

# CLAMPDOWNS AND COURAGE: SRI LANKA



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# SRI LANKA



## ON THE BRINK

Sri Lanka is at cross roads. With crises in the political, economic, social, and cultural spheres aggravating daily, the country faces looming uncertainty. The situation that was deteriorating during 2017, has now reached a climax. In the period between May 2017 to April 2018, Sri Lanka has witnessed a number of developments with far reaching consequences.

The post-Rajapaksa expectations of respect for human rights and enhanced democratic governance in Sri Lanka following the regime change in January 2015, were based on bi-partisan politics in the South, willingness of the Tamil polity to find a negotiated political solution, and a strong civil society. The factors that propelled change have now come under threat due to emerging political instability.

On the one hand, former president Rajapaksa, who maintained an authoritarian family oligarchy, threatens to come back to power using war triumphalist nationalism as his political platform. Sinhala Buddhist majoritarianism provides the foundation for his politics. On the other hand, the ruling coalition which came to power on the promise of democratisation, justice, and accountability has almost disintegrated. The two coalition partners, the Sri Lanka Freedom Party (SLFP) headed by President Sirisena and the United National Party (UNP) headed by Prime Minister Wickremasinghe, have taken up contradictory positions on political, economic, social, and cultural issues. The year 2017 marked the political and social polarization of the country.

The recent anti-Muslim violence that sent shock waves throughout the country is an indication of the increasingly widening ethnic polarisation. Xenophobia, fuelled by 'fake news' on social media, remains disturbingly widespread. In the wake of anti-Muslim riots in early March, the government blocked all social media platforms blaming the social media for inciting violence and mobilising rioters. Now, the government plans to bring in mechanisms to monitor and control social media.

The section of civil society that could have played a role in providing an alternative narrative has been partly co-opted by the government while the rest of civil society largely remains fragmented on ethnic, political, and social lines. For a variety of reasons including the absence of a united approach, the once vibrant media rights organisations have become weak.

Since January 2015, post-Rajapaksa Sri Lanka made a paradigm shift in its relations with the international human rights community, coordinating positively with United Nations human rights mechanisms and opening up the country for international scrutiny. A number of UN working groups and Special Rapporteurs as well as international human rights organisations visited the country and produced critical reports, while commending the positive developments.

The Right to Information Act has been in force since February 3, 2017. The Right to Information Commission of Sri Lanka, which maintains a trilingual website, has so far been proactive on access to information and demonstrated a remarkable independence.

The National Human Rights Action Plan (NHRAP) for the period 2017–2021 was made public on November 1 and approved by the Cabinet in January 2017. The Action Plan has a number of goals related to freedom of expression. However, there has been no public discussion on the Action Plan, either before or after it was published.

During the period under review, open space for critical opinions and the right to dissent remained intact in general. However, this period saw multiple incidents of censorship as well as assaults and harassment of media personal. The Censor Board refused permission to perform a theatrical performance on abortion which was part of V-Day PatriAnarchy. Since November 2017, the popular website LankaeNews remains banned in Sri Lanka.

The government's failure to deliver on its promise of political, social, and economic justice and the infighting between the ruling coalition have provided fertile ground for the nationalist forces in the North as well as the South. The developments that took place during 2017 hint at the possibility of the repressive Rajapaksa family oligarchy returning to power, overturning democratic gains achieved after 2015.

It is in this context that Sri Lanka needs to achieve the Sustainable Development Goals (SDGs) as part of the global 2030 agenda. While the SDG 16 speaks of promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels, target 16.10 is directly related to freedom of information and expression: "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements".

Conceptually, the aspect of public access to information refers to the presence of a robust system through which information is made available to citizens. Such a system represents a combination of intellectual, physical, and social elements that affect the availability of information to individuals. Further, viewing public access to information as a matter of human rights reinforces the aspect of protecting fundamental freedoms.

To achieve these standards Sri Lanka needs democratic governance that facilitates and encourages citizens' participation, but the developments in the country in the preceding year do not appear favourable for SDG 16:10.

At the United Nations Universal Periodic Review (UPR) of Sri Lanka held in November 2017, the Government of Sri Lanka accepted recommendations to take all necessary measures to ensure the protection of civil society actors, and journalists and to investigate cases of threats and attacks against them, and to take measures to adequately protect human rights defenders, to ensure proper investigation into alleged attacks and to prosecute those found responsible.



