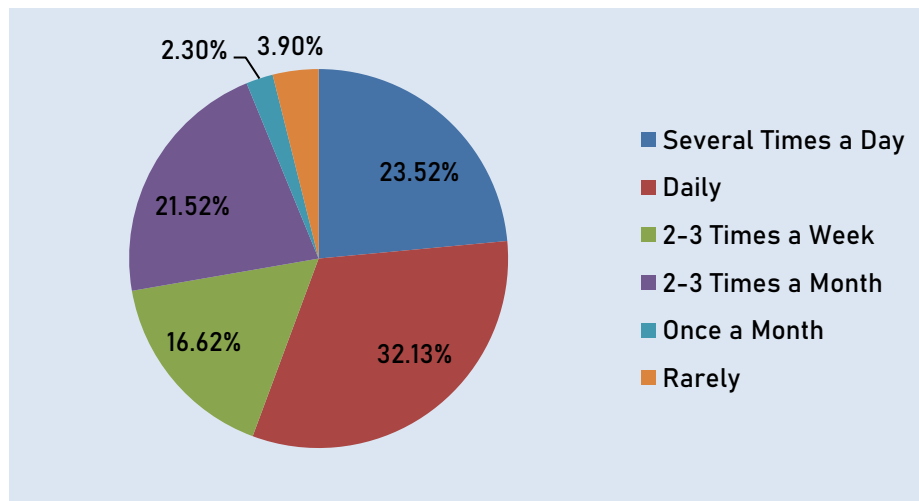


Figure 4: How often do you use social media platforms (15 to 29 years)?

Expressing Opinions Online vs Offline

When presented with specific scenarios on how they would report certain issues such as incidents of corruption, gender-based violence or harassment – a high majority of respondents indicated that they would opt to not do anything. However, those that stated they would report to media had a high response rate of using social media to report these incidents. 83.1% would use social media to report that their road is broken, 85.9% would use social media to report incidents of corruption, 86.2% would use social media to report incidents of gender-based violence and 87% would use social media to report incidents of harassment, torture or death.

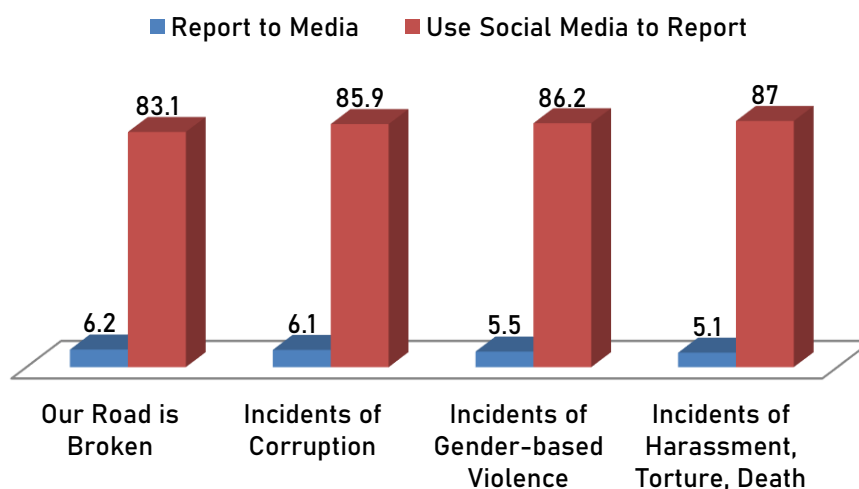


Figure 5: Would you choose to report to media for these incidents? If so, would you use social media to report?

