ශ්‍රේෂ්ඨාධිකරණයේ තීරණය:
உயர் நீதிமன்றத் தீர்ப்பு :
Determination of the Supreme Court:

SC.SD.NO.65/23

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of the exercise of the Constitutional jurisdictional of the Supreme Court under and in terms of Article 120 of the Constitution read with Article 121 of the Constitution to determine whether the Clause 6 of the Bill titled "Value Added Tax (Amendment)' or any part thereof is inconsistent with the Constitution.

Supreme Court Special Determination
Application No. 65/2023

Digital Mobility Solutions Lanka (Private) Limited

No. 309, High Level Road,

Colombo 00600.

PETITIONER

Vs.

The Honourable Attorney General,

Attorney General's Department,

Colombo 01200

RESPONDENT

BEFORE : **P. PADMAN SURASENA, J.**
A. L. SHIRAN GOONERATNE, J.
ARJUNA OBEYESEKERE, J.

SC.SD.NO.65/23

COUNSEL : Dr. K. Kanag-Iswaran, PC with Lakshmanan Jeyakumar & Aslesha Weerasekera instructed by Moahan Balendra for the Petitioner.

Nirmalan Wigneswaran, DSG with Madhushka Kannangara, SC for the Hon. Attorney General.

ARGUED & DECIDED ON : **27.09.2023**

P. PADMAN SURASENA, J.

As has been agreed upon on the last date, the Commissioner General of Inland Revenue (Acting) has filed the Affidavit dated 26.09.2023.

Mr. Lakshmanan Jeyakumar appearing for the Petitioner confirms to Court that he is in receipt of a copy of the said Affidavit.

Having perused the said Affidavit, Court observes that the Commissioner General of Inland Revenue (Acting) has confirmed that Uber Lanka (Private) Limited is a registered VAT payer; Uber Lanka (Private) Limited pays VAT on Uber Eats and Uber rides on self-assessment basis.

As indicated to Court on the last date i.e., 25.09.2023, in view of the above affidavit, the learned Counsel for the Petitioner informs Court that the Petitioner does not wish to proceed any further with this Petition.

Therefore, the learned Counsel for the Petitioner moves to withdraw this Petition.

Learned Deputy Solicitor General has no objection for the application to withdraw the Petition.

Application to withdraw the Petition is allowed.

Petition is dismissed.

In view of the above, Court will not proceed to make any determination on this Petition.

SC.SD.NO.65/23

Registrar is directed to inform this position to the Hon. Speaker and the Secretary General of Parliament annexing a copy of the proceedings of this case.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT

Hsm/Rsk

III

මාර්ගගත ක්‍රමවල සුරක්ෂිත භාවය පිළිබඳ පනත් කෙටුම්පත: ශ්‍රේෂ්ඨාධිකරණයේ තීරණය

நிகழ்நிலைக் காப்பு சட்டமூலம்: உயர் நீதிமன்றத் தீர்ப்பு

ONLINE SAFETY BILL: DETERMINATION OF THE SUPREME COURT

ගරු නියෝජ්‍ය කථානායකතුමා
(மாண்புமிகு பிரதிச் சபாநாயகர் அவர்கள்)
(The Hon. Deputy Speaker)

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 121(1) ව්‍යවස්ථාව ප්‍රකාරව, ශ්‍රේෂ්ඨාධිකරණය හමුවේ අභියෝගයට ලක් කරන ලද "මාර්ගගත ක්‍රමවල සුරක්ෂිත භාවය පිළිබඳ" නමැති පනත් කෙටුම්පත සම්බන්ධයෙන් ශ්‍රේෂ්ඨාධිකරණය විසින් ලබා දෙන ලද තීන්දුව ගරු කථානායකතුමා වෙත ලැබී ඇති බව පාර්ලිමේන්තුවට දැන්වීමට කැමැත්තෙමි.

පනත් කෙටුම්පතෙහි ව්‍යවස්ථානුකූලභාවය පිළිබඳව ශ්‍රේෂ්ඨාධිකරණ තීරණය පහත පරිදි වේ:

(i) 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 සහ 56 යන වගන්ති ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 84(2) ව්‍යවස්ථාව ප්‍රකාරව, පාර්ලිමේන්තුවේ දී විශේෂ බහුතරයකින් සම්මත කළ යුතු ය.

(ii) එසේ වුව ද, වගන්ති කිහිපයක් සම්බන්ධයෙන් ශ්‍රේෂ්ඨාධිකරණ තීරණයෙන් යෝජිත සංශෝධනවලට යටත්ව පනත් කෙටුම්පතේ 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 සහ 56 යන වගන්ති පාර්ලිමේන්තුවේ කාරක සභා අවස්ථාවේ දී සංශෝධනය කරන්නේ නම් මෙම පනත් කෙටුම්පත පාර්ලිමේන්තුවේ සරල බහුතරයකින් සම්මත කළ හැකි ය.

ඉහත කරුණුවලට යටත්ව, පනත් කෙටුම්පත හෝ එහි විධිවිධාන කිසිවක් ආණ්ඩුක්‍රම ව්‍යවස්ථාවට අනනුකූල නොවන බවට ශ්‍රේෂ්ඨාධිකරණය අදහස් කරයි.

ඒ අනුව, ශ්‍රේෂ්ඨාධිකරණයේ තීරණයේ සඳහන් කර ඇති සංශෝධනවලට යටත්ව, පනත් කෙටුම්පත පාර්ලිමේන්තුවේ සරල බහුතරයකින් සම්මත කළ හැකි ය.

ශ්‍රේෂ්ඨාධිකරණයේ තීරණය අද දින කාර්ය සටහන් දැක්වෙන නිල වාර්තාවේ මුද්‍රණය කළ යුතු යැයි මම නියෝග කරමි.

ශ්‍රේෂ්ඨාධිකරණයේ තීරණය :
உயர் நீதிமன்றத் தீர்ப்பு :
Determination of the Supreme Court:

"Online Safety Bill"

BEFORE: Priyantha Jayawardena PC - Judge of the Supreme Court
A.L. Shiran Gooneratne - Judge of the Supreme Court
Achala Wengappuli - Judge of the Supreme Court

S.C. (S.D.) No. 66/2023

Petitioner : Rathnayake Mudiyanselage Tharindu Amila Uduwargedara

Counsel : Dr. Jayampathi Wickremaratne PC with Champani Padmasekera, Jayantha Dehiattage and Anusha Perusinghe

S.C. (S.D.) No. 67/2023

Petitioners : Sri Lanka Working Journalists' Association
Renda Kankanamge Don Duminda Sampath
Lasantha Ruhunage
Thambirasa Nadarasa

Counsel : Dr. Jayampathi Wickremaratne PC with Champani Padmasekera, Jayantha Dehiattage and Anusha Perusinghe

S.C. (S.D.) No. 68/2023

Petitioners : Ranjith Madduma Bandara
Professor G.L. Pieris
Rehan Jayawickrema

Counsel : Farman Cassim PC with Hijaz Hisbullah and Shifan Maharoof

S.C. (S.D.) No. 69/2023

Petitioner : Ernaga Gunasekare

Counsel : J.M. Wijebandara with Krishanthi Wijebandara, Kavindaya Kuruwita Arachchi and Dushmanthi Porogama

S.C. (S.D.) No. 71/2023

Petitioner : Media Law Forum (Guarantee) Limited

Counsel : Lakshan Dias with Maneesha Kumarasinghe and Hirushi Jayawardene

S.C. (S.D.) No. 72/2023

Petitioner : Duminda Nagamuwa

Counsel : Nuwan Bopege and Dinusha Thiranagama

S.C. (S.D.) No. 73/2023

Petitioners : Chaminda Dias
Christopher Stephen
Thasneema Dahlan
Manik Rodrigo
Leisha R. Lawrence
Angeline Ondaatjie
Catherine Mack
Nayanna Smarasinghe,

Counsel : Hijaz Hisbullah with Shifan Maharoof

S.C. (S.D.) No. 74/2023

Petitioner : Ambika Satkunanathan

Counsel : Pulasthi Hewamanna with Harini Jayawardhana, Fadhila Fairoza, and Githmi Wijenarayana

S.C. (S.D.) No. 75/2023

Petitioners : Kaushalya Nawaratne
Isuru Balapatabendi

Counsel : Uditha Egalahewa PC with N.K. Ashokbharan, Miyuru Egalahewa and Shenal Fernando

S.C. (S.D.) No. 76/2023

Petitioner : Tashya Kiloshini De Silva

Counsel : Niran Anketell with Hafeel Farisz

S.C. (S.D.) No. 77/2023

Petitioner : Warnakulasuriya Charith Jayantha Peiris

Counsel : Nuwan Pieris

S.C. (S.D.) No. 79/2023

Petitioner : Dr. Kaushalya Ariyarathne

Counsel : Chathura Galhena with Dharani Weerasinghe and Nayanajith De Silva

S.C. (S.D.) No. 80/2023

Petitioner : Ranga Kalansooriya

Counsel : Jagath Wickremanayake PC with Niranjala Gunatilaka

S.C. (S.D.) No. 81/2023

Petitioner : Wadiya Pathirage Wijayananda Jayaweera

Counsel : Jagath Wickremanayake PC with Samadhi Gamalath

S.C. (S.D.) No. 83/2023

Petitioner : Benadict Joseph Starling Fernando

Counsel : Rushdhie Habeeb with Supun Dissanayake

S.C. (S.D.) No. 84/2023

Petitioners : Mohamed Rauf Mohamed Najah
Mohamed Zahir Ahamed Rudane

Counsel : Rushdhie Habeeb with Supun Dissanayake

S.C. (S.D.) No. 85/2023

Petitioner : Dr. Harini Amarasuriya

Counsel : Upul Kamarapperuma with Kaneel Maddumage, Kavindi Weerasekera, Radha Kuruvitabandara, Duvini Godagama, Tereesha Wedaarachchi and Leshaini Ranaweera

S.C. (S.D.) No. 87/2023

Petitioner : Mohamed Mujibur Rahuman

Counsel : Sandamal Rajapakse with Kassala Kamer

S.C. (S.D.) No. 88/2023

Petitioner : Galbokka Hewage Ajith Kumara

Counsel : Thanuka Madhawa Nandasiri

S.C. (S.D.) No. 89/2023

Petitioner : Centre for Policy Alternatives (Guarantee) Limited
Dr. Paikiasothy Saravanamuttu

Counsel : Suren Fernando with Luwie Ganeshathasan and Khyati Wickramanayake

S.C. (S.D.) No. 90/2023

Petitioner : MTV Channel (Private) Limited

Counsel : Sanjeewa Jayawardena PC with Lakmini Warusavithana and Punyajith Dunusinghe

S.C. (S.D.) No. 91/2023

Petitioners : Shantha Priyadarshana Wijesooriya
Attiygala Widanalage Awantha Rohana Karunarathne

Counsel : Sanjaya Wilson Jayasekera with Ershan Ariyaratnam and Kaushalya Senanayaka Arachchi

S.C. (S.D.) No. 92/2023

Petitioners : Chirantha Anthoney Ranmal Amarasinghe
Rajeev Yasiru Kuruwitage Mathew

