

## Review



## Law of 'isolation' and its legitimacy of practice in Sri Lanka in relation to COVID-19: a legal review

Charith Amidha Hettiarachchi<sup>1\*</sup>, Chirathi Deshara Attanayake<sup>2</sup>, Sanath Sameera Wijesinghe<sup>3</sup>

<sup>1</sup> Ministry of Health, Sri Lanka; <sup>2</sup> Supreme Court, Sri Lanka; <sup>3</sup> The Open University of Sri Lanka

Correspondence: dr.charith@gmail.com

 <https://orcid.org/0000-0002-7329-6581>

DOI: <https://doi.org/10.4038/jccpsl.v28i1.8466>

Received on 02 October 2021

Accepted on 20 March 2022

### Abstract

**Introduction:** Isolation of persons is a key strategy to prevent and control highly contagious diseases throughout the history worldwide and its importance had re-emerged due to the COVID-19 pandemic. In Sri Lanka, like other countries, this isolation process is mainly governed by the law. The Quarantine and Prevention of Diseases Ordinance is the main law in this regard where the powers are mainly vested with health authorities.

**Objectives:** To review the law of isolation and its legitimacy of practice in Sri Lanka

**Methods:** A desk review of existing laws associated with isolation and quarantine in Sri Lanka was conducted and compared with the actual practice of implementation of these laws during the COVID-19 epidemic.

**Results:** Quarantine and Prevention of Diseases Ordinance of Sri Lanka and its regulations contain strong provisions on isolation of persons which are incorporated into legal scenarios of disease locality, infected house/place, self-quarantine and observational hospital/place and linked to face mask and social distancing rules. However, these legal provisions are misused and not legitimately implemented by authorities of health and police.

**Conclusions & Recommendations:** Quarantine and Prevention of Diseases Ordinance of Sri Lanka and its regulations can be used to prevent and control COVID-19 effectively as adequate and powerful provisions are available, especially in relevant to isolation of persons. However, the relevant law is often wrongly interpreted and imposed by authorities as well as non-authorities. Authorities and Authorized Officers need to be empowered on their powers and limitations to implement the law legitimately in order to achieve the maximum control and prevention of COVID-19 and other infectious diseases.

**Keywords:** *quarantine law, isolation law, COVID-19, lockdown law, infectious disease*

## Introduction

The term 'isolation' is often heard worldwide since the beginning of the Corona Virus Disease-2019 (COVID-19) pandemic. It is among the recommended national strategies of the World Health Organization (WHO) (1) and proven to be effective in COVID-19 prevention (2). Thus, it is legally adopted by most countries and implemented as first line measure to prevent the spread of COVID-19 among their population.

Isolation strategy has been used to prevent the spread of communicable diseases for centuries. Ships were isolated for 30 days to prevent the spread of plague in Europe in 1343 (3). In 1793, sailors were isolated in a hospital outside the City of Philadelphia, the United States to prevent the spread of yellow fever among citizens (3). At least 70 peoples were isolated in New York, United States, when the city was hit by typhus in 1892 (3). Nearly 30 000 people were isolated in Toronto in 2003, Canada due to the SARS epidemic (3). In all those situations, other people were prohibited to enter the isolated areas and vice versa.

Quarantine and Prevention of Diseases Ordinance of No. 03 of 1897 (hereafter, referred as the Quarantine Ordinance) is the main law governing the law of isolation in Sri Lanka. The Quarantine Ordinance can be considered as the Sri Lankan counterpart of the Indian Epidemic Disease Act No. 3 of 1897, which had been enacted on 4 February 1897; just five days before the Sri Lankan ordinance, to control the plague epidemic in India (4). The Quarantine Ordinance of Sri Lanka is amended several times (Table 1). Regulations published in the Gazette No. 7481 on 28.08.1925 (hereafter, referred to as the regulation) under the Quarantine Ordinance is the main regulation relevant to the law of isolation in Sri Lanka (Table 2), which had also been amended several times.

Several legal terms are being used in the Quarantine Ordinance with similar meaning but for different purposes: 'isolation,' 'quarantine,' 'observational place,' 'disease locality,' 'infected house,' and 'self-quarantine' (5). Further, non-legal terms like 'lockdown,' 'quarantine curfew,' 'quarantine centre'

are in use among authorities, politicians, media and the public. Even though the provision of isolation is related to any infectious disease, it is currently being used in the prevention and control of COVID-19 in Sri Lanka. Policymakers should correctly communicate the concept to the public for utilizing it up to the maximum effectiveness and commitment levels amongst the people (6). The objective of this study was to analyse the legal provisions related to isolation in the Quarantine Ordinance and legitimacy of their implementation in the country to prevent COVID-19. Furthermore, the study highlights the drafting and implementation deficiencies of the law.

## Methods

The original publications of the Sri Lankan Constitution, Acts, Regulations and books were reviewed to collect literature. Several key scenarios were identified concerning isolation of persons, such as 'quarantine,' 'self-quarantine,' 'disease locality,' 'infected house/place,' and 'hospital/place of observation' and their legal provisions were critically analysed in this study. Practical implementation of the isolation process in Sri Lanka was studied by referring department circulars and guidelines to find out whether the implementation procedures follow the legal principles. Court cases related to 'isolation' were searched in official websites of national legal organizations.

