

# The Draft Online Safety Bill

On September 18, 2023, the Draft Online Safety Bill was published in the Sri Lankan Government Gazette on the orders of the Minister of Justice. The following is a brief introduction to the Bill.

## Objectives of the Bill

As stated in Section 3, the purpose of the Bill is

- To protect persons against damage caused by false statements or threatening, alarming, or distressing statements
- To ensure protection from statements that are in contempt of court or prejudicial to the maintenance of order and impartiality of the judiciary
- To introduce measures to detect, prevent, and safeguard against the misuses of online accounts and bots to commit offenses under this Bill, and
- To prevent the financing, promotion, and other support of online accounts which repeatedly communicate false statements of fact in Sri Lanka

## Offenses under the Bill (Section 12 to 25)

- Communication of false statements of fact in Sri Lanka
- False statements amounting to contempt of court
- Provocation of riots without reason through false statements
- Disturbing a religious assembly through false statements
- Communication of false statements with the intention of offending religious sentiments
- Communication of false statements with the intention of outraging religious feelings
- Cheating through an online location
- Cheating by impersonation
- Intentional insult by false statement with intent to provoke a breach of peace
- Circulating false report with intent to cause mutiny or an offense against the State
- Communicating statements of fact to cause harassment
- Child abuse through an online location
- Making or altering bots to commit an offense

For these offenses, a punishment of 5 years' imprisonment and/or a fine, or 3 years' imprisonment and/or a fine can be imposed.

All offenses are non-cognizable and bailable.

As per Section 32, the Magistrate's Court can list as a declared online location any site which disseminates three or more prohibited statements to end users in Sri Lanka. Here, "online location" can mean either stored on a computer, viewable, listenable, or via the Internet, website, web page, reference website, or other channel such as a forum.

## Relief available under the Bill to a person offended by an online publication

An aggrieved person can complain to the Online Safety Commission. The statement in question can be banned after an investigation, and circulation of such statements can be prevented by direct notification to the circulator.

Within 24 hours after receiving the order, the offender must act according to the instructions.

If that person fails to do so, an order to

- Disable access by end users in Sri Lanka to the online location containing such communication of the statement of fact in Sri Lanka, or
- Remove the relevant communication of the prohibited statement in Sri Lanka from the online location containing such communication

shall be made to the relevant Internet Service Provider or Intermediary Service.

Any person affected by the communication of any prohibited statement may apply to the Magistrate's Court by way of petition and affidavit to obtain an order to prevent the circulation of such statements.

## Liability of service providers in relation to communication

Where a person who engages in providing the following services fails to adhere to the relevant Code of Practice issued by the Commission by way of regulations made under this Bill, and thereby causes wrongful loss to any other person, such a person shall be liable to pay damages by way of compensation to the person who suffered the loss.

An internet intermediary service

A telecommunication service

A service of giving public access to the internet, or

A computer resource service

## Preventing fake online accounts and organized counterfeiting

To prevent the creation of fake online accounts and organized counterfeiting, the Commission has the power to notify an Internet Intermediary Service to suspend such accounts for a period of time.

## Registration of Social Media Platforms

Social media websites and platforms in Sri Lanka need to register in the manner specified under Section 11 (K).

## Commission on Security of Online Systems (Online Safety Commission)

This Commission consists of six people appointed by the President.

## Powers of the Commission

- To issue directives to persons who communicate prohibited statements under this Bill
- To issue directives to persons, internet service providers or internet intermediaries
- To issue orders pertaining to registration of social media platforms
- To introduce a code of conduct for social media platforms
- To inform internet service providers and internet intermediaries to disable online sites that make prohibited statements

## Implications for the right to free speech and expression

- A non independent commission giving judgments regarding prohibited statements and stopping such statements can challenge the presumption of innocence.
- The offenses for prohibited statements set forth in this Bill are non-specific and can be given wide meaning, which can limit the right of expression.
- A Commission appointed by the President and removed by the President has no independence, the decisions of such a Commission may be political and can hinder the free expression of citizens.
- As the Bill states that social media platforms must be registered, social media platforms which do not adhere to the conditions stipulated in this Bill may leave the country. Citizens will lose the freedom of expression.
- Some of the bot activities carried out through foreign organizations related to Sri Lanka cannot be suspended on technical grounds. Only citizens of Sri Lanka can be made liable for such an offense.
- When considering the misuse of Section 3 of ICCPR and Section 120 of the Penal Code, there is a high risk of the provisions of this Bill being used to suppress dissent.

## Positive features of the Bill

- Persons committing offenses under the Bill can only be arrested with a warrant.
- All offenses under the Bill are bailable.
- False statements have been defined.

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