Counsel : Thishya Weragoda with Subhangi Vimalanathan, Yasanga Senadeera, Stefania Perera, Chamodi Wijeweera, Thamali Rajapakse, Shanika Sanjana

S.C. (S.D.) No. 93/2023

Petitioners : Young Lawyers Association
Jayantha Dehiaththage
Migara Doss

Counsel : Shantha Jayawardena with Niroshika Wegiriya, Niranjan Arulpragasam, Sajana de Zoysa and Wihangi Tissera

S.C. (S.D.) No. 94/2023

Petitioner : Amara Divakara Liyanarachchi

Counsel : Chatura Galhena with Sachini Haandapangoda

S.C. (S.D.) No. 95/2023

Petitioner : D.M. Rathidu Suramya Senarathna

Counsel : Manoja Gunawardana

S.C. (S.D.) No. 96/2023

Petitioner : Darshatha Damith Gamage

Counsel : M.A. Sumanthiran PC with Ermiza Tegal, Divya Mascaranghe and Namashya Ratnayake

S.C. (S.D.) No. 97/2023

Petitioner : Ruwan Laknath Jayakody Arachchige Jayakody J.B. Gurusighe

Counsel : Swasthika Arulingam

S.C. (S.D.) No. 98/2023

Petitioner : Palihawadana Mudiyanselage Dahanakgedara Shelani Nimanthika Palihawadana

Counsel : Vijith Singh with Kalpanee Dissanayke

S.C. (S.D.) No. 99/2023

Petitioner : A.A.M. Rifthi Ali

Counsel : Azad Musthapa

S.C. (S.D.) No. 100/2023

Petitioner : Udaya Kalupathiran

Counsel : Lakshan Dias with Maneesha Kumarasinghe and Hirushi Jayawardene

S.C. (S.D.) No. 101/2023

Petitioner : G.W.A.J. Chanaka Madhura de Silva

Counsel : Sunil Abeyratne with Dr. Theshire Gunatilake and Mihiri Kudakoluwa

S.C. (S.D.) No. 103/2023

Petitioner : Nagananda Kodituwakku

Appeared in person

S.C. (S.D.) No. 104/2023

Petitioners : Geoffrey Alagaratnam PC
Saliya Pieris PC

Counsel : Viran Corea with Ashiq Hassim, Thilini Vidanagamage and Razi Muhammadha

S.C. (S.D.) No. 105/2023

Petitioner : Star Publications (Pvt) Ltd
Korrallage Kavinda Ishan Ilangakoon Bandara

Counsel : Lakdev Unamboowe

S.C. (S.D.) No. 106/2023

Petitioner : His Eminence Cardinal Malcolm Ranjith

Counsel : Shammil Perera PC with Primal Ratwatte and Duthika Perera

S.C. (S.D.) No. 107/2023

Petitioner : Yohan Lalinda Ariyawansa

Counsel : Chamath Fernando with Mahesh Parakrama

S.C. (S.D.) No. 109/2023

Petitioner : Aruna Ruvan Weerasinghe

Counsel : Niran Anketell with Hafeel Farisz

S.C. (S.D.) No. 111/2023

Petitioner : Mike Steve Greg Gabriel

Counsel : Lakshan Dias with Maneesha Kumarasinghe and Hirushi Jayawardene

S.C. (S.D.) No. 112/2023

Petitioners : Rally for Animal Rights & Environment - Rare
Panchali Madurangi Panapitiya
Weerakkody Appuhamilage Manoja Jayaswini Weerakkody

Counsel : Harsha Fernando with Revan Weeasinghe, Chamith Senanayake, Yohan Tennekoon, Ruveen Weerasinghe and Thenura Samarasuriya

S.C. (S.D.) No. 115/2023

Petitioner : Visakesa Chandrasekaram

Counsel : Manoja Gunawardena

S.C. (S.D.) No. 116/2023

Petitioners : Don Amila Suyama Edodamahawatta
Don Nihal Weerasinghe

Counsel : Shantha Jayawardena with Niroshika Wegiriya, Niranjan Arulpragasam, Sajana de Zoysa and Wihangi Tissera

S.C. (S.D.) No. 117/2023

Petitioners : Anthony Lasantha Manoj Kumara Nanayakkara
Rev. Kuranage Pattrick Sujeewa Perera
Rev. Bibiladeniya Mahanama Thero

Counsel : Darshana Kuruppu with Sudarsha Silva and Dineru Bandara

S.C. (S.D.) No. 118/2023

Petitioners : Bishrul Hana Ibrahim
Ananda Dharmapriya Kohomban Wickrama Jayasekara

Counsel : Hejaaz Hizbullah with Shifan Maharoof

S.C. (S.D.) No. 120/2023

Petitioners : Tharindu Iranga Jayawardhana
Kurukulasuriya Marius Rukshan Fernando
Heeralugamage Suren Shanushka Emmanuel Perera
A.N. Shalika Wimalasena
Mohammad Faris Mohammad Fazeer
M.G.T.N. Anuruddha Bandara
V.P. Tharushi Dishara Fernando
Balakirushnan Nirosh Kumar
Nirosh Maithree Noragal

Counsel : Thishya Weragoda with Thamali Rajapakse, Stefania Perera, Yasanga Senadeera, Dilan Nalaka and Subhangi Vimalanathan

Respondent : Hon. Attorney General

Counsel : Viraj Dayaratne PC ASG with Susantha Balapatabendi PC, ASG, Nirmalan Wigneswaran DSG, Ishara Madurasinghe SC, Jehan Gunasekera SC, Medhaka Fernando SC and Madusha Thanippuliarachchi SC

Court assembled for hearing at 2:00 p.m. on the 18th of October, 2023 and at 9:30 a.m. on the 19th of October, 2023.

A Bill titled "Online Safety Bill" was published in the Government Gazette on the 15th of September, 2023 and placed on the Order Paper of Parliament on the 3rd of October, 2023.

The aforementioned petitioners have, by forwarding their petitions to this court between the 3rd and the 17th of October, 2023 invoked the jurisdiction of this court in terms of Article 121(1) of the Constitution to determine whether the Bill or any of the Clauses therein are inconsistent with the provisions of the Constitution.

The Attorney General was noticed in terms of the Article 134(1) of the Constitution. The learned Additional Solicitor General who appeared for the Attorney General assisted the court in considering the constitutionality of the Bill and the Clauses therein.

The long title of the Bill states –

"An Act to establish the online safety commission; to make provisions to prohibit online communication of certain statements of fact in Sri Lanka; to prevent the use of online accounts and inauthentic online accounts for prohibited purposes; to make provisions to identify and declare online locations used for prohibited purposes in Sri Lanka; to supress the financing and other support of communication of false statements of fact and for matters connected therewith or incidental thereto."

The Bill consists of the following Chapters:

Part I – Establishment of the Online Safety Commission

Part II – Powers and Functions of the Commission

Part III – Prohibition of online communication of certain statements of fact

Part IV – Measures against communication of certain statements of fact in Sri Lanka

Part V – Declared online locations

Part VI – Counteracting inauthentic online accounts and coordinated inauthentic behaviour

Part VII – Appointment of experts to assist investigations and their powers

Part VIII – Finance

Part IX – General

Objectives of the Commission are set out in Clause 3 of the Bill which states that the Bill seeks to introduce a legal regime to regulate activities carried out online within and outside Sri Lanka to protect children and adults from being abused through the internet. Further, the Bill will create new offences and procedures to prevent such acts and to provide redress to the victims. Moreover, it will deal with threats posed by unregulated, unaccountable and untraceable acts.

At the commencement of the hearing, the learned Additional Solicitor General who appeared for the Attorney General, submitted to court a draft of the proposed amendments to the Bill which he said already approved and agreed to by the Ministry of Law and Order. He further submitted that the said amendments would be made to the Bill at the Committee Stage in the Parliament. Further, copies of the said amendments were handed over to the learned counsel for the petitioners in court.

"Page 1, Clause 2 - delete line 9 and substitute the following:-

"(b) a loss, **damage or harm** is caused within or outside".

Page 1, Clause 3 - (1) delete lines **15 to 18** and substitute the following: -

"3. The objectives of this Act shall be-

(a) to protect persons against **damage or harm** caused by communication of prohibited statements;";

(2) delete line 10 and substitute the following: -

Page 2 - "communicate prohibited statements in Sri Lanka.".

Page 2, Clause 5 - delete lines 22 to 26 (both inclusive) and substitute the following: -

"Appointment of the members of the Commission

5. (1) The Commission shall consist of five members appointed by the President, subject to the approval of the Constitutional Council, from among the persons having qualifications and experience in one or more of the fields of information technology, law, governance, social services, journalism, science and technology or management.

(2) Subject to the provisions of section 6, the President shall recommend the names of five persons to be appointed as members of the Commission

under subsection (1), to the Constitutional Council for approval.

(3)

(4) The President shall, within a period of fourteen days of receiving the approval of the Constitutional Council, appoint the persons approved by the Constitutional Council under subsection (2) as members of the Commission.

(5) Where the Constitutional Council refuses to approve the name of a person referred to in subsection (2), the President shall make a fresh nomination, and the provisions of subsections (1), (2), and (3) shall apply to such nomination accordingly.

(6) In the event of the President failing to make the necessary appointments within the period of fourteen days as specified in subsection (3), the persons approved by the Constitutional Council shall be deemed to have been appointed as the members of the Commission, with effect from the date of the expiry of such period.".

Page 4, Clause 7 - delete lines 1 and 2 and substitute the following:-

"(2) A member of the Commission may be removed from his office by the President, subject to the approval of the Constitutional Council following a hearing of the relevant member where such person–

(a)is unable to exercise, perform and discharge the powers, duties and functions of such office because of an infirmity of body or mind that has lasted for more than a period of three months;

(b) has failed to exercise, perform and discharge the powers, duties and functions of such office for a consecutive period of more than three months without the approval of the Commission; or

(c) is disqualified in terms of the provisions of section 6.

(3) Upon the receipt of the approval of the Constitutional Council, the President shall, in writing, remove such member of the Commission, and shall state in the letter of removal-

(a)the date on which the removal shall take effect which shall not be a date earlier than the date on which the letter of removal is received; and

(b) the reasons for the removal.

(4) Any member of the Commission may be suspended from the office by the President prior to the commencement of the hearing or during the course of the hearing under **subsection (2)".**

Page 5, Clause 9 - delete line 27 and substitute the following: -

"Commission present and voting at the meeting at which the decision is taken. The decision so supported by the votes of a".

Page 7, Clause 11 - (1) delete lines 13 and 14 and substitute the following:-

"(b) to issue notices to persons who communicate prohibited statements,";

- (2) delete lines 16 to 18 (both inclusive);

Page 8 - (3) delete **lines 11 and** 12 and substitute the following: -

"(i) to carry out such investigations as may be necessary to exercise and perform the powers and functions of the Commission;";

Page 9 - (4) delete line 9 and substitute the following:-

"Commission;

(q) to appoint, employ and dismiss members of the staff of the Commission and to exercise disciplinary control over such staff; and".

Page 9, PART III, Heading - delete lines 15 and 16 and substitute the following: -

"PROHIBITION OF ONLINE COMMUNICATION OF FALSE STATEMENTS".