## Results & Discussion

Terms reviewed in relation to isolation are given below.

### • Isolation

The term 'isolation' is defined in the Quarantine Regulations, 1960 (7) of the Quarantine Ordinance as 'separation from others of a person in such a manner as to prevent spread of infection by such person' (S.2), indicating the restriction of movements of an individual. Isolation is applied in legal concepts, namely quarantine, self-quarantine, disease locality, infected house/place and hospital/place of observation. A person could be isolated due to three

instances: diseased, suspected or contacts. However, in law, 'diseased' includes 'suspect' because the diseased is interpreted in the Quarantine Regulation as being infected or suspected of being infected (S.1) (8). 'Contact' is interpreted as “any person who has been in a place or on a vessel where disease exists, or who may directly or indirectly have been in contact with a diseased person, or who has been in circumstances which, in the opinion of the proper authority, are likely to cause him to become infected with disease” (S.1)(8).

### • Quarantine

The term 'quarantine' is derived from the Italian word 'quaranta' which means 'forty', referring to 40 days of isolation (9). Ancient Greek believed that contagious diseases develop within 40 days after the exposure (9). Dictionary meaning of the word quarantine is “a state, period, or place of isolation in which people or animals that may have been exposed to infectious disease are placed” (10).

Four Sri Lankan laws depicting the legal meaning of quarantine are Quarantine and Prevention of Diseases Ordinance No. 03 of 1897 (the Quarantine Ordinance) (5), Penal Code of No. 02 of 1883 (11), Animal Disease Act No. 59 of 1992 (12) and Plant Protection Act No. 35 of 1999 (13). As per the Quarantine Regulations, 1960 (7), quarantine means “inspection, examination, exclusion, detention, observation, surveillance, segregation, isolation, protection, treatment, inoculation, vaccination, sanitary regulation, disinfection, and disinfection of persons, animals, vessels, and goods and any other measures necessary for the prevention of the spread of any quarantinable disease into or from Ceylon”. Therefore, quarantine is not just isolation of persons, but a much broader management process related to the borders of a country. The term quarantine is not defined in the Penal Code No. 02 of 1883, however the term has been used in relation to vessels (S.264) (11). Animal Disease Act No. 59 of 1992 defines Quarantine as “the compulsory detention in isolation of any animal, or any article”, however applied only to imported animals (12). Quarantine Pest under the Plant Protection Act No. 35 of 1999 is “a pest of potential economic or environmental importance to

any area within Sri Lanka and not yet present there, or present but not widely distributed and being officially controlled” and had applied only to imported plants (13). When analysing all these legal interpretations, it confirms that the term quarantine is related to a type of isolation only at the border of a country; and therefore, not to be used for any isolation process that happens inside the country. In contrast, this term is widely used by health officials, politicians, media and general public for isolation of persons inside the country.

Sri Lankan health authorities have not differentiated the meaning between quarantine and isolation: the term quarantine has been used erroneously in circulars and guidelines in relation to the isolation process within the country (15-19) as well as at borders (14). Australian Health Authorities have correctly used the term 'quarantine' only in relation to borders (20) and 'isolation' when it happens within the country (21), which is similar to that in United Kingdom (22).

### • Disease locality

Disease locality is defined in the Regulations published in the Gazette No. 7481 on 28.08.1925 (8) as amended in 2020 (23) as “any locality infected or suspected of being infected with disease and declared to be diseased by the proper authority as a disease locality for such period as the proper authority shall determine”. Since the access to such locality is banned (S.55) (8), this situation is often called a 'lockdown', even though this term is not legally stipulated in the judicial course. Here, only the entry and exit are prohibited. Therefore, if the entire country is declared as a disease locality, all entry points (airports and seaports) should be closed; and no person shall enter or leave the country without permission of the proper authority – the Director General of Health Services (DGHS). In the disease locality or 'locked down' scenario, movements inside the country are not restricted unless specifically imposed by the proper authority in order to control COVID-19 (23). In contrast to this legal basis, health authorities, politicians, media and general public are of the opinion that an area or the country needs to be 'locked down' to restrict movements within an area.

During the first outbreak of COVID-19 in Sri Lanka, the DGHS had declared the entire country as a disease locality for COVID-19 on 25 March 2020 (24). However, since the Minister of Health had not confirmed, the said declaration has not lasted for more than 7 days. This is because, as per the regulations (S.1), any such declaration lasts only for 7 days unless it is confirmed by the minister (8). There were no reported declarations of disease localities thereafter by any proper authority.

#### • **Self-quarantine**

The aforementioned legal meaning on isolation is violated in the amendment brought in the year 2020 (23) to Regulations published in the Gazette No. 7481 on 28 August 1925 (8) by introducing a term 'self-quarantine', a process which happens inside the country. The said amendment regulation failed to define the term self-quarantine; furthermore, adjective 'self' is misleading as it implies a voluntary act rather than a compulsory act which is mandated by the law. This could be critiqued as a major error and an event that exhibits illegitimacy in legal drafting. The term isolation could have been used instead of the term self-quarantine. This legal fallacy is followed through in circulars and guidelines of the ministry of health (15-19). Self-quarantine can be only implemented in a disease locality (23). As none of the areas of the country is reported to be declared as a disease locality (except on 25 March 2020 which expired after seven days), self-quarantining of persons is illegitimate.