Sunday newspapers displayed by a roadside vendor in Colombo on February 11, 2018. Sri Lanka's ruling alliance was humiliated in local elections seen as a test of its leadership and the party of ex-president Mahinda Rajapakse was on track for a shock landslide victory. Credit: Lakruwan Wanniarachchi/AFP



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## HUMAN RIGHTS ACTION PLAN 2017-2021

In 2017 the government introduced the much-awaited National Human Rights Action Plan (NHRAP).

The Action Plan consists of numerous goals and corresponding objectives, among which are enhancing investigatory procedures regarding extrajudicial killings, criminalising enforced disappearances, ensuring constitutional recognition of the right to privacy, enhancing awareness of the law pertaining to hate speech, operationalising and fulfilling the right to information, enhancing democratic transparency, and ensuring compliance with the Fundamental Rights Chapter of the Constitution and transparency in the law making process. However, during the period under review, there was no visible progress under any of these objectives. The Action Plan notes that apart from recognising constitutional and international obligations to guarantee civil and political rights, Sri Lanka has enacted legislation to substantiate certain core civil and political rights, including the ICCPR Act, No. 56 of 2007, Right to Information Act, No. 12 of 2016, and Office on Missing Persons Act, No. 14 of 2016.

NHRAP includes the short-term goal (4.1.1.) of replacing the current counterterrorism law, Prevention of Terrorism Act (PTA), with a law that is compliant with constitutional provisions and international human rights law. PTA, which was used to suppress media workers during the previous regime, directly affects freedom of expression along with other human rights. It was under this law that journalist J. S. Tissainayagam was convicted by the Colombo High Court and sentenced to 20 years of rigorous imprisonment, though he was pardoned by then President Rajapaksa in 2010. Although several drafts of a new counterterrorism law have surfaced, none have complied with international human rights standards. In May 2017, the Cabinet approved, with little public consultation, a draft Counter Terrorism Act (CTA), which is intended to replace PTA. In the face of severe public criticism, the government has not moved forward. The Bill falls short of the government's pledges on protection of human rights and ending detention without charge.

### Preventing hate speech

One of the medium-term goals of the NHRAP is to enhance awareness of the law pertaining to hate speech. To achieve this goal, it is planned to conduct a public awareness campaign on the provisions of the ICCPR Act, No. 56 of 2007 pertaining to the prohibition of hate speech and to conduct an awareness campaign at the secondary school level. Of late, hate speech has become a pressing concern in the country. While substantive action is hardly taken against hate speech in Sri Lanka, in early March the government blocked access to social media platforms under the guise of fighting hate speech during the outbreak of communal violence. No action has been taken so far to effectively address widespread hate speech which remains a major issue related to freedom of expression in Sri Lanka.

### Religious Freedom

To achieve the objective of removing unlawful impediments to freedom of religion, the NHRAP seeks to take proactive measures to prevent attacks on places of worship, firstly, by investigating, prosecuting and upon conviction, punishing perpetrators of religion-based violence under appropriate laws, secondly by providing additional training to law enforcement actors and judicial officers, thirdly by taking disciplinary action in instances of failure by local police to prevent attacks on religious communities, and fourthly, by establishing mechanisms at community level in consultation with inter-faith groups. Attacks on religious places belonging to Muslims and Evangelical Christians have taken place regularly during the period under review. However, no effective action has been taken to protect religious freedom.

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The Muslim Council of Sri Lanka, an umbrella organisation for civil society groups, has recorded 25 attacks on mosques and Muslim-owned establishments since April 2017 to July 2017, and the National Christian Evangelical Alliance of Sri Lanka has reported over 40 incidents in 2017.

The controversial Buddhist monk Galagodaatte Gnanasara Thero surrendered in late June 2017, after evading arrest for a month following charges of hate crimes against Muslims. He was arrested in court and granted bail soon after. The significant influence that Sri Lanka's Buddhist clergy wields on the country's political affairs brings in to question whether tackling religious intolerance in Sri Lanka is a legal challenge or a political one.