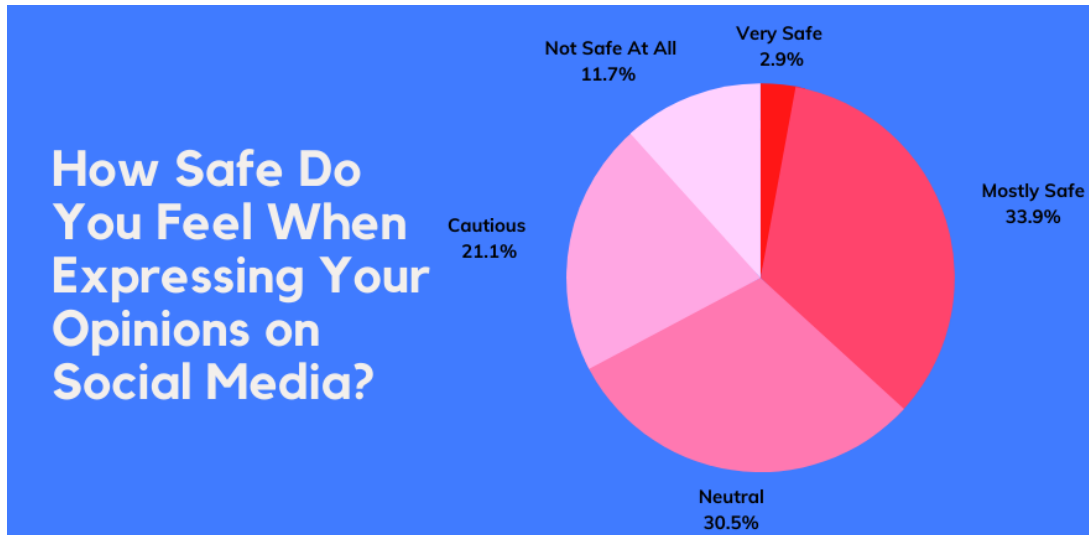


Figure 6: How Safe Respondents Feel Expressing Themselves on Social Media

Expressing Opinions Online: Safety Concerns

In relation to how safe respondents felt when expressing their opinions on social media, there was a mixed reception received as 33.9% said they felt “mostly safe”, 30.5% stated “neutral”, 21.1% were “cautious”, 11.7% felt “not safe at all” and only 2.9% expressed that they felt “very safe”. These results demonstrate a strong sense of hesitancy among the youth to express their beliefs and opinions on social media which indicates that there is a prevalent fear among online users in Sri Lanka on their safety when expressing opinions.

Expressing Opinions Online: Accuracy

When asked to rank specific statements on freedom of expression, a wide majority of respondents indicated a neutral or positive response that social media allows people to voice their opinions freely. Moreover, the majority of respondents also chose “agree” or “strongly agree” to indicate that it is easier to express themselves on social media as opposed to in real life. This in turn shows the dichotomy between real life versus digital life as respondents feel that in the digital landscape, there is a higher degree of freedom of expression opposed to physically expressing oneself. However, a significant percentage also indicated that it is important to have a private profile on social media which indicates reluctance in full transparency of one's views.

Receiving and Sharing Information on COVID-19 via New Media

In relation to information on COVID-19, a high percentage of respondents (61.8%) indicated that they obtain information through social media. This information was predominately centric on the vaccination process (73.9%), travel restrictions (71.5%), global COVID-19 situation (61.9%) and health-related information (61.3%). As COVID-19 has substantially affected the world globally as well as nationally, the high percentage of those that access information through social media of COVID-19 demonstrates a change in digital landscape in information credibility and ease of access.