#### • **Infected house/place**

Infected house/place is not defined in the Quarantine Ordinance or its regulations; however, could be a house or place infected with a disease. Here, the 'disease' means any infectious disease (S.1) (8). The 'place' could be an educational institute (school, university, etc.), a religious place, a commercial building, a factory or a workplace. This is similar to the isolation of persons within the house or place as no person shall enter or leave such house or place (S.56) (8). The scenario of infected house/place is somewhat similar to the scenario of self-quarantine, however not the same. The differences between two

legal scenarios are listed in Table 3. The main advantage is people in-side a house or place can be isolated in an area which has not declared as a disease locality; therefore, should have been a main provision used during the COVID-19 epidemic. Up to date, there are no reported instances of declaring infected houses or places; therefore, this important provision is underutilized.

#### • **Hospital/place of observation**

Hospital/place of observation is also not defined in the Quarantine Ordinance or its regulations. The proper authority can establish any hospital or place as a hospital or place of observation (8). The concept of hospital or place of observation is widely used by health authorities, politicians, media and public as 'quarantine centre' which is incorrect. Health officials and police use these impropriety terms through media neglecting the legitimacy of legal terms and in fact the ministry of health had used erroneous term in its official guidelines (17). As discussed earlier, the term 'quarantine' has a different meaning which is related only to borders of a country. The term 'observational centre' would have been a better word for informal use. Isolation is also applied here as no person can even reach within one hundred yards of such locality (S.43) (8). Certain places and hospitals have been acquired to be used as 'observational centres' but merely through an administrative procedure of government departments and not by using the legal powers of the proper authorities.

#### • **Proper authority**

A law recognizes the 'authority' as the responsible body to ensure the function of a relevant law in the respective administrative area. Most critical decisions under a particular law are taken by the Authority. Furthermore, Authority generally does not have the power of prosecution (4). In the Quarantine Ordinance, 'authority' is named as proper authority (8). In other public health laws like the Food Act, National Medicinal Regulatory Authority Act, Prevention of Mosquito Breeding Act and National Authority Tobacco and Alcohol Act, there is only one authority for a particular administrative area. Different administrative bodies may have their own

authorities. Other than that, there may be a separate authority for the entire country. However, there should not be more than one authority for same specific administrative area/body; otherwise, there could be contrary and overlapping decisions for the same administrative area (4). However, proper authority under the Quarantine Ordinance is an exception as several proper authorities are identified for each administrative area.

Proper authority under the Quarantine Ordinance is different from its regulation to regulation except for four regulations where the proper authority is the same: regulations published in the gazette No. 7481 on 28 August 1925 (8), The Venereal Diseases Regulations (25), The Mosquito-Borne Diseases (Prevention) Regulations (26) and the Quarantine Regulations (7). The proper authorities of these regulations are summarized in Table 4.

Unless specifically mentioned (e.g., S.91c), all proper authorities are vested with the same power; therefore, the difference among proper authorities is based on the geographical area. The DGHS as the proper authority for the entire country, can overrule orders and decisions of other proper authorities, however, cannot restrict powers of other proper authorities (4). In contrast, the DGHS - proper Authority to the entire country - has imposed restriction to medical officers of health (MOH) (proper authorities at regional level) on 'lock downing' areas and 'closing institutions' through circulars (27) (28), which could be considered as ultra-virus - acting beyond one's legal powers.

As shown in Table 4, several proper authorities had been appointed for the same administrative area either in a same institution (e.g., in MOH office) or in different institutions (e.g., MOH office and local council) by using the conjunction 'or'. In legal interpretation, the phrase 'or' generally encapsulates the 'inclusive' meaning rather than the 'exclusive' meaning. For example, A or B means A or B or both (4). It is possible to take different legal decisions by different proper authorities in the same administrative area, which will lead to a huge legal confusion as both the public and law enforcing officers would be in a puzzle to decide which decision

is in force.

District director of health services (DDHS) or regional director of health services (RDHS) is considered as the proper authority in an area other than the area mentioned in other categories (23), however no such areas exist in the country which in turn questioning the legitimacy of legal drafting. It is not clear whether the mayor/chairman of the council or MOH/AMOH has powers inside a military, naval or air force establishment or in a port/airport which is located in his/her area.

Even though DGHS, local council chairman, MOH and AMOH are proper authorities and have adequate powers to impose restrictions, the trend is such legal restrictions are expected to be imposed by the central government or president. Therefore, it is unfortunate to see that proper authorities under the Quarantine Ordinance are waiting to get implemented their powers by others due to lack of confidence and knowledge.

#### • **Delegation of powers of the proper authority**

The proper authority can delegate whole or part of his/her powers to any person as per the section 37 of the regulations which says, "the powers conferred by the regulations contained herein on the proper authority, may be exercised by such persons as the said proper authority may authorize in writing in that behalf" (8). Such delegation can be done to a person within or outside of his institution/department. DGHS had delegated some of his powers to Acting Inspector General of Police (IGP) by his name (29) but under strong restrictions where the IGP could hardly take any decision by his own without the consent of the DGHS or local health authorities.