Following violent incidents against Muslims in Gintota in Galle district in November, in Ampara, in the Eastern Province, in February 2018, major anti-Muslim violence in Kandy district in early March 2018 prompted the declaration of a state of emergency, imposition of curfew and ban on social media.

A prominent lawyer and human rights activist, Lakshan Dias was publicly threatened with disbarment by the then Minister of Justice, Dr Wijedasa Rajapaksa, for providing figures on the number of such attacks in a television debate in May 2017. He was named and shamed by nationalist media causing him to leave the country for a short period.

## CENSORSHIP AND CONTROL

The fourth goal of the National Human Rights Action Plan aims at protecting and promoting the freedom of speech and expression including the right to information.

The blocking of the popular and critical web site LankaeNews.com within Sri Lanka is a notable regression of good governance promises. All local internet providers have blocked access to LankaeNews on the orders of Telecommunication Regulatory Commission (TRC) of Sri Lanka. So far, all inquiries to find out the reasons for blocking the website have been unsuccessful. The TRCSL has turned down an RTI request regarding the ban on LankaeNews, stating that the disclosure of information pertaining to the ban is a threat to national security. The RTI request was filed by Sampath Samarakoon, media rights activist and the editor of Vikalpa.org and Groundviews.org.

Although the request on LankaeNews ban was rejected, TRC released information revealing that it had blocked 13 websites in Sri Lanka since 2015. The websites blocked include a number publishing political news, and a few publishing pornographic material. The reasons given for blocking four websites: vigasapuwith.blogspot.com, ukussa.org, Lankanewsweb.today, and lankacnews, was "publishing incorrect information and damaging the President's reputation". Two, lankanewsweb.today and sinhala.lnwtoday, were blocked for "publishing false information".

The information that was initially denied to Groundviews on national security grounds, was released later following an appeal to the RTI Commission. It was confirmed that the website LankaeNews was blocked following a complaint from the Office of the President in November 2017.

Experts opine that the TRC has no power to block a transmission without invoking judicial proceedings or obtaining an order from the Minister in charge, thus rendering the LankaeNews ban not only politically, but also legally wrong.

The government seems to have abandoned its project of media regulation, which was initiated by then Director General of the Government Information Department in early 2017.

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The proposed press law, titled Independent Council for News Media Standards (ICNMS) envisaged a fine of LKR 1 million (USD 6400) for any media institution which does not subscribe to the ICNMS' proposed laws and a fine of Rs.100 000 (USD 640) and imprisonment of the journalist found guilty of publishing 'false news'.

Meanwhile, political control of large state media networks continues unabated, making state-controlled media the most biased and most propagandist force.

## REINING IN SOCIAL MEDIA

The social media ban that was imposed in the wake of anti-Muslim riots in Kandy, was another alarming instance of media censorship. The anti-Muslim gangs mobilised themselves on social media, particularly Facebook, and anti-Muslim rhetoric was widely shared. The Sri Lankan Facebook community is over five million strong and the overwhelming majority use mobile connections to read, share and post on Facebook. Yudhanjaya Wijeratne, a writer and a data scientist concluded that contrary to the government's expectation, the ban on social media merely brought Facebook activity to January-February levels (on average, a roughly 50 per cent drop from the three days before the riots). By being uncoordinated and by deploying draconian tactics of the sort that one would have expected from the Rajapaksa regime, the government has lost a great deal of credibility", he observed.

The irony is that while the ban was in force, both the President and the Prime Minister kept posting on their Facebook pages. The censorship sent a clear message regarding the government's power to control media and information. As most users turned to Virtual Private Networks (VPN) to access Facebook, at the later stages of the state of emergency and social media ban, the government started to block VPNs as well.

The government is now discussing the setting up of an institution to monitor social media usage as a measure aimed at preventing provocation of hate against any community or religion. "The government will not block social media such as Facebook but there will be strict monitoring, which will be aimed at preventing postings which provoke hate among communities and religions. This monitoring may result in baring those who upload hate speech on social media," stated the Minister of Digital Infrastructure Technology.

Many Sri Lankan rights activists have raised the issue of not being able to report hate filled and abusive posts on Facebook in local languages. The government invited Facebook officials to the country within weeks of anti-Muslim violence to discuss the issue.