Page 9, Clause 12 - (1) delete line 23 and substitute the following: -

"to a fine not exceeding five hundred thousand rupees and in the event of a second or subsequent";

Marginal note (2) delete the words "false statements of fact" and substitute the words "false statements".

Page 10, Clause 13 - delete lines 2 and 3 and substitute the following: -

"Constitution or any other law making provisions in respect of the offence of contempt of court, commits an offence and the provisions of that Article or such law and sections 18 and 55 of the Judicature Act, No.2 of".

Page 10, Clause 14 - (1) delete line 13 and substitute the following: -

exceeding five years, or with fine not exceeding five hundred thousand rupees or with both such";

(2) delete line 17 and substitute the following: -

"exceeding three years, or with fine not exceeding three hundred thousand rupees, or with both".

Page 10, Clause 15 - delete line 25 and substitute the following:-

"three years, or to a fine not exceeding three hundred thousand rupees, or to both such imprisonment and".

Page 11, Clause 16 - delete lines 1 to 10 (both inclusive).

Page 11, Clause 17 - delete lines 13 to 17 (both inclusive) and substitute the following: -

"religious feelings of any class of persons, insults or attempts to insult the religion or the religious beliefs of that class by communicating a false statement, commits

an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding three hundred thousand rupees,".

Page 11, Clause 18 - **delete the marginal note and substitute the following:-**

Marginal note **"online cheating";**

Page 12 - delete lines 3 and 5 and substitute the following: -

"commits the offence of "online cheating" and shall on conviction be liable to imprisonment for a term which may extend to seven years or to a fine not exceeding seven hundred thousand rupees, or to both such imprisonment and fine and in the".

Page 12, Clause 19 - (1) delete lines 10 to 13 (both inclusive) and substitute the following: -

"means of an online account, cheats by-

(a) pretending to be some other person;

(b) knowingly substituting one person for another; or

(c) representing that such person or any other person is a";

- (2) delete lines 15 to 17 and substitute the following: -

"**commits the offence of "online cheating by personation" and shall on conviction be liable to imprisonment of either description** for a term which may extend to three years or to a fine not exceeding three hundred thousand rupees, or to both";

Marginal note - **delete the marginal note and substitute the following:-**

"Online cheating by personation".

Page 12, Clause 20 - (1) delete lines 21 to 29 (both inclusive);

Page 13 - (2) delete lines 1 to 3 (both inclusive).

Page 13, Clause 21 - delete line 12 and substitute the following: -

"seven years, or to a fine not exceeding seven hundred thousand rupees, or to both such imprisonment and".

Page 13, Clause 22 - (1) delete line 17 and substitute the following: -

"wilfully makes or communicates **a statement**, with";

Marginal note (2) delete the words "statements of fact" and substitute the words **"statements".**

Page 14, Clause 23 - (l) delete lines 21 to 27 (both inclusive) and substitute the following: -

"Child abuse or &c **23.** (1) Any person, whether in outside Sri Lanka, who, by way of an online account or through an online location commits or aids and abets an act upon a child, which constitutes an offence within the meaning of section 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, 365A o 365B of the Penal Code commits an offence and shall on conviction be liable to the punishment for each such offence as specified in the Schedule hereto:

Provided however, in the case of aiding and abetting to commit an offence under section 363 of the Penal Code in respect of a child, every reference to a "woman" in subsection (2) of section 364 of the Penal code shall be read and construed as a reference to a "child" for the purpose of this section.

Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location, publishes any photograph, audio or video of abusive or pornographic nature relating to a child, commits an offence and shall on conviction be liable to imprisonment for a term not less than two years and not exceeding twenty years or to a fine not exceeding one million rupees, or to both such imprisonment and fine";

Page 15, - (2) delete lines 1 to 8 (both inclusive).

Page 15, Clause 25 - delete lines 24 to 31 (both inclusive).

Page 16, PART IV, - delete lines 2 and 3 and substitute the following: -

"MEASURES AGAINST ONLINE COMMUNICATION

Heading OF PROHIBITED STATEMENTS IN SRI LANKA".

Page 17, Clause 26 - (1) delete line 8 and substitute the following: -

"investigations through the officers of the Commission. During such investigations, an opportunity to be heard shall be given to the person alleged to have communicated such prohibited statement.";

(2) delete lines 12 and 13 and substitute the following:-

"seriousness of the matter and the likelihood of damage or harm caused by such prohibited statement, issue notice";

Page 18 - (3) insert the following immediately after line 14:

- "(9) Where-

(a)a person fails to act in accordance with the provisions of paragraph (b) of subsection (6); or

(b) an internet access service provider or internet intermediary fails to act in accordance with the provisions of subsection (8),

the Commission may apply to the Magistrate's Court by way of petition and affidavit to obtain an order directing such person or internet access service provider or internet intermediary, as the case may be, to comply with such provisions and the provisions of section 27 shall *mutatis mutandis* apply in relation to such application.".

Page 20, Clause 27 - (1) delete line 11 and substitute the following:-

"(9) Where the person against whom any order is made";

- (2) delete line 20 and substitute the following: - "prohibited statement in Sri Lanka; or";

- (3) delete lines 24 to 27 (both inclusive).

Page 21, Clause 28 - **(1) delete lines 8 and 9 and substitute the following:-**

"subsection (1), the Commission shall make an application to the Magistrate's Court by way of petition and affidavit seeking a conditional order directing";

Page 23, - **(2)** delete line 22 and substitute the following:-

"(10) Where the internet intermediary against whom";

- **(3) delete line 25 and substitute the following:-**

"the Magistrate, such person shall be liable to a fine not";

- **(4)** delete lines 27 to 30 (both inclusive).

Page 24, Clause 29 - (1) delete line 3 and substitute the following:

Page 26, Clause 32- - (1) delete lines 5 to 9 (both inclusive) and substitute the following: -

"(a) three or more different prohibited statements have been communicated to the end users in Sri Lanka on such online location in respect of **which conditional orders were made absolute** by the Magistrate under section 27; and";

- (2) delete lines 22 and 23 and substitute the following: -

"(d) the date on which the declaration expires";

Page 27 - **(3) delete line 10 and substitute the following:-**

"(a) on the date specified therein, in";

- **(4)** delete lines 16 to 27 (both inclusive) and substitute the following: -

"before the date it comes into effect, the Commission shall publish, in such form and manner as may be prescribed, a notice in the *Gazette* –

(a) stating that a declaration has been issued under this section; and

(b) setting out the URL, domain name, or any other unique identifier of the online location, to which the declaration relates.";

Page 31 - (4) delete line 1 and substitute the following:-

"(15) Where the owner or operator of a declared online";

- (5) delete lines 11 to 14 (both inclusive).

- **(5) delete line 16 and substitute the following:-**

"cancel a declaration made under subsection (1) for such period".

Page 38, Clause 36 - **(1) delete line 1 and substitute the following:-**

"(11) Where the internet intermediary against whom";

- **(2) delete lines 11 to 14 (both inclusive).**

Page 38, Clause 37 - **delete line 18 and substitute the following: - "37. (1) The Minister".**

Page 41, Clause 42 - **(1) delete lines 23 to 25 and substitute the following:-**

"42. (1) Save as expressly provided in this Act, the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, shall mutatis mutandis apply to investigations, institution of proceedings, the trial of";

- **(2) insert the following immediately after line 27:-**

"(2) Where the Commission, on consideration of material collected in the course of investigations conducted under this Act, is satisfied that any person has committed an offence under the provisions of this Act, it may take steps to institute criminal proceedings in terms of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979.".

Page 42, Clause 45 - **delete lines 18 to 24 (both inclusive) and substitute the following:-**

"45. A person who abets an offence under this Act commits".

Page 46, Clause 53 - delete line 26 and substitute the following:-

"be placed before Parliament for approval and any rule, which is not so approved, shall be deemed to be rescinded with effect from the date of such

Page 47, Clause 56 - **(1) delete line 21 and substitute the following: -**

"56. (1) In this Act unless the context otherwise requires-";

Page 48 - **(2) delete line 12 and substitute the following: - "false statement or private information and";**

Page 49 - **(3) delete lines 1 to 3 (both inclusive);**

Page 51 - **(4) insert the following immediately after line 3:-**

"publish" means making available to the public on or through the internet;

(5) insert the following immediately after line 24: -

"(2) Any word or expression used in this Act and defined in the Penal Code but not defined in this Act shall have the same meaning assigned to such word or expression in the Penal Code.".

New Schedule

Page 51 - Insert immediately after line 26 of the following new schedule:

"SCHEDULE"

Section	Offence under the Penal Code	Punishment
286A	Obscene publication &c. relating to children	Imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine.
288	Causing or procuring children to beg	Imprisonment of either description for a term not exceeding five years and may also be liable to a fine
288A	Hiring or employing children to act as procurers for sexual intercourse	Imprisonment of either description for a term not less than two years and not exceeding five years and may also be liable to a fine
288B	Hiring or employing children to traffic in restricted articles	Imprisonment of either description for a term not less than five years and not exceeding seven years and may also be liable to a fine
308A	Cruelty to children	Imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine and be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person
360A	Procuration	Imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine
360B	Sexual exploitation of children	Imprisonment of either description for a term not less than five years and not exceeding twenty years and may also be punished with fine
360c	Trafficking	Imprisonment of either description for a term not less than three years and not exceeding twenty years and may also be punished with fine
363	Rape	Rigorous imprisonment for a term not less than seven years and not exceeding twenty years and fine and shall **in addition** be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person and further term of imprisonment **which may extend** up to two years in case of failure to pay compensation
	Rape (a) by a public officer on a woman in his custody (b) by a person being on the management or staff of a remand home women's or children's institution &c. on ant women inmate (c) by a person being on the management or staff of a hospital on a woman in that hospital (d) on a pregnant woman (e) on a woman under eighteen years (f) on a mentally or physically disabled woman (g) by a gang of persons	Rigorous imprisonment for a term not less than ten years and not exceeding twenty years and fine and **shall in addition** be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person and further term of imprisonment **which may extend** up to two years in case of failure to pay compensation
	Rape on a woman under sixteen years of age and woman stands towards the man in any of the degrees of relationship enumerated in section 364A	Rigorous imprisonment for a term not less than fifteen years and not exceeding twenty years and with fine
364A	Incest	Rigorous imprisonment for a term not less than seven years and not exceeding twenty years and fine
365	Unnatural offence	Rigorous imprisonment for a term not less than ten years and not exceeding twenty years and fine and shall be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries

		caused to such person
365A	Acts of gross indecency between persons	Rigorous imprisonment for a term not less than ten years and not exceeding twenty years and fine and **shall** also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person
365B	Grave sexual abuse	Rigorous imprisonment for a term **not less than ten years** and not exceeding twenty years and fine and **shall** also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person".

Page 1, Long title - (1) delete the words "TO MAKE PROVISIONS TO PROHIBIT ONLINE COMMUNICATION OF CERTAIN STATEMENTS OF FACT IN SRI LANKA;"
and substitute the words "TO PROVIDE SAFETY FROM PROHIBITED STATEMENTS MADE ONLINE;"; and

(2) delete the words "FALSE STATEMENTS OF FACT" and substitute the words "PROHIBITED STATEMENTS". "

Determination

Are the amendments proposed to be moved at the Committee Stage contrary to Article 78 of the Constitution?