Jurisprudence is not conclusive on whether a delegation can be done to more than one person and whether the delegated power remains with the delegator (proper Authority) even after the delegation. However, the legality is such that the person who received the power (delegatee) could not delegate the power further as demonstrated by the Latin maxim '*delegatus non potest delegare*' - A delegated power cannot be further delegated (4).



Therefore, delegated powers of DIG cannot be implemented by any other officer of the police department. However, self-quarantining of persons by police officers is not uncommon which is another example for illegitimate practice of the law.

#### • **Authorized officers**

Authorized officers are the persons who have powers to prosecute offenders who violate the law. Authorized Officers are responsible to the 'Authority' in the area (4). The term 'Authorized Officers' is not specifically stipulated in this Ordinance. Instead, the Quarantine Ordinance has used the terms inspectors and officers to 'carryout provisions in this Ordinance' [S. 3(1) (r)]. These inspectors and officers are to be appointed by the minister (5) or proper authority (8).

The minister has appointed Sanitary Inspectors as inspectors (8). The designation was amended as Sanitary Assistants of the Department of Medical and Sanitary Services in 1943. Training of Sanitary Inspectors is said to be started since 1913. The post Sanitary Inspector had been probably existed even before the year 1913. Because it is written in Leonard Woolf's diary, that he had inspected the town with the Sanitary Inspector on 01.09.1908. On this date, he was an Assistant Government Agent in Hambantota District. Designation was changed as Sanitary Assistants in 1937 and again as Public Health Inspectors in 1954. Therefore, the designation was Sanitary Assistant when this appointed was made that is in 1943. Currently this Sanitary Assistants are called as Public Health Inspectors and Department of Medical and Sanitary Services is called Ministry of Health or Department of Health; however, the designation of Sanitary Assistant in the regulations is still not amended to update it.

Since Public Health Inspectors are not appointed as Inspectors or Officers by the current designation (Public Health Inspector), it is not clear whether they can prosecute for offences under the Quarantine Ordinance. It depends on how this is interpreted by the court. In case of any doubt about the power of Public Health Inspectors, to make it clearer, the proper authority could appoint them as inspectors under the section 39 of the Regulations. The Minister

of Health so far has not appointed any Inspector or Officer other than Sanitary Assistants.

The Penal Code was enacted in 1883, even before the enactment of the Quarantine Ordinance. As per the section 264 of Penal Code, a Police Officer has powers to prosecute under any law relating to regulating quarantine issues and regulating the intercourse between places where an infectious disease prevails and other places (11). Therefore, Police Officer has being considered as an Authorized Officer in the Quarantine Ordinance (5). However, in practice, Police Officers use provisions of the sections 262 (negligent act likely to spread infection of ant disease) and section 263 (malicious act likely to spread infection of ant disease) of the Penal Code (11) to prosecute offenders rather than the provisions of the Quarantine Ordinance.

#### **Provisions on disease locality**

##### • **Declaration**

The proper authority can declare any area or locality as a disease locality (8). The proper authority can do such declaration if there is an infected or suspected to be infected person or persons in the locality. To make the declaration legally valid, several requirements need to be fulfilled: specific geographical area, presence of infected or suspected to be infected persons by an infectious disease, declared by the proper authority and communicated to the minister of health (8). Even though the proper authority can decide the time period of the declaration of a disease locality, the validity of the declaration does not last for more than 7 days unless it is confirmed by the minister. Further, the Minister can revoke the declaration as well as alter the time duration of the declaration (8). This means if the Minister does not do anything, the declaration will be expired in 7 days. In practice, it is well known that such 'locked down' areas had been declared by unauthorized persons (persons other than proper authority) or without fulfilling legal requirements. Therefore, provisions of the Quarantine Ordinance are misused.

Evidence shows that this law had been implemented with sense during the colonial period. On 29.10.1945

and 21.01.1946, the Governor Henry Monck Mason Moore – counterpart of the minister at that time - had confirmed the declarations of diseased locality declared by the Chairman of Kotte Urban Council. These confirmations were done by gazette notifications. Same governor had revoked the above two confirmations in 11.06.1946 by another gazette notification (4). The predecessors had set examples for the proper practice of the Quarantine Ordinance, so the current authorities could learn from them.

#### • **Enter and leave**

No person shall enter or leave a disease locality without the permission of the proper authority (S.55) (8). Here the area declared as a disease locality becomes isolated from outside: similar to a 'locked down' situation. This provision itself does not restrict movements within the disease locality.

Restriction of movements between provinces is declared on and off, giving permission to 'essential service providers' to travel across. To be legitimate, each province has to be declared as disease locality by the DGHS – the proper authority to whole of the country through a gazette notification followed by the confirmation of the minister of health. Permissions to travel across the boundaries also shall be granted by the same proper authority – DGHS. Since the legal provisions are not used as it is, provisions of the Quarantine Ordinance are misused in this occasion also.

The term 'quarantine curfew' is also often imposed to restrict movement within the country. However, the Quarantine Ordinance does not have any provision on 'curfew': neither in Police Ordinance nor in Penal Code. In Sri Lanka, curfew can be only imposed by the president through a gazette notification under the Public Security Ordinance, No 25 of 1947 (30). Therefore, by implementing a 'quarantine curfew,' health authorities or police overuse and misuse their powers which is ultra vires.