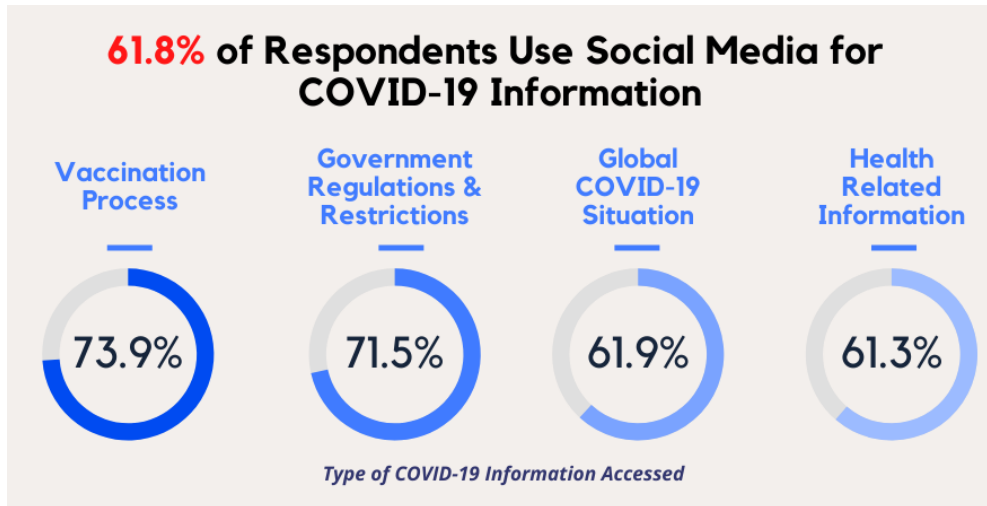


Figure 7: Use of Social Media for COVID-19 Information

Gaps in the Legal Framework on Freedom of Expression

In the context of Sri Lanka, freedom of expression is a guaranteed right as stated in the Constitution under Article 14(1). This states that “every citizen is entitled to the freedom of speech and expression including publication”². However, there are certain limitations on this right in the interest of racial and religious harmony, parliamentary privilege, contempt of court defamation or incitement to an offense. As stated in Article 15 (2) of the Sri Lankan Constitution regarding restrictions on fundamental rights:

*The exercise and operation of the fundamental right declared and recognized by Article 14(1) (a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.*³

Moreover, there have been case studies in Sri Lanka in which Article 14(1)(a) was successfully brought in court to protect instances of freedom of expression. An example of such a case study is the *Amaratunga v. Sirimal and Others (Jana Ghosha Case)* that occurred in 1993. A member of the SLFP that was beating a drum at the protest was asked by the police to stop and was then assaulted with his drum broken with a rice pounder. The protesters were then subjected to tear-gas and a baton charge to disperse the crowd. This case was taken to court as it was held that the Police did not have reason to apprehend a breach of the peace and that the petitioner's fundamental right of speech and expression were violated. The following was stated⁴:

“The right to support or to criticize the Governments and political parties, policies and programmes is fundamental to the democratic way of life, and the freedom of speech and

² <https://www.srilankalaw.lk/constitution-of-the-democratic-socialist-republic-of-sri-lanka.html>

³ <https://www.srilankalaw.lk/constitution-of-the-democratic-socialist-republic-of-sri-lanka.html>

⁴ *Amaratunga v. Sirimal and Others (Jana Ghosha Case)* <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/029-SLLR-SLLR-1993-1-AMARATUNGA-v.-SIRIMAL-AND-OTHERS-JANA-GHOSHA-CASE.pdf>

expression is one which cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.”

The court ruled in favor that the fundamental right of the petitioner under Article 14 (1)(a) was violated that the obligation cast upon the Court by Article 4 (d) of the Constitution, to respect, secure and advance fundamental rights, would amply justify the exercise of the State’s power (under Article 126 (4) to give directions to the police to ensure that they will respect the citizen’s fundamental right of speech and expression, and will not suppress peaceful protest. In essence, freedom of expression should be reconciled with the collective interests of the public⁵.

In relation to hate speech, Article 20 of the International Covenant on Civil and Political Rights (ICCPR) states that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Section 3 of the ICCPR Act further strengthens this by stating that “No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Although the ICCPR Act is the most effective piece of legislation in Sri Lanka to combat hate speech, there are no reported judgments or trials that have been concluded under the Act⁶.

These broad parameters for limitation on freedom of expression in the legal framework of Sri Lanka have created the space in which this right can be institutionally denied.