The learned President's Counsel appearing for the petitioners in SC/SD/96, 98 and 103/2023 submitted that approximately 30 amendments were proposed by the Additional Solicitor General and given the scope and nature of the amendments proposed, it is clear that Article 78(3) of the Constitution will be contravened if these amendments were to be considered at the Committee Stage in Parliament.

He further submitted that Article 78(3) was introduced by the Twentieth (20th) Amendment to the Constitution to prevent substantially changing a Bill from the version which has been gazetted, thus preventing the legislature from passing a different Bill from that which the citizens have been given an opportunity to challenge under a Bill Article 121 of the Constitution.

However, the amendments sought to be introduced by the Additional Solicitor General in the form of Committee Stage amendments introduce new schemes into the Bill. Thereby, substantially changing the merits and principles of the Bill. Hence, he submitted to the court to determine that the aforementioned amendments cannot be moved at the Committee stage in Parliament in terms of Article 78(3) of the Constitution.

Article 78(3) of the Constitution reads as;

> *"**Any amendment proposed to a Bill in Parliament** shall not deviate from the merits and principles of such Bill."*
>
> [emphasis added]

The words "Any amendment proposed to a Bill in Parliament" used in the aforementioned Article shows that the said Article is only applicable to amendments proposed to a Bill in Parliament and have no application to instances where Constitutional jurisdiction of the Supreme Court is invoked under Article 121 of the Constitution.

Further, Article 123 of the Constitution stipulates the jurisdiction of the Supreme Court to determine the constitutionality of Bills. Article 123 (1)(c) states;

> *"whether such Bill or any provision thereof, requires to be passed by the special majority required under the provisions of paragraph (2) of article 84 and approved by the people at a referendum by virtue often provisions of article 83, **and may specify the nature of the amendments which should make the Bill or such provision ceased to be inconsistent**".*
>
> [emphasis added]

Therefore, if any of the Clauses in the Bill are inconsistent with the Constitution, the Supreme Court is required to suggest the amendments that should be made at the Committee Stage to avoid any inconsistency with the Constitution. Further, if the Supreme Court specifies the nature of the amendments which should be made to a Bill or any of the Clauses in order for them to cease any inconsistencies with the Constitution, the Bill will be amended at the Committee Stage in Parliament by incorporating the amendments specified by the Supreme Court.

It is pertinent to note that there is a long tradition of petitioners appearing in person, counsel appearing at the hearing or the Attorney General proposing amendments to a Bill either to incorporate essential amendments to a Bill or suggesting amendments to avoid any inconsistencies with the Constitution. Further, since there is no post legislative review of Acts passed by Parliament in terms of Article 80(3) of the Constitution, the Supreme Court usually exercises jurisdiction under Article 134 to allow persons to appear during a determination of the Bill. Thus, a *cursus curiae* has developed to accept amendments proposed by the Attorney General and the counsel at the hearing. However, the court may accept or reject such amendments after considering them.

In any event, a careful consideration of the Bill and the said proposed amendments by the Additional Solicitor General shows that the said amendments will not result in deviating from the merits and principles of the Bill.

Clause 3

Clause 3 of the Bill seeks to introduce a legal regime to regulate activities carried out online within and outside Sri Lanka to protect children and adults from being abused through the internet. Further, the Bill will create new offences and procedures to prevent such acts and to provide redress to the victims. Moreover, it will deal with threats posed by unregulated, unaccountable and untraceable acts.

Policy considerations underlying the Bill

The learned Additional Solicitor General submitted that a study by Save the Children in 2021 found that 3 out of 10 children have faced some type of online violence in Sri Lanka. Further, in Child Sexual Abuse Material: Model Legislation & Global Review, research carried out by the International Centre for Missing & Exploited Children (ICMEC) in 2018, stated that Sri Lanka was one of the 25 countries that did not have legislation for Child Sexual Abuse carried out through an online forum.

He further submitted that the US Council on Foreign Relations provides the following statistics that justify the need to regulate the publications and conduct on the internet. i.e.,

Facebook has removed pieces of content covered with a warning, or subject to other action;

- Spam – 3.3B, adult nudity and sexual activity – 75M, violent and graphic content – 40M, hate speech – 32M, child nudity and sexual exploitation – 18M, other – 47M.

YouTube has removed videos of;

- Spam, misleading and scams – 5.5M, child safety – 5.3M, nudity or sexual – 2.5M, violent or graphic – 1.9M, promotion of violence and violent extremist content - 1.2M, other -1.1M.

Twitter has removed pieces of content of;

- Hateful conduct – 955K, abuse or harassment – 601K, sensitive media – 171K, promoting suicide or self-harm – 74K, private information – 38K, other 87K.

The above data demonstrates the amount of material that the social media platforms themselves remove according to their internal safeguards. Hence, there is an urgent need for regulation of the internet.

Further, the learned Additional Solicitor General submitted that it is in this backdrop, a joint Cabinet Memorandum was presented to the Cabinet of Ministers, *inter alia,* drawing attention to the fact that many countries have taken legislative measures to address the usage of online/virtual platforms to disseminate false statements in order to prevent division and spreading hate in society. The same Cabinet Memorandum stated that the proposed legislative process only intends to regulate the untrammelled dissemination of false statements as aforesaid and does not intend to cover opinions, criticism, satire and parody. Moreover, the Cabinet Memorandum stated that the proposed law should also be drafted in a manner which enables Sri Lanka to combat contemporary challenges online such as inauthentic online accounts and bots which manipulate and distort public opinion.

In the aforementioned circumstances, the Bill was drafted and presented to the Parliament for its approval.

The petitioners heavily relied on the determination made in the ***Sri Lanka Broadcasting Authority Bill*** **(SC/SD/1/1997-15/1997)** where it was observed that it is the most natural and genuine exposition of legislative instrument to construe one part by another determined, "for the best expresseth the meaning of the makers… and this expression is ex. visceribus act" from the guts of the Act. The meaning that holds through the basic clauses of the Sri Lankan Broadcasting Authority Bill, namely clauses 3(1), 3(4), 4(c), 4(d), 4(f), 4(g), 5(e), 5(f),5(g), 7(1), 7(2), 7(5), 10, 11, 22 and the First, Second and Third Schedules, their drift at effect is that they have a real, as distinguished from a fanciful, capacity to accommodate, propensity, or likelihood to encourage or permit, the violation of the fundamental right to freedom of thought protected by Article 10 of the constitution; **These things may not happen, but they might happen because they are permitted. The evils to be prevented are those that might happen. Cf Gros-jean (supra.).** In our view, the Sri Lanka Broadcasting Authority Bill as a whole is inconsistent with Article 10 of the Constitution."

It is pertinent to note that the recent events that are taking place in Sri Lanka show that there is an abuse of the internet and it has not only affected children but also adults. Further, blackmailing professionals, having live sex shows targeting school children, scandalizing people, financial app scams interference with the administration of justice, particularly when important matters of public discourse are being taken up for hearing, are a few to mention. Moreover, such matters are not only confined to Sri Lanka but is a menace to the entire world.

Further, concerns are growing over foreign involvement with cybercrimes, including online financial fraud, theft of personal information and e-commerce scams, with the latest arrest of nearly 40 foreign nationals in Sri Lanka. According to the Police, some foreign nationals have defrauded millions of Rupees over several months through the internet from the accounts of people in different countries. They were arrested based on complaints received through several embassies. Hence, law enforcement authorities warned the public to be more vigilant over alleged fraud carried out in Sri Lanka through the internet by foreigners who are in Sri Lanka on tourist visas.

Moreover, Sri Lanka has been identified as a soft target for cybercriminals. According to the *24th edition of Microsoft's Security Intelligence Report,* cryptocurrency mining malware, where cybercriminals seek illicit profits by using victim's computers to mine cryptocurrency coins such as Bitcoins have increased in Sri Lanka.

In the circumstances, the State has a responsibility to enact legislation to prevent such crimes and protect the people of this country. Such legislation will secure the equal protection of the law enshrined in Article 12(1) of the Constitution. Thus, the determination in ***Sri Lanka Broadcasting Authority Bill*** **(SC/SD/1/1997-15/1997)** has no application to the instant Bill. In any event, most of the laws are enacted to prevent committing crimes. Hence, Parliament need not wait till a crime is committed to enact laws,

International perspective

Increasingly, countries are trying to regulate the internet content through "cybercrime legislation". It covers a wide range of criminal offences from terrorist activities and espionage conducted with the help of the internet and illegal hacking into computer systems, to running bot nets for the purpose of spreading spam emails and credit card fraud, phishing, theft and manipulation of data, and cyber-stalking, to name just a few. Hence, regulation of the internet has become an urgent need of the world. Therefore, several countries such as the United States of America, France, Germany, Australia, South Korea, Singapore and China have enacted legislation to regulate the internet. Further, the House of Commons and the House of Lords in the United Kingdom has approved the Online Safety Bill and is awaiting the Royal Assent.

The United Kingdom

The Online Safety Bill has been signed off by the Houses of Parliament and will become law once Royal assent is given. The Bill takes a zero-tolerance approach to protecting children and makes sure social media platforms are held responsible for the content they host. If they do not act rapidly to prevent and remove illegal content and stop children seeing material that is harmful to them, such as bullying, they will face significant fines that could reach billions of pounds. In some cases, their upper management may even face prison sentences. Further, social media platforms will be legally responsible for the content they host.

Australia

Online regulation has focused on darker corners of the internet, but with a rapidly evolving digital ecosphere, the Australian eSafety Commissioner has been increasing its regulatory presence, to which global tech companies have had to adapt. In addition to social media platforms and messaging service providers, the Online Safety Act applies to:

- all websites
- search engines
- app distributors
- internet carriage services
- anybody who manufactures, supplies or installs equipment used by end-users (including manufacturers of wi-fi routers, smart TVs, gaming consoles)
- discussion forums and consumer review networks

The founding principles of the Right to Freedom of Expression

Article 19 of the Universal Declaration of Human Rights (hereinafter referred to as "UDHR") guarantees the right to freedom of expression.

Further, the International Covenant on Civil and Political Rights (ICCPR) elaborates and gives legal force to many of the rights articulated in the UDHR. It guarantees the right to freedom of expression similar to those of Article 19 of the UDHR, i.e.,

(1) Everyone shall have the right to freedom of opinion

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

In September 2011, the United Nations Human Rights Committee, a treaty monitoring body for the ICCPR, issued General Comment No. 34 in relation to Article 19. General Comment No. 34 constitutes an authoritative interpretation of the minimum standards guaranteed by Article 19 of the ICCPR.

Importantly, General Comment No. 34 states that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and internet-based modes of expression. In other words, the protection of freedom of expression applies online in the same way as it applies offline.

At the same time, General Comment No.34 requires States party to the ICCPR to consider the extent to which developments in information technology, such as internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world. In particular, it states that the legal framework regulating mass media should take into account the differences between print and broadcast media and the internet, as well as noting the ways in which the various media coverage.