#### • **Face mask and social distancing**

When a disease locality is declared due to COVID - 19, certain additional rules apply. Everyone should

always wear a face mask (S.90a) and maintain a social distance of not less than one meter (S.90b), in a public place or when a person come into close contact with another, in any other place (23).

The phrase public place refers to any place to which the public have access, whether as of right or otherwise, whether on payment or not, whether on invitation or not (23). The definition of the public place inserted to regulation 3 in 2020 (23) instead of regulation 1 which is the interpretations regulation; however, legal drafters were mistaken as the regulations 3 had been already rescinded in 1934 by the gazette no 8029 (31) which again indicates the poor drafting. A Public Place could be a market, public transport (bus/train), common street, religious place, beach, etc. Every person needs to wear facemasks in public places irrespective of the close contact. However, when it comes to non-public places (e.g., wedding hall, private house, office, personal vehicle, etc.), every person needs to wear facemasks, only when he/she comes in to close contact with another. These rules apply only in a disease locality which is declared due to COVID-19. In practice, facemask and social distance rule is trying to impose and even prosecuted, though the area is not legitimately declared as a disease locality. Therefore, provisions of the Quarantine Ordinance are repeatedly misused concerning to face masks and social distancing.

#### • **Movements within the area**

When a disease locality is declared due to COVID - 19, movement of persons within the disease locality can be prohibited by the proper authority (S.91a) (23). Therefore, just because an area declared as a disease locality due to COVID-19, movements within the area will be not restricted unless such restriction is specifically made by the proper authority.

The level of restriction is explained as “every person shall, upon the restriction of movements of persons under regulation 91, stay in his house, premises or place of residence for such period determined by the proper authority, for the preventing the spread of Coronavirus Disease 2019” (S.92) (23). It further

prohibits enter, leave, travel and transport. When movements are completely restricted, it would be like a 'curfew', which public and media often referred as 'quarantine curfew'. This 'restriction of movements within the disease locality is a new introduction by the Gazette No. 2197/25 in 15.10. 2020 (23), as no such provision was available previously to restrict movements of general public within the disease locality. Therefore, this is a complete restriction of movements. If this kind of restriction is imposed, there is no necessity of self-quarantine. Therefore, self-quarantine in a disease locality declared due to COVID -19, when movements are restricted is an erroneous legal procedure.

#### • Self-quarantine

When a disease locality is declared due to COVID -19, the proper authority can direct any person suspected to be a diseased to be self-quarantined in his house, premises or place of residence (S.91c) (23). Therefore, to ask someone to be self-quarantined, there are three requirements: 1. order is made only by the proper authority, 2. the area have been declared as a disease locality by the proper authority and 3. the person should be a suspect of having the disease (no need of confirmation) as decided by the proper authority. In practice, it is quite common to see that self -quarantine is done by unauthorized persons such as public health inspectors and police officers as well as without declaring the area as a disease locality.

A person who has a contact with a diseased person/place or person having symptoms, could be considered (by the proper authority) as a suspect of having the disease. However, without any contact history or symptoms it may not legitimate to proper authority to direct a person for self-quarantine.

The period of self-quarantine should be decided by the proper authority who made such order; however, it should not exceed the incubation period of COVID-19. The Incubation period of COVID-19 must be determined by the DGHS (23). On the other hand, there is an alternative provision in the Quarantine Ordinance to isolate people. That is the declaration of infected house or place which can be done without

declaring an area as a disease locality. The legal differences between self-quarantine and declaring infected house is listed in table 3.

Self-quarantine must be done in such person's house, premises or place of residence. The provision to send a person to a place of observation - 'quarantine centre' - is stipulated in the section 49 (8). This is also having to be done by the proper authority, a procedure not correctly followed in practice as military and police had engaged in this without a legal authority.

#### • Opening of institutions and businesses

When a disease locality is declared due to COVID -19 and with the restriction of movements, no person shall open to the public any institution, place of business or any other similar premises unless permitted by the proper authority (S.92) (23). Therefore, all government, private, commercial and non-commercial institutions shall be kept closed to public unless permitted by the proper authority. This does not necessarily mean that all premises should be closed, and this only means that premises should not be opened to people. Therefore, premises which are not opened to public (e.g., certain offices, stores, factories, etc.) could be kept functioning.

However, the proper authority may allow operating or functioning of any institution, workplace, supermarket, shop, sales outlet or any other place of business which provides essential services, or any other service required for maintaining national security or public health (S.93) (23). The law has not allowed the proper authority to permit any person to travel within, when movements are restricted, unless the proper authority lifted up the restriction of movements. Therefore, even the permitted premises are opened, people could not be able to access them. On other words, essential services and goods (as permitted by the proper authority) have to be delivered to the doorstep of the people. In addition, to the non-compliance to legal procedure, in practice, it has been allowed selected people to travel within the restricted area.

Disease Locality can be declared without restriction of movements inside. In such instances institutions,



shops, workplaces or any other place could be kept open. Table 5 lists out practices to be adopted compulsory within such premise (S.94 and 95).

#### • **Practices in public transport vehicles**

When a Disease Locality is declared due to COVID - 19, the driver, conductor and the owner of a motor vehicle which is used for public transportation shall ensure such social distancing between two passengers as determined by the proper authority and shall comply with such other disease preventive measures as may be determined, from time to time, by the proper authority (S.97) (23). The one-meter social distance is not mentioned here; therefore, the social distance could be determined by the proper authority. However, since public transport vehicle is a public place, peoples are obliged to wear face masks and to keep social distance not less than one meter. Therefore, there could be mismatch between provisions related to public place and public transport which is another laxity in legal drafting. The one-meter distance rule is not pragmatic for public transport in Sri Lanka.