Section 3 (1) of the International Covenant on Civil and Political Rights (ICCPR) Act prohibits advocacy of hatred that constitutes incitement to discrimination, violence or hostility and has hitherto been abused to target members of minority communities without just cause⁷.

The Prevention of Terrorism Act No. 48 of 1979 (PTA) allows authorities to carry out arrests without warrant for unspecified “unlawful activities” and permits detention for up to a period of 18 months without producing the suspect before a court⁸. This highly controversial act has been used to infringe on human rights and restrict freedom of expression throughout the country – especially in relation to minorities such as Tamil and Muslim communities. For over 40 years, this Act has enabled “prolonged arbitrary detention, to extract false confessions through torture, and to target minority communities and civil society groups”⁹. Moreover, Section 14 of the PTA prohibits the publication of any statement made by the detainee or with regard to the investigation which is a direct infringement on human rights and prevents accountability and objectivity for the investigation¹⁰. In January 2022, the Prevention of Terrorism (Temporary Provisions) Act of 1979 Amendment Bill (the “Amendment Bill”) was published which includes certain revisions to reduce some abuses under the law such as shortening the sentence from 18 months to 12 months. However, this act still violates the prohibition against arbitrary detention and does not provide a clear definition for terrorism which makes it easier to arrest people¹¹.

⁵ <https://www.lawnet.gov.lk/freedom-of-expression-and-right-to-information/>

⁶ Centre for Policy Alternatives (September, 2018) *Confronting Accountability for Hate Speech in Sri Lanka: A Critique of the Legal Framework*

⁷ <https://www.icj.org/sri-lank-de-radicalization-regulations-should-be-immediately-withdrawn/>

⁸ <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>

⁹ <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>

¹⁰ <https://english.theleader.lk/news/1749-govt-commences-engagement-with-civil-society-on-pta-reforms>

¹¹ Human Rights Watch (2022) *“In a Legal Black Hole” – Sri Lanka’s Failure to Reform the Prevention of Terrorism Act*

Within the context of the COVID-19 pandemic, the Government of Sri Lanka has taken steps to limit freedom of expression among dissenters by using broad based interpretations of ill-defined laws. In April 2020 and June 2021, authorities issued an emergency regulation in which they would arrest anyone found to be disseminating false or derogatory statements about official protocol related to COVID-19, pursuant to the Computer Crimes Act (CCA), the Police Ordinance and Penal Code¹². This has led to the investigation and detention of those such as the former spokesperson of the Health Ministry, Dr. Jayaruwan Bandara, who was interrogated based on a television interview in which he made comments about the expense of COVID-19 test and general pandemic response of government officials¹³.

The Right to Information (RTI) was included as a fundamental right to the 1978 Constitution under the 19th Amendment in 2015 followed by the introduction of the Right to Information (RTI) Act in 2016¹⁴. Moreover, the cornerstone of RTI is based on good governance, accountability, transparency and decision-making. Although the RTI was only introduced as a fundamental freedom by the 19th Amendment in 2015, freedom of expression including freedom of press had been considered prior and the first decision to introduce this act to the Constitution. . Moreover, RTI should also encourage whistle-blowing practices and ensure that public departments that handle vast amounts of public money such as Customs, the Inland Revenue Department and budget allocations should be more transparent. However, one positive aspect observed under this study was that public institutions at both district and administrative levels had performed better than those at a national level and there was proactive disclosure in the RTI and protection for whistleblowers.

The recently proposed Personal Data Protection (PDP) Bill has also been criticized for its controversial clauses and infringement on freedom of expression¹⁵. The draft bill was presented to Parliament on January 2022¹⁶ and it is a fundamental necessity for the legislative system in Sri Lanka as new laws are needed to protect personal data. Moreover, the Parliament confirmed on 4th March 2022 that a second reading of the PDP Bill will be taking place on the 9th of March 2022¹⁷. The PDP Bill is modeled after the European Union General Data Protection Regulation (GDPR) Act implemented in 2018. However, the PDPB also includes “stricter penalties and questionable clauses with regards to the independence of the Data Protection Authority, exclusion of journalistic purpose, powers vested upon the Minister and nature of filling appeals¹⁸” which has raised serious concerns amongst media and civil rights organizations.