Further, the protection of freedom of expression has highlighted that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the internet. In particular, they recommend the development of tailored approaches for responding to illegal content online, as well as pointing out that specific restrictions for material disseminated over the internet are unnecessary.

Can the right to freedom of expression be restricted?

While the right to freedom of expression is a Fundamental Right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to restrict the following by law;

(a) for respect of the rights or reputations of others;
(b) for the protection of national security or of public order, or of public health

or morals.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states;

> ..
>
> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

A similar provision is provided under Article 14(1)(a) of the Sri Lankan Constitution, which states;

> ***"14. (1) Every citizen is entitled to –***
>
> (a) ***the freedom of speech and expression including publication;"***
>
> [emphasis added]

Further, Article 15(2) of the Sri Lankan Constitution reads as;

> ***"15. (2) 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."***
>
> [emphasis added]

Thus, a careful consideration of Article 14(1) read with Article 15(2) of the Constitution shows that the freedom of speech and expression, including publication, guaranteed by the Constitution is not an absolute right **but 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.

The Bill contains provisions, *inter alia,* relating to the regulation of the internet in respect of racial and religious harmony, contempt of court, defamation or incitement to an offence. Moreover, the Bill does not prohibit the freedom of speech and expression, including publication, but only regulate matters such as protecting persons against harm caused by communication of prohibited statements, protection from communication of statements in contempt of court or prejudicial to maintaining the authority and impartiality of the judiciary. Further, it introduces measures to detect, prevent and safeguard against the misuse of online accounts and bots to commit offences specified in the Bill, and to prevent financing, promotion and other support of online locations, which communicate prohibited statements in Sri Lanka.

It is pertinent to note that the learned counsel for the petitioners and the learned Additional Solicitor General submitted that most of the offences created by the Bill are already offences under the Penal Code. In addition to the above, the offences have been created by the Computer Crimes Act No. 24 of 2007, Payment Devices Frauds Act No. 30 of 2006, Personal Data Protection Act, No. 9 of 2022 etc. Thus, it shows that the Bill proposes to extend offline offences that are already in existence to online offences.

In view of the above, the Clauses in the Bill are considered for any inconsistencies with the Constitution.

Are certain words used in the Bill vague?

The learned counsel for the petitioners submitted that there are several Clauses in the Bill that are vague and overbroad. Thus, when a law is vague and overbroad, it may lead to the arbitrary exercise of power by the authorities. Hence, such Clauses are inconsistent with Article 12(1) of the Constitution.

In this regard, the learned counsel for the petitioners cited the case of ***Joseph Perera alias Bruten Perera v. The Attorney General and others (1992) 1 SLR 199*** at 230, where it was held;

> *"Regulation 28 violates Article 12 of the Constitution. The Article ensures equality before the law and strikes at discriminatory State action. Where the State exercises any power, statutory or otherwise it must not discriminate unfairly between one person and another.* ***If the power conferred by any regulation on any authority of the State is vague and unconfined and no standard or principles are laid down by the regulations to guide and control the exercise of such power, the regulation would be violative of the equality provision because it would permit arbitrary and capricious exercise of power which is the antithesis of equality before law."***
>
> [emphasis added]

The learned Additional Solicitor General furnished the sources of the words and some of the Clauses that were taken in drafting the Bill. The said materials show that the terminology used in the Bill have been taken either from the Sri Lankan Acts or from Acts that are available in other jurisdictions. It is pertinent to note that the Bill intends to prevent offences committed on the internet etc. and by using rapidly advancing technology. Thus, it is prudent to use the existing words in our Acts and the words used in other jurisdictions as such words have already been tested in court and therefore, jurisprudence is available in interpreting such words.

In the circumstances, a critical analysis of the Clauses that have used technical terms show that the sources of such technical terms and the context of such words have been used are not vague and ambiguous and therefore, do not violate Article 12(1) of the Constitution.

Clause 5

The learned counsel for the petitioners submitted that Clause 5 of the said Bill provides for the establishment of the "Online Safety Commission" that is to be appointed on the sole discretion of the President. Accordingly, such provision would have the effect of granting the President unfettered discretion where both appointment and removal of the members of the Commission is concerned. Hence, the provisions in respect of the appointment and removal of members of the Commission in the said Bill are arbitrary and therefore, inconsistent with Article 12(1) of the Constitution.

Moreover, even the amendment proposed by the Attorney General during the course of the hearing, the inclusion of the words 'approval of the Constitutional Council' is undermined by the fact that recommendations and the appointments are in fact only by the President, which means that the President has full control over who is recommended for 'approval'. No suitable candidate can be considered outside of a recommendation by the President, which completely undermines the role of the Constitutional Council. Thus, the proposed amendments also violate Article 12(1) of the Constitution.

Responding to the above, the learned Additional Solicitor General submitted that there is no constitutional provision that mandates that the Constitutional Council should initiate appointments by recommending names to the President. On the contrary, Article 41C of the Constitution provides for the President to recommend names for the approval of the Constitutional Council.

A careful consideration of Clause 5 of the Bill shows that though Clause 5 enables the President to appoint the members of the Commission, it set out the qualifications of the members that should be appointed to the Commission. Hence, the said Clause has set out a criterion of appointing members. Therefore, the President cannot act arbitrarily in appointing members to the Commission. Further, making appointments based on the recommendation of the Commission or obtaining approval from the Commission to appoint named persons or enacting legislation without any reference to the Constitutional Council is a policy matter of the Government. The law requires to specify the criteria to prevent any inconsistency with Article 12(1) of the Constitution. Accordingly, the existing Clause 5 of the Bill does not infringe Article 12(1) of the Constitution.

However, the learned Additional Solicitor General informed court that Clause 5 would be amended at the Committee Stage in Parliament and the aforementioned amendment to the said Clause was tendered to court. The court observed that the said amendment does not set out the time period that an inquiry on a removal of a member should be concluded. Hence, the said proposed amendments to the said Clause are inconsistent with Article 12(1) of the Constitution. Thus, the said Clause should be passed in Parliament by a special majority as required by Article 84(2) of the Constitution. However, if a provision is added stating that an inquiry held against the chairmen, or a member of the Commission should be concluded within 3 months or 6 months from the date of the suspension, the said inconsistency will cease. Hence, the said Clause can be passed by a simple majority in Parliament.

Are the punishments stipulated in the Bill excessive?

The learned counsel for the petitioners submitted that the severity of the prescribed punishments in the Bill, particularly the formula of doubling sanctions for subsequent offences, raises concerns regarding their alignment with the proportionality principle. It was further submitted that while it is understood that escalating penalties can act as a deterrent, it is essential to consider whether such harsh measures proportionately balance the harm intended to be prevented.

Clauses 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 27(9) and 28(10) set out the penal provisions in the Bill. The said Clauses contain the following provision except in Clause 14, 27(9) and 28(10);

> *"... and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled."*

The learned counsel for the petitioners submitted that the penal sanctions imposed by the Bill are disproportionate to the offences created by the Bill and are excessive. Particularly, the punishments applicable to second or subsequent convictions of a person.

Every crime is composed of criminal elements. Further, imposing punishments is a deterrent to committing crimes. The purpose of punishment is to deter the offender from repeating the same and to discourage others from committing crimes. However, any punishment should be proportionate to the offences established by law. Further, when deciding the punishments for an offence, the punishments shall not be more severe than is required to achieve deterrence.

As stated above, some of the offences created by the Bill are already in existence in the Penal Code either directly or indirectly. However, the punishments introduced by the Bill for online offences are more severe than the punishments set out in the Penal Code. In this regard, it is pertinent to note that the Penal Code (An Ordinance to provide a General Penal Code for Ceylon) was enacted in the year 1883 by Ordinance No. 2 of 1883 and the punishments imposed by the Penal Code have not been revised in respect of most of the offences since then. Hence, the Penal Code cannot be taken as a guide to consider the proportionality of the punishments stipulated in the Bill as the Bill contains the present internet trend in imposing punishment.

A careful consideration of the penal sections in the Bill shows that the courts are vested with the discretion to impose punishments as the said Clauses set out minimum and maximum punishments. However, taking into consideration the theories that are applicable to imposing punishments for crimes, we are of the opinion that the punishments set out in the Bill for repeat offenders are excessive and therefore, such Clauses are violative of Article 12(1) of the Constitution. Hence, the said Clauses should be passed by a special majority in Parliament. However, if the punishments stipulated for a second or subsequent conviction are deleted, the said inconsistency will cease and therefore, the said Clauses can be passed by Parliament by a simple majority.

Clause 37

The petitioners submitted that Clauses 37 to 39 of the Bill authorize the Minister the power to appoint experts to assist the police in investigations in respect of an offence under the Bill and grant such experts far-reaching and broad powers. Further, the proposed amendment will make the consequences of these Clauses worse because it removes the said "experts" from the limited supervision provided by the Court (when appointing) and places the appointment process exclusively with the Minister. As such Clauses 37 to 39 of the Bill are arbitrary and capricious and is thus inconsistent with Articles 12, 14(1)(a), (b), (c), (e), (f), and (g), and 14A(2) of the Constitution.

In this regard, the petitioners cited the judgment delivered in ***Dinga Thanthirige Jayalath Perera v. Vice Admiral W.K.J. Karannagoda and Others*** **(SC Appeal 11/2017) (SC Minutes dated 11th January, 2023)** where it was held;

> *".... Unfettered and unreviewable absolute discretion' finds no place in the present era of Constitutionalism and the rule of law on which the sovereignty of the people of the Democratic Socialist Republic of Sri Lanka has been founded..."*

We have considered the said Clause 37 of the Bill and the amendment proposed to the said Clause and are of the view that the lack of guidelines in appointing experts under the said Clause violates Article 12(1) of the Constitution and therefore the said Clause or the proposed amendment needs to be approved by a special majority in Parliament.

In this regard, it is pertinent to note that the Computer Crimes Act No. 24 of 2007 contains a provision applicable to appointing experts to assist investigations. Accordingly, a similar provision can be introduced to replace the present Clause 37 of the Bill or if the said Clause is deleted and inserted the following, it will cease the said inconsistency with the Constitution.

"37.(1) The Minister may, in consultation with the Minister in charge of the subject of Justice, appoint by Order published in the *Gazette* any public officer, an employee of a Government Department, Government Corporation or an employee of a Government Company, having the required qualification and experience in electronic engineering or software technology (hereinafter referred to as "an expert") to assist the Commission in the investigation of an offence under this Act.

(2) For the purposes of this Act "expert" includes-

(a) any member of the staff of any University who possesses the prescribed qualification and, who is nominated by the Vice-Chancellor of the relevant University ;

(b) any public institution which in the opinion of the relevant University possesses the prescribed qualification and is nominated by the Vice-Chancellor of such University :

Provided that where an "expert" cannot be identified in terms of paragraph (a) or (b) above the Minister may, in consultation with the Vice Chancellor of the relevant University appoint any other institution which satisfies the prescribed qualification ;

(c) University shall mean any University established under the Universities Act, No. 16 of 1978.

(3) The qualifications and experience (having regard to the specific areas of expertise) required to be fulfilled by an officer appointed under subsection (1) and the manner and mode of appointment and the conditions of appointment of such officer shall be as prescribed by regulations.