#### • **Compulsory vaccination**

Provision on vaccination is a co-provision to the isolation in a diseased locality which can be imposed with isolation restrictions. The proper authority can vaccinate any person in a diseased locality, however only for the disease's smallpox (S. 59A) (8). This is a compulsory vaccination which no person can refuse. Similar provisions – compulsory vaccination for smallpox - available in the Vaccination Ordinance, No. 20 of 1886 (32). Since smallpox is no more prevailing, this provision is not relevant to date. Provisions may introduce as amendments mandating vaccination to mitigate the adverse health impact of COVID-19 and for contagious diseases which could emerge in the future.

The case of *J Choudhury vs. The State of Orissa* (1963) was based on the Epidemic Diseases Act of 1897 in India. In 1961, State of Orissa asked people to compulsorily inoculate to prevent the spread of Cholera during the 'Ratha Jatra' Festival. A homeopathic doctor was convicted as he refused to

get inoculated. The accused appealed against the lower court decision based on the grounds that he was protected from cholera by homeopathic precautions. Orissa High Court dismissed the appeal by upholding the provisions of the Epidemic Diseases Act (33). Therefore, no one could refuse a vaccine which had made compulsory under a public health law.

#### • **Provisions on 'infected house/place'**

The proper authority can declare a house or place as an 'infected house or place' (S.56) where no person shall enter or leave such house or place without the permission of the proper authority. This infected house/place could be a block of houses or a particular locality (S.75) (8). Further, the proper authority can evacuate occupants in the neighbourhood, for a period decided by the proper authority (S.75) and prohibit removable of any articles/goods from the infected building (S.71) (8). Duration of the declaration/notice is to be decided by the proper authority. This provision of declaring infected houses/place can be used to isolate persons within a house/place. Advantage of this provision is that isolation can be done without declaring the area as a disease locality, which would have been ideal instead of self-quarantine, though this useful provision on infected house/place had minimally used during this COVID-19 epidemic.

#### • **Provisions on 'hospital' or 'place of observation'**

The proper authority can declare any hospital or place as a 'hospital' or 'place of observation' (S.42). Though the ministry of health has declared several hospitals as COVID-19 hospitals, they were merely administrative decisions rather than legal declarations under the Quarantine Ordinance. No person shall enter or leave such hospital/place unless permitted in writing by the proper authority (S.44) and approach within one hundred yards (91.44m) of such hospital/place (S.43); however, this rule does not apply to persons who pass through the public roads within such area (S.43) (8). The proper authority is also vested with powers to acquire any building for isolation or observation of persons (S.79) (8). So far, such acquirements were done by the

government through administrative procedures instead of using the legal powers of proper authorities under the Quarantine Ordinance. The concept of hospital or place of observation is widely used by the term 'quarantine centre' which is legally incorrect. The term 'quarantine' has a different meaning. The term 'observational centre' would have been better for informal use.

#### • Provisions in the Constitution

The freedom of peaceful assembly, the freedom of association, practice of religion with others in public, the freedom to engage lawful trade/ business/ occupation/profession/enterprise, the freedom of movement within Sri Lanka and the freedom to return to Sri Lanka are fundamental rights guaranteed by the Constitution of the democratic Socialist Republic of Sri Lanka (34). However, these fundamental rights have been limited by virtue of Article 15 of the Constitution to prevent and control of such diseases. The Constitution has allowed to restrict above mentioned fundamental rights by laws enacted in the interest of public health and mortality. Therefore, restriction of above fundamental rights by a law in relevant to prevention of contagious disease, is not considered as a violation of fundamental right. Hence, right to conduct rallies organized by political parties or trade unions is no more a fundamental right if there is a threat to public health and can be prohibited under The Ordinance. However, instead of using the provisions of the Quarantine Ordinance, it is common to see that the police are requesting injunction orders from courts.

Similar constitutional provisions are seen in other jurisdictions also. The Constitution of the United States empowers the federal government to enact laws on isolation and quarantine (35).

In the case of *Jacobson v. Massachusetts* (1905) in the United States of America, the appellant challenged the state law on compulsory vaccination for Smallpox based on the ground that it violates public liberty; therefore, unconstitutional. However, the Supreme Court accepted the right of the state to enact laws in order to protect public health and declared that the questioned law is not

unconstitutional (36). Therefore, enacting and implementing laws to protect public health does not violate fundamental rights.

*Dolan and others v Secretary of State for Health and Social Care and others* (2020) was a case based on the Public Health (Control of Diseases) Act of 1984, Health and Social Care Act of 2008, and Coronavirus Act of 2020 in England. England government imposed a 'lockdown' situation on 26.03.2020, restricting movements and school education, in order to prevent the spread of COVID-19. Appellants argued that this is unlawful which severely restricts public liberty, human rights and educational rights. Court of Appeal concluded that imposed restrictions could not be considered to be unlawful, breach of general public law principles or violation of human rights (37). This recent case explains the legal validity of public health laws which would restrict public freedom and human rights.