Writing an open letter to Facebook, Colombo-based think tank the Centre for Policy Alternatives expressed that, "The role of social media platforms like Facebook in amplifying messages of violence has not been adequately examined. A delegation from Facebook met with the Government of Sri Lanka and committed to work with them to combat hate speech. However, the contents of that discussion are not in the public domain. It is not clear to what extent Facebook will be willing to work with representatives of civil society, some of whom have been flagging content on Facebook that violates its own Community Standards, for years. The lack of unbiased Sinhala-language moderation is regularly cited as one of the root causes why pages regularly posting abusive content along these themes are allowed to thrive online, despite sustained reporting from concerned users".

Thirteen civil society organisations in a letter addressed to Facebook founder Mark Zuckerberg, urged that, “At the very least, the company should make clear the number of moderators assigned to deal with user generated reports around content in Sinhala, in which Facebook office or time zone they are located in, as well as their gender. There should also be a clear commitment to look into and resolve user generated reports within a specific time period, which during heightened violence, must be further reduced”.



Fugitive Buddhist monk Galagodaatte Gnanasara (C) arrives at a court in Colombo June 21, 2017, to surrender in response to a warrant for his arrest. Gnanasara went underground from late May after police linked dozens of alleged hate crimes against Muslims to his radical group BBS or Buddhist Force. Credit: Ishara S. Kodikara/AFP

## **HUMAN RIGHTS COMMISSION OF SRI LANKA**

The Human Rights Commission of Sri Lanka (HRCSL) has shown a high level of independence and proactively intervened in protecting and promoting human rights and the rights of journalists in Sri Lanka.

For instance, in March 2018 HRCSL Vavuniya regional office was able to obtain press for accountability of the military. A Tamil journalist Shanmugum Thavaseelan was insulted and harassed by military officers while he was covering a protest over land in Mullathivu in the Northern Province in late February 2018. Upon his complaint, the HRCSL regional office conducted an inquiry at which the HRCSL was able to obtain a guarantee from the military officer in charge of the camp that journalists covering protests would not be harassed in the future.

The HRCSL also weighed in on the social media ban. Chairperson of the Commission Dr Deepika Udagama stated that “the Commission recognizes the critical necessity to protect freedom of expression and the right to information as guaranteed by the Constitution of Sri Lanka and Sri Lanka’s international human rights obligations... In doing so, we recognize the need to strike the necessary balance between those rights and maintenance of public order and the protection of the rights of all.”

## **RIGHT TO ASSOCIATION UNDER THREAT**

In February 2018, the Cabinet decided to publish in the Gazette the repressive Draft Act to Amend the Voluntary Social Service Organizations (Registration and Supervision) Act no. 31 of 1980 and present it to Parliament for approval. The drafting of this Bill took place in secrecy with no consultations. The Bill, the purpose of which is to “regulate, supervise and inspect” NGOs through a ‘National Secretariat for NGOs’, gives significant investigative powers to the Secretariat which assumes and duplicates functions of the police.

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The extraordinary and excessive power given to the Secretariat infringes on freedom of association, freedom of expression, as well as the right to privacy. It must be noted that the draft legislation, prepared in 2011 when the National NGO Secretariat was under the Ministry of Defence and the Defence Secretary was Gotabhaya Rajapaksa, was aimed at controlling civil society.

Activists came down heavily on the proposed law. “The draft Act creates a range of ‘offences under the Act’, some of which are broadly and vaguely defined and leave room for abuse. Offences include non-registration, which violates Freedom of Association and the principle of “Voluntary Notification”. Even a simple request for information if deemed inadequately responded to may attract a fine of Rs 250,000 (USD 1,600) or one-year imprisonment and thus, is likely to create a fear psychosis”, opined Ruki Fernando.

Sri Lanka’s media watch dog Free Media Movement noted that under the proposed amendment, “enjoyment of fundamental democratic values such as freedom association and freedom of peaceful assembly will be challenged. It is evident that the underlying aim of these amendments is to control the activities of civil society organisations and community organisations.”

According to the Draft Act, all voluntary civil associations have to register themselves with the National NGO Secretariat. The proposed amendment seeks to empower National NGO Secretariat to launch investigations into activities of civil society organizations without any judicial oversight.