Section 35 of the PDPB aims to counter this as it states the following: “Exemptions, restrictions or derogations to the provisions of this Act shall not be allowed except where such as exemption, restriction or derogation is prescribed by regulations and respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for the protection of the rights and fundamental freedoms of persons, particularly the freedom of expression and right to information¹⁹.”

¹² <https://www.icj.org/sri-lanka-covid-19-restrictions-should-not-undermine-freedom-of-expression/>

¹³ <https://www.icj.org/sri-lanka-covid-19-restrictions-should-not-undermine-freedom-of-expression/>

¹⁴ <https://www.lawnet.gov.lk/freedom-of-expression-and-right-to-information/>

¹⁵ https://www.tisirilanka.org/wp-content/uploads/2021/07/TISL-Legislative-Brief_Personal-Data-Protection-Bill_13.07.2021.pdf

¹⁶ https://www.dailymirror.lk/print/front_page/Personal-Data-Protection-Bill-should-not-be-passed-in-haste-NMSJ/238-232729

¹⁷ <https://www.parliament.lk/news-en/view/2477>

¹⁸ <https://www.dailymirror.lk/news-features/Personal-Data-Protection-Bill-Another-draconian-law-to-suppress-media-freedom/131-233442>

¹⁹ <https://www.icta.lk/icta-assets/uploads/2021/11/Data-Protection-Bill-Nov-2021.pdf>

However, the role of the Data Protection Authority or controller in deciding whether it is an infringement of freedom of expression poses as a threat to upholding democratic values. Furthermore, the omission of Section 85 of the GDPR for the PDP Bill has further raised concerns as it states the “journalist purpose is included in the freedom of expression in addition to purposes of academic, artistic or literary expression.” The PDP Bill therefore needs to ensure that it adhered to the protection of personal data but also that it does not jeopardize the data processing for journalistic purposes as there is a lack of independent authorities or commissions to ensure that the RTI Act and the PDP Bill do not reconcile each other. Similarly to the Computer Crimes Act, these Bills demonstrate the State exercising suppression among journalists especially in relation to the impact journalists have in using new media outlets such as social media platforms to disseminate information.

With internet usage growing drastically due to the pandemic, it has become even more relevant to understand the opportunities and limits of freedom of expression using new media during this global crisis.

The New Media Landscape in Sri Lanka

The new media landscape in Sri Lanka has drastically increased over the past decade as a wider population across the country has received access to the Internet. Moreover, since the outbreak of the COVID-19 pandemic was felt in Sri Lanka in early 2020, the transition towards conducting business operations and online learning facilities through digital platforms have gained immense prominence.

As shown in Figure 1, the majority of users in Sri Lanka access the Internet via smartphones (64%) whereas a lower percentage accesses the Internet via laptops / desktop devices (34.7%)²⁰. As higher the population in Sri Lanka are more versed in using the Internet through their smartphones, it signifies that more Internet users in the Country are likely to use social media platforms.

In terms of which social media platforms are prominent in Sri Lanka, Figure 2 shows the number of users in the four most prominent social media channels in the country as highlighted by Data Reportal (2021). Similar to global trends, Facebook is the most popular platform in Sri Lanka with an approximate number of 7 million users and 3.8 million users who can be reached via Messenger. Instagram and LinkedIn are the next two popular platforms with each platform averaging 1.3 million users in Sri Lanka.

Figure 8: Access to the Internet via Device Type in Sri Lanka



²⁰ <https://datareportal.com/reports/digital-2021-sri-lanka>

Sri Lanka is in the zone of no media freedom in the International Press Freedom Index. Sri Lanka ranks 127th out of 181 countries in the world²¹. According to 2020 report by Freedom House, which calculates media standards internationally, Sri Lanka ranks 56th in the last 100 countries in the International Press Freedom Index. Sri Lanka ranks 33rd out of 60 countries for violating political rights. Sri Lanka is ranked 127th out of 180 countries in the Media Freedom Index, according to the International Standards Report by Reporters Without Borders. In 2021, Sri Lanka has got only 50% marks in the Freedom House Internet Freedom Index.