(4) For the purpose of an investigation under this Act, an expert called upon to assist the Commission shall, have the power to—

(a) enter upon any premises along with a police officer not below the rank of a sub-inspector ;

(b) access any information system, computer or computer system or any programme, data or information held in such computer to perform any function or to do any such other thing ;

(c) require any person to disclose any traffic data ; (d) orally examine any person ;

(e) do such other things as may be reasonably required, for the purposes of this Act.

(5) An expert shall be paid such remuneration as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

(6) An expert may be called upon to assist the Commission or any police officer in the investigation of an offence under this Act and it shall be duty of the expert to render all such assistance as may be required for the purposes of such investigation. Where any proceedings have been commenced consequent to the findings of an investigation, it shall be the duty of the expert to make available for the purposes of such proceedings, any information, data, material or other matter that may be obtained by him in the course of such investigation."

Offences in the Bill

It may be appropriate to consider whether it is necessary to have offences such as rape, trafficking, incest and unnatural offences included in the Bill as such offences cannot be committed online.

Further, at present a 'Private Members Bill' is being considered by Parliament in abolishing the Penal Code offence of 'unnatural offence" created by section 365 of the Penal Code.

The counsel for the petitioners submitted that Clauses 11 and 12 of the Bill confer a wide range of powers, which would encroach even into the functions of the Judiciary. In this regard, the petitioners submitted that the Online Safety Commission would accordingly be empowered to act on their own discretion and would be entitled to issue notices or directives against any person, internet service provider or internet intermediaries who/which is alleged to have communicated a prohibited or false statement.

Further, Clauses 11 (f) and (h) of the said Bill sets out that the Commission would be vested with a wide range powers such as to block websites and instruct Internet Service Providers to restrict access to specific online locations.

The exercise of such powers on their own discretion could result in the violation of Articles 12 and 14A of the Constitution.

Clause 11(c)

The learned Additional Solicitor General submitted that Committee Stage amendments would be moved to delete Clause 11(c) of the Bill as the substantive provisions do not appear to provide for a 'directive' to be issued. Furthermore, in terms of Clause 25 of the Bill, non – compliance with a 'directive' issued under this Clause would be a distinct offence. As there are separate provisions dealing with the issuance of 'notices' which have judicial oversight, this Clause will be deleted during the Committee Stage.

With the deletion of Clause 11(c) of the original Bill before the Committee Stage amendments, Clause 11(d) of the Bill will be referred to as 11(c).

The learned Additional Solicitor General submitted that Clause 11(d) of the Bill deals with issuance of notices to any internet access service providers or internet intermediary to disable access to an online location which contains a prohibited statement by the end users in Sri Lanka or to remove such prohibited statement from such online location. This clause provides a conclusive solution for the communication of prohibited statements by the issuance of notices to internet access service providers or internet intermediaries to disable access to an online location which contains the prohibited statements.

He further submitted that Clause 26 (9) of the Bill would be amended at the Committee Stage for the Commission to make an application to the Magistrate's Court to obtain an order directing such person or internet access provider or internet intermediary, as the case may be, to comply with such provisions.

It is pertinent to note that even though a notice is issued by the Commission, in order for the internet access service provider or internet intermediary to disable access to the online location an order from the Magistrate is required to hold an inquiry of the relevant party that makes an application to the Magistrates Court and make an appropriate order.

Clause 13

Clause 13 of the Bill pertains to the prohibition of communicating false statements that amount to Contempt of Court, in the opinion of any court exercising special jurisdiction to deal with matters of contempt. This applies to any individual, irrespective of their presence in or outside of Sri Lanka, and violations are subject to penalties as defined in Article 105 of the Constitution and sections 18 and 55 of the Judicature Act, No. 2 of 1978.

An amendment is proposed to be made at the Committee Stage to make reference to 'any other law that makes provisions for contempt of court' in addition to Article 105 of the Constitution and sections 18 and 55 of the Judicature Act, No. 22 of 1978. The amended Clause 13 of the Bill would therefore read as follows;

> *"Any person, whether in or outside Sri Lanka who communicates a false statement which amounts to contempt of court, in the opinion of any court which exercises the special jurisdiction to punish the offence of contempt of court, in terms of paragraph (3) of Article 105 of the Constitution* ***or any other law making provisions in respect of the offence of contempt of court, commits an offence and the provisions of that Article or such law*** *and sections 18 and 55 of the Judicature Act, No.2 of 1978 shall apply in sentencing such person."*
>
> *[emphasis added]*

In terms of the scheme of the proposed Bill, the Commission would only intervene (upon receipt of a complaint) to stop the circulation of a false statement, which would amount to contempt of court immediately. Whether such false statement is in fact a statement amounting to 'contempt of court' and therefore should entail penal consequences is a matter left to be determined by the respective courts under the Constitution or Judicature Act and any other law to be passed in regard to the subject of Contempt of Court.

A careful consideration of Clause 13 of the Bill and the proposed amendment shows that enacting legislation in respect of committing Contempt of Court is within the legislative competence of Parliament. Such matters are policy matters of the Government. In any event, enacting such laws would not infringe the provisions of the Constitution. On the contrary, such legislation is essential to prevent interference with the judiciary.

However,

(1) the proposed Clause needs to be amended by conferring jurisdiction in terms of Article 105(3) of the Constitution to hear and determine such cases instead of conferring jurisdiction on the Magistrates Court,

(2) subject to the provisions of section 49(3) of the Judicature Act No. 37 of 1979,

(3) such conferring of jurisdiction shall be in addition to the powers conferred on the District Court , Family Court, Magistrates Court and Primary Court by section 55 of the Judicature Act No. 37 of 1979.

Clauses 14 and 15

The learned counsel for the petitioners submitted that Clause 14 of the Bill proscribes communications that "maliciously or wantonly... gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed". The terms "maliciously" and "wantonly" are laden with subjectivity. Without explicit definitions, they become malleable, susceptible to varying interpretations based on individual or situational biases. For instance, an impassioned critique or an assertive viewpoint, while strong in its expression, may not inherently be malicious. However, in the absence of clear delineations, such expressions risk being branded as malevolent based on the personal interpretations of those who evaluate them.

In Clauses 14 and 17 of the Bill, the word "Malicious" is used to describe the offence. However, there is no definition given to this word in the said Bill thereinafter, which makes such use vague, ambiguous and overbroad.

Moreover, Clause 14 also uses the word "Wantonly" which too is not clearly defined in the said Bill. Accordingly, the interpretation of such word would be ambiguous, vague and overbroad.

Hence, the petitioner stated that such vague and overbroad words referred to in the said Clause may be open to wide interpretation which would amount to abuse of powers contravening the original purpose of the said Bill and the object sought to be achieved by the Bill.

In this regard, the court was drawn to the Determination in ***Re the "Colombo Port City Economic Commission"*** **(S.C.S.D. Nos. 04/2021. 05/2021 07/2021 to 23/2021)**, where observed at page 30;

> *"....Upon reading of the Bill, the Court is of the view that* ***the regulatory structure set out in the Bill lacks clarity and provides for the exercise of arbitrary power by the Commission and this, inconsistent with Article 12(1) of the Constitution...."***
>
> [emphasis added]

Therefore, it was submitted that the ambiguity, vagueness and overbroad character of the words in the aforementioned Clauses would thereby render them inconsistent with the Constitution, and in particular Article 12 (1) of the Constitution.

A careful consideration of Clauses 14(a) and (b) show that the said Clauses are vague and ambiguous. Hence, the said Clauses also violate Article 12(1) of the Constitution and therefore, the said Clause should be approved by Parliament by a simple majority.

The learned Additional Solicitor General submitted to court that an amendment would be proposed at the Committee Stage to sub paragraph (a) and (b) in Clause 14, in order to bring more clarity and consistency with regard to the sentencing in accordance with the provisions of the Penal code, so that amended sub paragraphs would read as follows.

> *(a) if the offence of rioting be committed in consequence of such provocation, be liable to imprisonment of either description for a term not exceeding five years, or with fine not exceeding five hundred thousand rupees or with both such imprisonment and fine; and*
>
> *(b) if the offence of rioting be not committed, be liable to imprisonment of either description for a term not exceeding three years, or with fine not exceeding three hundred thousand rupees, or with both such imprisonment and fine.*

However, in the proposed amendments made to Clause 14 of the Bill, the said Clause can be approved by Parliament with a simple majority.

Clause 15

Clause 15 of the Bill provides;

> *"Any person, whether in or outside Sri Lanka who by communicating a false statement,* ***voluntarily causes disturbance to any assembly lawfully engaged*** *in the performance of religious worship or religious ceremonies, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled."*
>
> [emphasis added]

It was submitted that the said Clause is broad and vague to the point of being nonsensical. Hence, it is inconsistent with Article 12(1) of the Constitution.

Furthermore, due to this broad and imprecise nature of the offence, no reasonable person would know what would constitute this offence. Hence, it was submitted that individuals would self censor their statements and this offence would have a chilling effect and would thus be inconsistent with Article 14(1)(a) of the Constitution.

The learned Additional Solicitor General submitted that an amendment would be proposed at the Committee Stage, to amend the sentence in accordance with the provisions of the Penal Code, to read the said Clause as follows;

> "*Any person, whether in or outside Sri Lanka who by communicating a false statement, voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding three hundred thousand rupees, or to both such imprisonment and fine* ***and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled."***
>
> [emphasis added]

This amendment intends to set an upper limit to the sentence to provide more clarity in second or subsequent conviction.

Clause 16

A close scrutiny of Clause 16 of the Bill shows that there is ambiguity or vagueness in the said Clause. Hence, we are not inclined to uphold the said objection raised by the Counsel for the petitioners. As stated above, the provisions referred to in the said amendments specified for the second or subsequent commission of an offence is excessive. Thus, the words ***"****and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled"* should not be included at the Committee Stage. However, if such words are not deleted, the said Clause needs to be passed by a special majority in Parliament.

The counsel for the petitioners submitted that the phase, '**wounding the religious feelings of any other person**' is not defined and does not have a precise meaning. Thus, it is vague. The said term also does not provide any indication of what the threshold is for a statement to qualify as an offence in terms of this Clause. Hence, the said Clause is inconsistent with Article 12(1) of the Constitution. Further, the individuals would self-censor their statements and this offence would have a chilling effect and would thus be inconsistent with Article 14(1)(a) of the Constitution.

We are inclined to agree with the submissions made by the counsel for the petitioners. Further, we determine that the said Clause should be passed in Parliament by a simple majority.

However, the learned Additional Solicitor General submitted that at the Committee Stage amendments would be moved to remove this Clause altogether.

Clause 17

Clause 17 stipulates that any individual, irrespective of their location (i.e., whether in or outside Sri Lanka), who intentionally and maliciously seeks to outrage the religious sentiments of any group by communicating a falsehood that insults or aims to insult that group's religion or religious beliefs, commits an offence. The penal consequences for such an offence are potential imprisonment for up to three years, a fine, or both. In instances of a second or subsequent conviction under this Clause of the Bill, the penalties, whether imprisonment, fine, or both, may be doubled.