Significantly, no major political party opposed this amendment. In the face of mounting opposition from civil society, however, the government decided to postpone the amendment, leaving the question as to what motivates a government committed to good governance to approve a suppressive Act that seeks to control civil society. In times of crisis, a robust civil society and a professional independent media are the bulwarks against the creeping tide of authoritarianism.



Sri Lankan journalists and activists hold candles during a vigil in Colombo on January 30, 2018 for murdered colleagues and demanded justice for those killed for their work. Credit: Lakruwan Wanniarachchi/AFP

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## MEDIA VIOLATIONS: MAY 2017 - APRIL 2018

**Killings of journalists:** 0 – None recorded

**Threats against the lives of journalists:** 1 (Male: 1, Female: 0)

**Other threats to journalists:** 5 (Male: 5 Female: 0)

**Non-fatal attacks on journalists:** 1 (Male: 1, Female: 0)

**Threats against media institutions:** 1

**Attacks on media institutions:** 0 – None recorded

### Threat against the lives of journalists

**February 8, 2018: Western Province** Sisira Kumara Kuruppuarachchi provincial journalist Mabubima daily was returning home after covering a local government election meeting in Katunayaka, Gampaha District, around 8.00 pm along the Gampaha-Minuwangoda road near the 'Black Bridge' unidentified person threatened him with a weapon and told him not to engage in anti-government politics. He complained about the incident to the local police.

### Other threats to journalists

**June 8, 2017: Colombo** John Amaratunga, Minister of Tourism Development and Christian Religious Affairs, threatened journalists when he was asked questions regarding an environmental issue at Maturajawela wetlands and the charge that people were blaming him for the garbage problem in at Bopitiya in Wattala. Furious over the questions, Amaratunga asked the journalists to leave.

**January 28, 2018: Uva** Kapila Kuruppuarachchi of Sirasa TV and Jayalath Dissanayake of TV Derana, who were covering the election rally of United People's Freedom Alliance (UPFA) and Sri Lanka Freedom Party (SLFP) under the patronage of President Maithripala Sirisena, were threatened and chased away by an aide of the Minister of Transport and Civil Aviation Nimal Siripala De Silva.

**March 13, 2018: Colombo** KA Suresh Wijayarangana, the deputy manager current affairs at Neth FM radio, was threatened on telephone by deputy minister Palitha Thewarapperuma after an investigative radio program alleged him of corruption. The deputy minister said, "You will learn a lesson".

**March 28, 2018: Northern Province** Sri Lanka Military questioned Provincial Journalist Shanmugam Thavaseelan attached to the ABC Media Net Work A'lampil in Mullaitivu District in regarding his professional activities and threaten him to refrain from his professional duties

### Non-fatal attacks on journalists

**December 10, 2017: Southern Province** Provincial journalist Rohan Pradeep Kumara, who works for Hiru TV and Diviania newspaper, was assaulted by the Navy Commander Admiral Ravindra Wijegunaratne at the Hambantota port while covering the navy intervention on the protest by the port workers.

### Attacks on media institutions

**April 4, 2018: Colombo** Unruly mob exploded large amounts of fire crackers outside the gates of the Sirasa News First Colombo office and threw exploding fireworks at the closed gates and premises and boundary walls of the news group.

### Other notable incidents / developments

#### Censorship

**November 8, 2017: Colombo** Lanka-e-News a UK-based website that often publishes reports critical of the Sri Lankan government was inaccessible in Sri Lanka. The site was blocked after it published a report online alleging corruption by the Office of the President in a deal relating to the purchase of warships. The website said that 'the Telecommunications Regulatory Commission of Sri Lanka (TRCSL) which is under the President has ordered ISPs to block people in Sri Lanka accessing our website'.

#### Harassment

**July 30, 2017: Central Province** Palani Digambaram, Minister of Infrastructure and Community Development allegedly ordered the microphone of Sirasa Media correspondent Indika Roshan Kauarachchi to be removed from the podium where he was speaking in Hatton, Central Sri Lanka on Sunday, July 30. Kauarachchi was reporting the event at the invitation of the Government Information Department. Footage from television recordings shows evidence that the Sirasa microphone had been removed from the podium. Since the incident, supporters of the Minister have continued to threaten Indika.