Fifty eight public incidents have been reported to have disrupted media freedom in 2020²². These include 13 threats, four intimidation, five arrests, five denials of access, cyber-attacks, web-blocking, and suspension of broadcasts. It is also reported that the police and security forces continue to monitor the activities of journalists. Some news media outlets have to obtain the approval of the media owners before publishing/broadcasting the news. There is also a plan to bring in a law to get the permission of the security forces to register news websites²³. Media organizations have reported that newsrooms in many media outlets are controlled by actors with political agendas which makes it difficult for news reporters to be fully independent. Similarly considerable amount of news which affects the common people receives limited coverage. There have been instances of spreading of misinformation, disinformation, and fake news. Such reporting questions the credibility of online media sources to the public.

There are a number of ways in which media freedom is obstructed. Unauthorized intimidation of media owners and editors, obstruction of other businesses of media owners, threats, intimidation, obstruction of reporting, gathering of information about journalists, organized against journalists hate speech on social media, attacks on media institutions, blocking of social media and websites, blocking of the internet, introduction of laws restricting media freedom, decisions taken by the executive against media freedom, censorship, arrests, interrogations, Investigations to find the source, etc. The government has carried out interventions in the last one year to obstruct the freedom of the media in our country in a formal and informal manner.

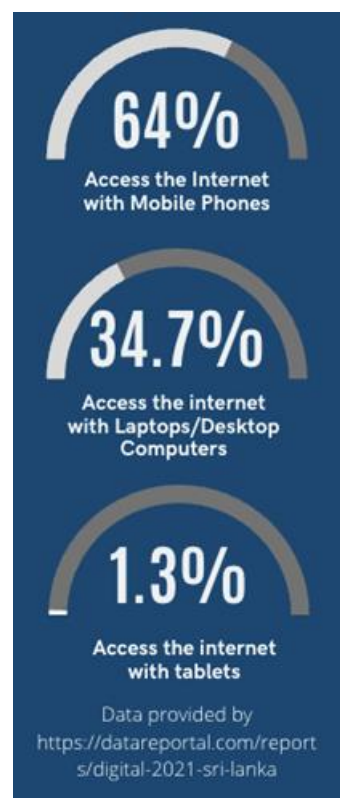


Figure 9: Number of Users per Social Media Platform in Sri Lanka

²¹ <https://freedomhouse.org/country/sri-lanka/freedom-world/2020>

²² Free Media Movement (2021) *Media Freedom in Sri Lanka – Annual Report: Incidence & Trends*. (http://www.fmmsrilanka.lk/wp-content/uploads/2021/08/FMM_2021_Aug_Annual_Eng.pdf)

²³ <http://www.dailynews.lk/2018/08/08/local/159142/army-vigilant-over-social-media>

Recommendations

The research proposes the following recommendations:

New Media Avenues for Community and Grassroots Voices to Reach District and Policy Levels

1. The public should be educated on the range of new media platforms (e.g. the Internet, mobiles, email, social networking, blogging etc.) and be better equipped on how to understand and use these platforms responsibly, as well as their rights when expressing themselves.
2. Media literacy training from early ages can stimulate generational change and grassroots activists and community leaders should be educated on how to leverage new media technologies to foster positive societal change.
3. University curricula and curricula of media training institutes (e.g SLPI, SLCJ, SLF, MTDC, etc.) should be adapted to be inclusive of new media technologies in areas of study such as journalism, sociology and politics especially in a Sri Lankan context to equip budding leaders with improved information flows.