#### Conclusions & Recommendations

Isolation is a frontline preventive strategy in contagious diseases like COVID-19. The law of Isolation is mainly governed by the Quarantine and Prevention of Disease Ordinance in Sri Lanka. The Quarantine Ordinance has adequate provisions on isolation with several different options in implementing such as disease locality, infected house/place, self-quarantine, observational hospital/place, etc. However, the powers had been underutilized and misused, probably due to poor confidence and knowledge among authorities. In the absence of proper involvement of the authorities, unauthorized persons and bodies trend to utilizing similar power illegally and unscientifically. Therefore, to prevent COVID-19 and other contagious diseases, the authorities should use their legal powers under the Quarantine Ordinance timely and confidently. Empowering health authorities with knowledge and skills through training would help to prevent and control of contagious diseases including COVID-19.

**Table 1: Amendments to *The Ordinance***

Name
Ordinance No. 7 of 1917
Ordinance No. 14 of 1919
Ordinance No. 14 of 1920
Ordinance No. 13 of 1936
Ordinance No. 11 of 1939
Ordinance No. 5 of 1941
Ordinance No. 38 of 1943
Act No. 12 of 1952

**Table 2: Amendments to the regulations published in the Gazette No. 7481 on 28.08.1925**

Name
Gazette No. 7971 on 10.03.1933
Gazette No. 6365 on 22.04.1938
Gazette No. 9134 on 11.06.1943
Gazette No. 9773 on 24.09.1947
Gazette No. 9908 on 1.10.1948
Gazette No. 10,593 on 2.10.1953
Gazette No. 10,713 on 17.09.1954
Gazette No. 2168/6 on 25.03.2020
Gazette No. 2170/8 on 11.04.2020
Gazette No. 1131/24 on 10.05.2000
Gazette No. 2197/25 on 15.10. 2020

**Table 3: Differences between provisions of self-quarantine and infected house/place**

Self-quarantine	Infected house/place
A person can be self-quarantined only in Disease locality	A person self-quarantine has to be done only in re Neighbourhood of an infected house can be evacuated lated to COVID-19 can be isolated in a house or place in any area
Person suspected to have COVID-19 can be self-quarantined	Infected house/place can be declared only if there is an ongoing infect Infected house/place can be declared due to any infectious disease ion (diagnosed to have and infection either clinically or laboratory)
self-quarantine has to be done only in related to COVID-19	Infected house/place can be declared due to any infectious disease
Neighbourhood of an infected house cannot be evacuated	Neighbourhood of an infected house can be evacuated
Time duration of the self-quarantine should not exceed the incubation period of COVID-19 which has to be determined by the Director General of Health Services (Proper Authority for the entire country)	No such restriction in time duration. However, expires in 7 days if not confirmed by the Minister of health

**Table 4: Proper Authorities for administrative areas**

Administrative area	Proper Authority
Entire country	Director General of Health Services
Municipal Council	Mayor of the Municipal Council
	Medical Officer of Health
	Additional Medical Officer of Health
Urban Council	Mayor of the Urban Council
	Medical Officer of Health
	Additional Medical Officer of Health
Pradeshia Saba	Chairman of the Pradeshia Saba
	Medical Officer of Health
	Additional Medical Officer of Health
Port	Director of Quarantine
	Deputy Director of Quarantine
	Medical Officer of the Port Health Office
Airport	Director of Quarantine
	Deputy Director of Quarantine
	Medical Officer of the Airport Health Office
Military, naval or air force establishment	Medical officer of the establishment
Area other than an area referred above	District Director of Health Services or Regional
	Director of Health Services

**Table 5: List of practices to be adopted in premises where movements restricted**

Should not exceed the maximum number of employees and other persons permitted within the premises at a time stipulated by the Proper Authority
Should ensure that every person who enters such institution or work place wears a face mask at all times
Should ensure social distance not less than one metre between two persons
Should ensure that the body temperature of every person is measured before entering
If the body temperature is more than the body temperature as determined by the Proper Authority, such person shall not be allowed to enter
Should provide adequate hand washing facility with soap or sanitizer
Should ensure that every person who enters such institution or workplace washes their hands before entering
Should maintain a record of the name, identity card number and contact details of every person entering
Should comply with such other disease preventive measures as may be determined, from time to time, by the Proper Authority

## Author declarations

**Competing interests:** None

**Ethics approval & consent to participate:** Since this is a desk review of open access public documents, ethical approval is not relevant. Since this is a desk review of open access public documents, consent is not relevant.

**Funding:** None

**Acknowledgements:** The corresponding authors sincerely appreciates staff of the Food Control and Administration Unit of the Ministry of Health Sri Lanka for their administrative support.

**Author contributions:** The corresponding author did the initial literature search and writing of the manuscript. Co-authors contributed to the literature search and for further methodological development of the paper.