While the ostensible aim of Clause 17 is to protect religious sentiments from intentional and malicious falsehoods, its actual scope extends beyond the remit of "online safety", as traditionally understood. Online safety, in its quintessential sense, is concerned with safeguarding users from immediate digital threats, such as cyberbullying, phishing, scams, or exposure to harmful content. The focus is on creating a safe environment where users can navigate and interact without fear of personal harm, privacy breaches, or digital manipulation.

However, the learned Additional Solicitor General submitted that the Committee Stage Amendment to Clause 17 of the Bill would be made. Further, after the amendment it will read as follows;

> *"Any person, whether in or outside Sri Lanka who with the deliberate and malicious intention of outraging the religious feelings of any class of persons, insults or attempts to insult the religion or the religious beliefs of that class by communicating a false statement, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding three hundred thousand rupees, or to both such imprisonment* ***and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled."***
>
> [emphasis added]

The above Committee Stage amendments seek to ensure an upper limit to the sentence to ensure more clarity in the event of a second or subsequent conviction.

Clause 20

The learned counsel for the petitioner submitted that the term "break the public peace", which is in Clause 20 of the Bill, is intrinsically fluid and devoid of specific parameters. Without explicit definitions, it becomes amorphous, open to varied interpretations contingent upon individual or situational perspectives. Article 10 of the Constitution guarantees that *"every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice"*. Further, Article 14(1)(e) of the Constitution *"guarantees the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching"*. Thus, in order to secure such rights, the State is entitled to enact legislation. Further, the lack of precise delineations may lead to misinterpretation or abuse.

Hence, vague and broad terms which seek to constitute a penal offence are inconsistent with Article 12(1) of the Constitution. Furthermore, the broad scope to which the provisions of this Clause will apply an impermissible abridgement of the rights contained in Article 14(1)(a) of the Constitution.

The learned Additional Solicitor General submitted that the aforementioned amendments would be made to Clause 20 of the Bill at the Committee stage. If the said amendments are made at the Committee stage, Clause 20 of the Bill may be passed by the simple majority in Parliament.

Clause 21

Clause 21 of the Bill prohibits the communication of false statements with the intention to incite mutiny within the navy, army, or air force of Sri Lanka or to cause public fear, alarm, or induce someone to commit an offence against the State or public tranquillity. Violators face penalties of imprisonment for up to seven years, a fine, or both. For repeat offenders, the stipulated penalties may be doubled upon a second or subsequent conviction.

The introduction of a specific Clause that criminalizes the communication of false statements with intent to cause mutiny and offences against the State is overly expansive and not strictly aligned with the intended scope of the proposed law. By focusing on broader national security concerns and public order, the Clause deviates from the principal objective of protecting Internet users and the public from online harm and providing for their safety.

The learned Additional Solicitor General submitted further that the Clause 21 of the Bill will be amended in the following manner at the Committee Stage of Parliament to specify the upper limits of the fine that can be imposed for an offence under that Clause:

> *"Any person, whether in or outside Sri Lanka who communicates any false statement, with intent to cause any officer, sailor, soldier, or airman in the navy, army or air force of Sri Lanka to mutiny, or with intent to cause fear or alarm to the public, induces any other person to commit an offence against the State or against the public tranquillity, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding seven years, or to a fine not exceeding seven hundred thousand rupees, or to both such imprisonment and* ***fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled."***
>
> [emphasis added]

Clause 23

The learned Additional Solicitor General submitted that the Clause 23 of the Bill will be amended at the Committee Stage in the Parliament in the following manner;

> 23.
>
> *(1) Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location commits or aids and abets an act upon a child, which constitutes an offence within the meaning of section 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, 365A or 365B of the Penal Code commits an offence* ***and shall on conviction be liable to the punishment for each such offence as specified in the Schedule hereto:***
>
> *Provided however, in the case of aiding and abetting to commit an offence under section 363 of the Penal Code in respect of a child, every reference to a "woman" in subsection (2) of section 364 of the Penal code shall be read and construed as a "child" for the purpose of this section.*
>
> *(2) Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location, publishes any photograph, audio or video of abusive or pornographic nature relating to a child, commits an offence and shall on conviction* ***be liable to imprisonment for a term not less than two years and not exceeding twenty years or to a fine not exceeding one million rupees, or to both such imprisonment and fine.***
>
> [emphasis added]

Clause 26

Clause 26 of the said Bill provides that the Online Safety Commission has been given the sole discretion to make decisions to issue notices upon the person who communicated the prohibited statement and upon any internet service provider to prevent the circulation of such prohibited statement within 24 hours, and in the event upon which such the person does not comply with the notice, the Commission can issue a notice to the internet service provider or the intermediary to (a) disabled access to the prohibited statement or (b) to remove the prohibited statement from such online location.

Clause 26 of the Bill introduces a remedy for individuals who have been affected by a prohibited statement within the meaning of the Bill.

In terms of Clause 26(1) of the Bill, an individual who is aggrieved by a prohibited statement may submit a complaint providing information to the Commission regarding such prohibited statement. The Commission is empowered to receive such complaints through officers designated as 'information officers' in terms of Clause 26(2) of the Bill.

An obligation is also cast on the complainant to serve a copy of the complaint to the person or persons making or communicating the prohibited statement and any internet access service provider or internet intermediary (Clause 26(3)(b)) of the Bill. This provision has been included to ensure that the person alleged to have made a prohibited statement is given an opportunity at the very earliest stage to provide his side of the story with respect to the complaint.

After acknowledging receipt of the complaint through its information officers (Clause 26(3)), the Commission must form an opinion whether sufficient material exists that a prohibited statement has been communicated and thereafter carry out investigations through the officers of the Commission, in terms of Clause 26(5) of the Bill.

Further, a Committee Stage Amendment will be made to conferring power on the Commission to hear the person who is alleged to have communicated the prohibited statement, during the course of an investigation carried out by the Commission as aforesaid.

It was further submitted that the powers of investigation conferred on the Commission in terms of Clause 26(5) of the Bill, stems from the general powers of investigation vested in the Commission in terms of Clause 11(i) of the Bill. Clause 11(p) of the Bill empowers the Commission to obtain the assistance of the police in the conduct of any investigation undertaken by the Commission.

Moreover, the Bill also provides in Clause 42 that the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, shall *mutatis mutandis* apply to investigations.

Furthermore, it was submitted that pursuant to carrying out its investigation as aforesaid, the Commission is empowered, in terms of Clause 26(6) of the Bill, to issue a notice on the individual responsible for the communication of the prohibited statement to take measures to prevent its circulation. Clause 26(6)(b) also imposes an obligation on the person responsible for communicating the prohibited statement to comply with the notice of the Commission within 24 hours.

The learned Additional Solicitor General submitted that if the individual responsible for the communication of the prohibited statement fails to comply with the notice and removes the same within 24 hours, the Commission is empowered in terms of Clause 26(7) of the Bill to issue a notice to the internet access service provider or internet intermediary on whose online location by which such prohibited statement has been communicated to disable access in Sri Lanka from the online location. Further, such internet access service providers or internet intermediaries are required to comply with such notice within 24 hours in terms of Clause 26(8) of the Bill.

Further, the Committee Stage Amendment would be moved requiring the Commission to apply to the Magistrate's Court where there has been non-compliance with its notice in terms of Clauses 26(6)(b) and 26(8) of the Bill.

Moreover, the aforesaid Committee Stage amendment seeks to supplement the regulatory functions and powers of the Commission. The amendment seeks to introduce a mechanism (under judicial oversight) to enforce and give effect to a notice issued by the Commission under Clause 26 of the Bill, where such notice has not been complied with by an individual, internet access service provider or internet intermediary.

In the circumstances, it was submitted that the statutory scheme contained in Clause 26 of the Bill for the issuance of a notice to prevent the circulation of a prohibited statement is clear, precise, and unambiguous. Moreover, there are adequate safeguards that have been incorporated to Clause 26 of the Bill to prevent any abuse of the statutory scheme contained in that clause.

The learned Additional Solicitor General further submitted that the Clause 26(5) of the Bill only requires the Commission to carry out the following assessments before issuing a notice only;

> *"if the Commission is satisfied, that sufficient material exists that a prohibited statement has been communicated, it may, taking into consideration the seriousness of the matter and the likelihood of damage or prejudice caused by such prohibited statement, issue notice to the person who communicated such prohibited statement."*

Hence, the function of the Commission is to make a *prima facie* and preliminary assessment whether material facts exist under the circumstances to conclude that a certain type of statement has been communicated by an individual. Accordingly, there is no final determination of rights of persons by the Commission in terms of Clauses 26(5) and 26(6)(b) of the Bill. Moreover, there are no penal consequences that are imposed by the Commission directly through the issuance of a notice under Clause 26(5) of the Bill. Therefore, a notice issued under Clause 26 of the Bill cannot be construed as a judicial function.

We are inclined to agree with the submissions made by the learned Additional Solicitor General. Further, in the proposed amendments made to the said Clause, it can be passed by simple majority in Parliament.

Clause 39

Clause 39 of the Bill deals with the power of search and seizure. According, to the submissions made in respect of Clause 37, an expert derives the authority to search and seize material upon the issuance of a warrant by the Magistrate upon a request for such by a police officer. There is no untrammelled power wielded by an expert in such an instance, and only makes provision for an expert to obtain material necessary for investigations. Further, it was submitted that the said Clause is an identical provision to section 18 of the Computer Crimes Act, No. 24 of 2007.

Section 18 (1) of the Computer Crimes Act, No. 24 of 2007 states;

> *"An expert or a police officer may, for the purposes of an investigation under this Act under the authority of a warrant issued on the behalf by a Magistrate on application made for such purpose,-*
>
> *(i) obtain any information including subscriber information and traffic data in the possession of any service provider;*
>
> *(ii) intercept any wire or electronic communication including subscriber information and traffic data, at any stage of such communication."*

Clause 42

Clause 42 of the Bill sets out for the provisions of the Code of Criminal Procedure Act No. 15 of 1979 to apply with regard to procedure in respect of investigations, trial of offences, appeals from judgments and sentences pronounced under a trial in this Act.

The State proposes by way of a Committee Stage amendment to include 'institution/commencement of action' into the section in order to circumvent actions under this Act being instituted in an ad hoc or arbitrary manner.

This would ensure that a uniform and consistent procedure would be followed in respect of all things incidental to the prosecution of offences under this Act. It would thereby enhance Fundamental Rights by ensuring that all persons would be treated in a like manner and provide adequate safeguards to underpin the fundamental tenets enshrined under Article 12(1) of the Constitution.

Clause 53

The learned counsel for the petitioners submitted that the Clauses 53 and 54 of the Bill are lacking in precision and criteria. Hence, the said Clauses are arbitrary and capricious, and therefore violates Article 12, Article 14(1)(a), (b), (c), (e), (f), and (g) of the Constitution.

Clause 53(1) of the Bill read with Clause 53(2) of the Bill imposes a statutory obligation on the Commission to formulate rules (within 24 months) for two purposes, i.e.

(a) To issue a code of practice to service providers and internet intermediaries specifying security procedures and practices that should be followed by them

(b) To specify the procedure under which the websites providing social media platforms to the end users in Sri Lanka shall be registered

Clauses 53(3) and 53(4) of the Bill requires public consultations to be held prior to the formulation of the aforesaid rules.