Limitations and Challenges by Various Stakeholders on Freedom of Expression via New Media Platforms

1. Facilitate relevant authorities and relevant officials to take necessary action to ensure that provisions existing in legislation promoting freedom of expression are effectively implemented.
2. Repeal/amend draconian laws that stifle freedom of expression and information rights in online and offline spaces.
3. Educate the public on their rights and responsibilities especially in expressing themselves on new media platforms and engaging in responsible news dissemination.
4. Media entities (e.g. media houses, newspaper outlets etc.) should ensure that they have adequate mechanisms in place to counter political bias and government control, as well as protect and train their personnel (e.g. journalists, reporters etc.) on expressing their views online in an ethical and socially responsible manner.
5. Emphasis should be given on more fact-checking organizations and media watchdog groups to promote responsible journaling and also increase accountability from politicians, government representatives and other stakeholders.

Impact of COVID-19 on New Media Culture in Sri Lanka

As highlighted in the above research, 61.8% had indicated that they had received information relating to COVID-19 from new media avenues. From vaccine information to health and governmental guidelines, individuals have displayed a new found trust in social media to receive information – especially relating to serious issues such as health and wellbeing. This shows how essential new media avenues are in sharing information to the public. Therefore, when it comes to freedom of expression – it should be important that these avenues allow individuals to freely speak their opinions but to also mitigate “fake news” that can potentially be harmful and endangering.

Sri Lanka's cabinet of ministers in 2021 have approved a proposal to draft a "Fake News" bill to combat "false and misleading statements on the Internet"²⁴. This bill is planned to model after Singapore's Protection from Online Falsehood and Manipulation Act (POFMA) which has gained controversy for being a tool for government propaganda and controlling free speech and the media. Therefore, it is crucial that any "fake news" bill in Sri Lanka does not infringe on human rights and allows individuals to express themselves freely whilst still ensuring that there are adequate mechanisms in place to protect false information from being spread that could endanger lives. Previously, individuals would opt to get together to discuss news and word-of-mouth information with other members of the community, friends, families and etc. However, due to physical restrictions and banning of gatherings imposed by the COVID-19 pandemic, more individuals chose to engage with new media platforms to express their views and discuss news with others. Although this severely increased user-engagement with new media, the progression and mechanisms in place for these platforms did not improve correspondingly which demonstrates a shift in dialogue without adequate mechanisms in place to cater to the rapid digital transformation in the country.

Role of New Media in Creating Digital Identities among Users

- 1) Develop and implement campaigns to strengthen citizen journalism to promote freedom of expression and strengthen democracy in the country such as workshops aimed for general public on how to address a range of social, political and cultural issues digitally.
- 2) Encourage online websites and online media outlets to showcase more blog posts and opinion pieces from not only professional journalists and academics but everyday citizens as well.
- 3) Establish more digital spaces for citizens to network, share ideas and freely express themselves in order to foster a progressive and interactive environment for users to sharpen their digital identities.

Areas for Further Study

Due to the constraints of this specific study, there were several areas that had emerged during the research which could not be probed in detail and requires further research to be conducted. Although it has been touched on in this study, more comprehensive research should be conducted to specifically look at hate speech and new media in Sri Lanka. The growth of online hate speech and the resurgence of extremist groups using new media platforms for recruitment and dissemination of ideologies should be examined.

Moreover, the research conducted identified the different social media platforms used by both youth and the influential age category in Sri Lanka – however, a further in-depth dissection into the types of content being posted on the most prominent social media platforms should be looked into. This can help with examining the degree of freedom of expression felt by users of the application and can further look at how different their digital identities can shift and be more expressive depending on the platform. Furthermore, additional research should be conducted to examine the role of monetization of social media platforms such as paid promotion and advertising campaigns. The commercialization side of social media such as Facebook and Instagram has demonstrated strong influence in restricting the freedom of expression of users and promoting certain viewpoints over others.

²⁴ <https://ifex.org/sri-lanka-free-media-movement-said-fake-news-bill-could-undermine-freedom-of-expression/>