## Reference

- World Health Organization. 2020. *COVID-19 strategy update*. World Health Organization. Available from: <https://www.who.int/publications/i/item>. Accessed 19 October 2021.
- Girum T, Lentiro K, Geremew M, Migora B, Shewamare S. Global strategies and effectiveness for COVID-19 prevention through contact tracing, screening, quarantine, and isolation: a systematic review. *Tropical Med and Health* 2020; 48(1): DOI: 10.1186/s41182-020-00285-w.
- Mayer, Johanna. 2018. *The origin of the word quarantine*. Science Friday. Available from: <https://www.sciencefriday.com/articles/the-origin-of-the-word-quarantine>. Accessed 19 October 2021.
- Hettiarachchi C. *Contagious Diseases Prevention Law in Sri Lanka*. Gurulugomi ebookstore 2021. Available from: <https://gurulugomi.lk>
- Department of Government Printers. *Quarantine and Prevention of Disease Ordinance, No 03 of 1897*. Colombo: Department of Government Printers, 1897.
- Zabadi H, Yaseen N, Alhroub T, Yahya M. Assessment of Quarantine Understanding and Adherence to Lockdown Measures During the COVID-19 Pandemic in Palestine: Community Experience and Evidence for Action. *Public Health* 2021. DOI: 10.3389/fpubh.2021.570242.
- Government Publication Bureau. *Quarantine Regulations of 1960*. Colombo: Government Publication Bureau, 1960.
- Department of Government Printers. *Gazette No. 7481*. Colombo: Department of Government Printers, 1925.
- Mackowiask P, Sehdev P. The Origin of Quarantine. *Clinical Infectious Diseases* 2002; 35(9): 1071-1072. DOI: 10.1086/344062.
- Lexico. 2021. *Quarantine*. Oxford Lexico. Available from: <https://www.lexico.com/definition/quarantine>. Accessed 10 September 2021.
- Government Publication Bureau. *Penal Code No 02 1883*. Colombo: Government Publication Bureau, 2015.
- Government Publication Bureau. *Animal Disease Act, No 59 of 1992*. Colombo: Government Publication Bureau, 1992.
- Government Publication Bureau. *Plant Protection Act, No 35 of 1999*. Colombo: Government Publication Bureau, 1999.
- Ministry of Health and Indigenous Medical Services. *Quarantine measures for travellers arriving from overseas during the pandemic of COVID-19, Sri Lanka*. Colombo: Ministry of Health and Indigenous Medical Services, 2021.
- Ministry of Health and Indigenous Medical Services. *Quarantining of high-risk individuals for the control of COVID-19 outbreak, Sri Lanka*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
- Epidemiology Unit. *Guideline for the Home quarantine/Quarantine in non-health care settings*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
- Ministry of Health and Indigenous Medical Services. *Release of persons who have quarantined from the quarantine centers*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
- Ministry of Health and Indigenous Medical Services. *Contact investigation and quarantining for COVID-19 outbreak control*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.



19. Ministry of Health and Indigenous Medical Services. *Quarantine of health staff who are exposed to COVID-19 patients*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
20. NSW Government. 2021. *Quarantine on NSW- what you need to know*. NSW Government. Available from: <https://www.nsw.gov.au/covid-19/quarantine>.
21. NSW Government. 2021. *Self-isolation rules*. NSW Government. Available from: <https://www.nsw.gov.au/covid-19/rules/changes/self-isolation>.
22. NHS. 2021. *When to self-isolate and what to do*. National Health Services. Available from: <https://www.nhs.uk/conditions/coronavirus-covid-19/self-isolation-and-treatment>.
23. Government Publication Bureau. *Gazette No.2197/25*. Colombo: Government Publication Bureau, 2020.
24. Ministry of Health and Indigenous Medical Services. *Notice on Declaration of Disease Locality*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
25. Department of Government Printers. *Venereal Disease Regulations*. Colombo: Department of Government Printers, 1943.
26. Department of Government Printers. *Mosquito-Borne Diseases (Prevention) Regulations*. Colombo: Department of Government Printers, 1946.
27. Ministry of Health and Indigenous Medical Services. *Closing down premises as a public intervention*. Colombo: Ministry of Health and Indigenous Medical Services, 2020.
28. Ministry of Health and Indigenous Medical Services. *Movement restriction and closing of establishments under Quarantine and Prevention of Disease Ordinance*. Colombo: Ministry of Health and Indigenous Medical Services, 2021.
29. Ministry of Health and Indigenous Medical Services. *Delegation of powers to control COVID-19 epidemic*, 2020.
30. Department of Government Printers. *Public Security Ordinance No 25 of 1947*: Department of Government Printers, 1947.
31. Department of Government Printers. *Ceylon Quarantine Regulations*. Colombo: Department of Government Printers, 1934.
32. Department of Government Printers. *Vaccination Ordinance, No 20 of 1886*. Colombo: Department of Government Printers, 1886.
33. Indian Kanoon. *J Choudhury vs. The State of Orissa* (1963). Available from: <https://indiankanoon.org>. Accessed 18 October 2021.
34. Government Publication Bureau. *The Constitution of the Democratic Socialist Republic of Sri Lanka*. Colombo: Government Publication Bureau, 1978.
35. Centers for Disease Control and Prevention. *Quarantine and Isolation*. 2021. U.S. Department of Health and Human Services. Available from: <https://www.cdc.gov/quarantine/specificlawsregulations>.
36. Justia. *Jacobson v. Massachusetts* (1905). Available from: <https://supreme.justia.com/cases/federal/us/>. Accessed 19 October 2021
37. Practical law. *Dolan and others v Secretary of State for Health and Social Care and others* (2020). Available from: <https://uk.practicallaw.thomsonreuters.com/>. Accessed 19 September 2021.