The rules that are made under Clause 53(1) of the Bill must be published in the Gazette and shall come into operation on the date of publication or on such later date as may be specified therein.

However, Clause 53 of the Bill does not set out a requirement to place the rules before Parliament. Thus, the said Clause 53 of the Bill is arbitrary and capricious due to absence of Parliamentary supervision as the subordinate legislation or promulgated with the authority of Parliament. Hence, the said Clause should be passed in Parliament by a special majority as required by Article 84(2) of the Constitution. However, if the proposed amendments to the said Clause are effected, the amended Clause 53 of the Bill could be passed in Parliament by a simple majority.

Clause 53(6) of the Bill requires rules framed by the Commission to be placed before Parliament for approval. The learned Additional Solicitor General submitted that a Committee Stage amendment would be made to Clause 53(6) of the Bill to be presented to the Parliament for approval. The rules which are not approved by Parliament are deemed to be rescinded from the date of such non-approval by Parliament.

Clause 54

Clause 54 of the Bill deals with the Minister's power to make Regulations with respect to matters which have to be prescribed by regulations under the Act or matters with respect to which regulations are authorised or required to be made under the Act.

The regulations made by the Minister are required to be published in the *Gazette* and come into operation on the date of publication or on such a later date as may be specified in the *Gazette.*

Regulations made under the Act are required to be placed before Parliament for approval and will stand rescinded from the date of non-approval by Parliament, in the event such regulations are not approved by Parliament.

Exceptions from the applicability of the Bill

The learned President's Counsel who appeared for the petitioner in SC/SD/106/2023 submitted that the text messages and various other modes are used for religious purposes and thereby, the Bill shall not curtail such matters. He further, submitted that such curtailments by certain Clauses in the Bill would violate Article 12(1) of the Constitution. We are inclined to agree with the submissions made by the learned President's Counsel.

Furthermore, the Counsel who appeared for the petitioner in SC/SD/79/2023 submitted that there are publications already available on the internet which will be offences when the Bill becomes law. He further submitted that if someone hacks into an account and posts an offensive material, the owner of such an account or a service provider will become liable under the Bill.

However, such inconsistency can be avoided by excluding the following from the application of the Bill and therefore such a Clause in the Bill can be passed by a simple majority in Parliament.

(a) If emails are the only user-generated content enabled by the service.
(b) SMS and MMS services

(i) if SMS messages are the only user-generated content enabled by the service,
(ii) if MMS messages are the only user-generated content enabled by the service,
(iii) if SMS messages and MMS messages are the only user-generated content enabled by the service.

(c) If one-to-one live aural communications are the only user-generated content enabled by the service.
(d) One-to-one live aural communications" has the meaning given by section 39(6).

(i) The false statements, prohibited statements and other prohibited materials that are removed within 6 months from this Act comes into operation,
(ii) Any materials that have been uploaded or interfered by third parties.

Observations of the Court

The court observed that there is no provision in the Bill to secure the confidentiality of the information that may transpire during an investigation carried out under the Bill which is essential. Hence, in order to fill the said vacuum, the legislature may consider including the following to the Bill at the Committee Stage.

> *"Every person engaged in an investigation under this Act shall maintain strict confidentiality with regard to all information as may come to his knowledge in the course of such investigations and he shall not disclose to any person or utilize for any purpose whatsoever any information so obtained other than in the discharge of his duties under this Act.*
>
> *(2) A service provider shall not be held liable under the civil or criminal law for the disclosure of any data or other information for the purposes of an investigation under this Act.*
>
> (3) *Any person who contravenes subsection (1) shall commit an offence and shall on conviction be liable to a fine not exceeding three hundred thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.*

Clause 42

The learned Additional Solicitor General submitted that Clause 42 of the Bill enables the Commission to institute criminal proceedings in the Magistrate's court. However, in order to avoid

any ambiguity, the legislature may consider adding the following to Clause 42 of the Bill at the Committee Stage in Parliament as Clause 42(2) of the Bill;

> *"42(2) Proceedings in a Magistrate Court shall be instituted by an officer, authorised in writing by the Commission on a written report being made to the Magistrate that an offence has been committed under this Act."*

Moreover, it would be appropriate to introduce a deeming provision to the Bill which will facilitate prosecution of persons who commit offences outside the territory of Sri Lanka. Such provision is incorporated to the Computer Crimes Act. Thus, the legislature may consider the following;

> *"For the purposes of the application of the provisions of this Act in relation to an offence committed outside the territory of Sri Lanka shall be deemed to have been committed in Sri Lanka."*

- The word "damage" in Clause 3A should be replaced with word "harm" and delete the word "damage" in Clause 18B of the Bill in order to avoid ambiguity with civil actions. Delete the words "of facts" in Clause 22(1) of the Bill.
- Amend the illustrations to section 22(1) of the Bill. Delete the word "orally" in Clause 26 of the Bill.
- The words "one week" in Clause 27(7) and in all other Clauses of the Bill should be replaced with the words "two weeks" or with a longer period.
- The word "penalty" should be replaced with the word "fine" in Clause 27(10) in other penal sections of the Bill.
- The word "period" in the penal provisions of the Bill should be replaced with the word "term".

Conclusion

(i) If Clauses 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 and 56 are required to be passed in Parliament by a special majority as required by Article 84(2) of the Constitution.

(ii) However, if Clauses 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 and 56 are amended at the Committee Stage in Parliament, subject to the determinations made in respect of several Clauses referred to above, this Bill may be passed in Parliament with the simple majority.

We have examined the provisions of the Bill and are of the opinion that, subject to the above, none of the provisions in the Bill are inconsistent with the Constitution. Therefore, the Bill can be passed by a simple majority in Parliament, subject to the amendments stated above.

We wish to place on record our appreciation for the assistance given by the learned Additional Solicitor General and the learned counsel for the petitioners in the consideration of the Bill.

Priyantha Jayawardena PC
Judge of the Supreme Court

A.L. Shiran Gooneratne
Judge of the Supreme Court

Achala Wengappuli
Judge of the Supreme Court

ගරු නීතිඥ ලක්ෂ්මන් කිරිඇල්ල මහතා
(மாண்புமிகு சட்டத்தரணி லக்ஷ்மன் கிரிஎல்ல)
(The Hon. Lakshman Kiriella, Attorney-at-Law)

ගරු නියෝජ්‍ය කථානායකතුමනි, මට රීති ප්‍රශ්නයක් මතු කරන්න තිබෙනවා.

අපි පාර්ලිමේන්තුවේදී මේ කාරණය ගැන කියා තිබෙනවා. ගරු නියෝජ්‍ය කථානායකතුමනි, මේ පාර්ලිමේන්තුවට හදිසියේම පනත් කෙටුම්පත් ඉදිරිපත් කරනවා. මට මතකයි, එක අවස්ථාවක මුළු පනත් කෙටුම්පතම ප්‍රතික්ෂේප වුණා. ඒ, මීට මාස තුන හතරකට කලින්. කිසිම සොයා බැලීමක් නැතිව තමයි මේ පනත් කෙටුම්පත් ඉදිරිපත් කරන්නේ. ඒවා ගැන Sectoral Oversight Committeesවලදී සාකච්ඡා කළේත් නැහැ; සිවිල් සමාජය එක්ක සාකච්ඡා කළේත් නැහැ.

ඉතින්, හදිසියේ පනත් කෙටුම්පත් ඉදිරිපත් කළාම වෙන දේ බලන්න. සංශෝධන 50කට වැඩියි. අපි පාර්ලිමේන්තුවට ආපු කාලයේ නම් පනත් කෙටුම්පතක් ඉදිරිපත් කළාම එක වගන්තියයි, දෙකයි සංශෝධනය වෙන්නේ. දැන් ෆැක්ටරියක් වාගේයි. පනත් කෙටුම්පත් ඉදිරිපත් කරනවා, කිසිම සොයා බැලීමක් නැහැ. දැන් බලන්න, ත්‍රස්ත විරෝධී පනත පිළිබඳව. *[බාධා කිරීම්]* ඔය කෑ ගහන අය නැඟිටලා කථා කරන්නකෝ, කෑ ගහන්නේ නැතිව. නැඟිටලා කථා කරන්න, කෑ ගහන්න එපා. මම කථා කරනවා වාගේ නැඟිටලා කථා කරන්න.

ගරු නියෝජ්‍ය කථානායකතුමනි, ඔබතුමා කලින් සඳහන් කළ ත්‍රස්ත විරෝධී පනත් කෙටුම්පත ගන්න. ඒ පනත් කෙටුම්පත පාර්ලිමේන්තුවට ඉදිරිපත් කළාද, නැද්ද කියන ප්‍රශ්නය එදා මතු වුණාම ආණ්ඩු පක්ෂයෙන් සහතිකයක් දුන්නා, "Order Paper එකේ තිබෙනවා. Order Paper එකේ තිබෙන එක ප්‍රමාණවත්" කියලා. *[බාධා කිරීමක්]* පොඩ්ඩක් ඉන්න.

ගරු ප්‍රසන්න රණතුංග මහතා (නාගරික සංවර්ධන හා නිවාස අමාත්‍ය සහ ආණ්ඩු පාර්ශ්වයේ ප්‍රධාන සංවිධායකතුමා)
(மாண்புமிகு பிரசன்ன ரணதுங்க - நகர அபிவிருத்தி மற்றும் வீடமைப்பு அமைச்சரும் அரசாங்கக் கட்சியின் முதற் கோலாசானும்)
(The Hon. Prasanna Ranatunga - Minister of Urban Development and Housing and Chief Government Whip)

ගරු නියෝජ්‍ය කථානායකතුමනි, සභාවේ මූලික කටයුතු අවසන් කරන්න. ඊට පසුව එතුමාට පුළුවන් කථා කරන්න. එතකොට ප්‍රශ්නයක් නැහැ.

ගරු නීතිඥ ලක්ෂ්මන් කිරිඇල්ල මහතා
(மாண்புமிகு சட்டத்தரணி லக்ஷ்மன் கிரிஎல்ல)
(The Hon. Lakshman Kiriella, Attorney-at-Law)

පොඩ්ඩක් ඉන්නකෝ.

ගරු නියෝජ්‍ය කථානායකතුමා
(மாண்புமிகு பிரதிச் சபாநாயகர் அவர்கள்)
(The Hon. Deputy Speaker)

ගරු මන්ත්‍රීතුමනි, ශ්‍රේෂ්ඨාධිකරණය මේ සම්බන්ධයෙන් අපව දැනුවත් කරලා තිබෙනවා. දෙවැනි වර කියවීමේදී අදහස් දැක්වීම කරන්න පුළුවන්.

ගරු නීතිඥ ලක්ෂ්මන් කිරිඇල්ල මහතා
(மாண்புமிகு சட்டத்தரணி லக்ஷ்மன் கிரிஎல்ல)
(The Hon. Lakshman Kiriella, Attorney-at-Law)

මම කියන්නේ පාර්ලිමේන්තුවේ න්‍යාය පත්‍රයට දාපු දවසේ- *[බාධා කිරීමක්]* නැහැ, නැහැ. පොඩ්ඩක් ඉන්න. මේක රීති ප්‍රශ්නයක්.