# NEPAL



**May 10, 2017: Kathmandu** Thakur Prasad Timalisina and Gambhir Pathak, FNJ members in Kathmandu district, were arrested ahead of the local elections.

**June 17, 2017: Kanchanpur** Editor Khem Bhandari and executive editor Ganesh Bhatt of Manaskhanda daily were arrested for publication of a news report and charged under the Public Crime and Punishment Act in Bhimdatt Municipality, Kanchanpur, western Nepal. The news in question is a report about the police arrest of two women whom the newspaper claimed to be innocent. Police released Bhandari and Bhatt after 28 hours of detention on June 18.

**July 19, 2017: Bajura** Chakka Bahadur Malla, district correspondent for Image Channel TV, was arrested and taken into custody by the police in Bajura. He was in the process of registering a case with the police after he was attacked along with four municipal officials of the Budinanda Municipality on July 13. A gang attacked them near the district headquarters. Malla received injuries and was recovering when he was arrested after a police complaint was registered against him. The police registered a case of rape against Malla, in which the District Court, on April 1, cleared him due to lack of evidence.

**November 26, 2017: Various** At least eight journalists including Khem Thapaliya of Jaljala monthly, Jitendra Maharjan of Nihugu Jwojalapa monthly, Dipesh Shahi of Madhyanha daily, Kalibahadur Mahatara of Janaprabhat weekly, Jagadish Nath Yogi, Prakash Dumre of Garjan Post weekly, Jayashwor Acharya and Padam Prasad Pokhrel of Pyuthan Mission monthly were arrested from different parts of the country in November in connection with the election security.

**February 20, 2017: Dharan** Sangarashasil Lamjel and Jamuna Shrestha from Prabodh weekly, and Mina Tamsuwa from the Morning Times daily were arrested and booked under the Some Public (Crime and Punishment) Act. They were released on bail after one weeks' detention.

## Harassment

**August 17, 2017: Kathmandu** Gopal Khadka, the Managing Director of state-owned Nepal Oil Corporation (NOC) filed a defamation case against Nagarik daily, claiming NPR 800 million (USD 780,000) in damages with an intention to silence the media house from publishing reports about his corruption. The Kathmandu District Court official served a notice to the daily's directors Binod Raj Gyawali and Shova Gyawali, editor-in-chief Guna Raj Luintel and correspondent Dilip Paudel on September 1.

## August 17, 2017: Kathmandu (CONT.)

Nagarik daily published a series of investigative stories on corruption involved in the procurement of land by NOC in various parts of the country, the daily's sister publication Republica reported. A parliamentary probe committee has investigated the issue and concluded that procurement procedures were not followed in purchase of the lands. The media house filed a counter-claim of Rs 1.5 billion.

## Regulations

**July 31, 2017: Kathmandu** The Election Commission issued a circular to the Press Council of Nepal 'to present the chief editor of the Deshantar weekly before the EC within three days' for clarification on two news items that the constitutional body claimed to be 'false' and 'baseless'. The news items in question were published on July 23 and 30 accusing the EC of financial misconduct. The EC also directed PCN to take action against the Chief Editor Kabir Rana.

**November 21, 2017: Kathmandu** A ruling of Patan High Court in Nepal backed attempts by police to force editors of online media to reveal their sources. The Crime Division of the Metropolitan Police Office in Kathmandu wrote to several online media platforms asking them to disclose the source of the secret appraisal reports of top police officials, following a controversy about the appointment of the Inspector General of Police (IGP). The online media agencies filed a complaint against the police's request claiming that it infringed press freedom. But the Court ruled that the police action didn't violate freedom of the press. The police is investigating the unlawful access to the files and the alleged tampering with the secret appraisal reports.

**February 25, 2018: Kathmandu** The Nepali Supreme Court ordered the country's Press Council to ban the publication of news criticising the chief justice. Kantipur daily published a series of articles about discrepancies in the date of birth of Nepal's Chief Justice Gopal Parajuli. The articles alleged that he might be close to retirement age. Chief Justice Parajuli heard the case – despite the issue being about him – and entered an interim order, calling on the Press Council of Nepal (PCN) to probe news reports published by Kantipur mentioning discrepancies about his birth date in official documents. The order asked the PCN to investigate if the news violated journalists' code of conduct and to ensure that no news criticising the Chief Justice is published again.