

Questions & Answers
ONLINE SAFETY BILL
Centre for Policy Alternatives
December 2023

This document provides a brief Q and A of the controversial Online Safety Bill. The version of the Bill that is examined contains the proposed Committee Stage amendments made by the Attorney-General, which were subsequently approved by the Supreme Court. For an explanation of the differences between the originally Gazetted Online Safety Bill and the amendments proposed, please see [here](#).

Q1. What is the Online Safety Bill?

The Online Safety Bill was published in the Gazette by the Minister of Public Security on the 18th of September 2023 and tabled in the Parliament of Sri Lanka on the 3rd of October 2023. The Bill sets out that it shall establish an ‘Online Safety Commission’ with specific objectives.



To put it simply, the Online Safety Bill can criminalize what a person posts or shares online, with penal sanctions leading up to 20 years.

Q2. What is the 'Online Safety Commission'?

The Online Safety Commission would consist of five members appointed by the Executive President of Sri Lanka, subject to approval from the Constitutional Council. The members must have qualifications and experience in one of the fields of information, technology, law, governance, social services, journalism, science, technology or management. The Commission would have extensive powers, such as powers to;

• Issue directives to persons, service providers or internet intermediaries involved in the communication of "prohibited statements"

• Issue notices to persons communicating "prohibited statements" to cease such communication and to instruct internet service providers to disable online locations

• Make recommendations to internet service providers to remove prohibited statements

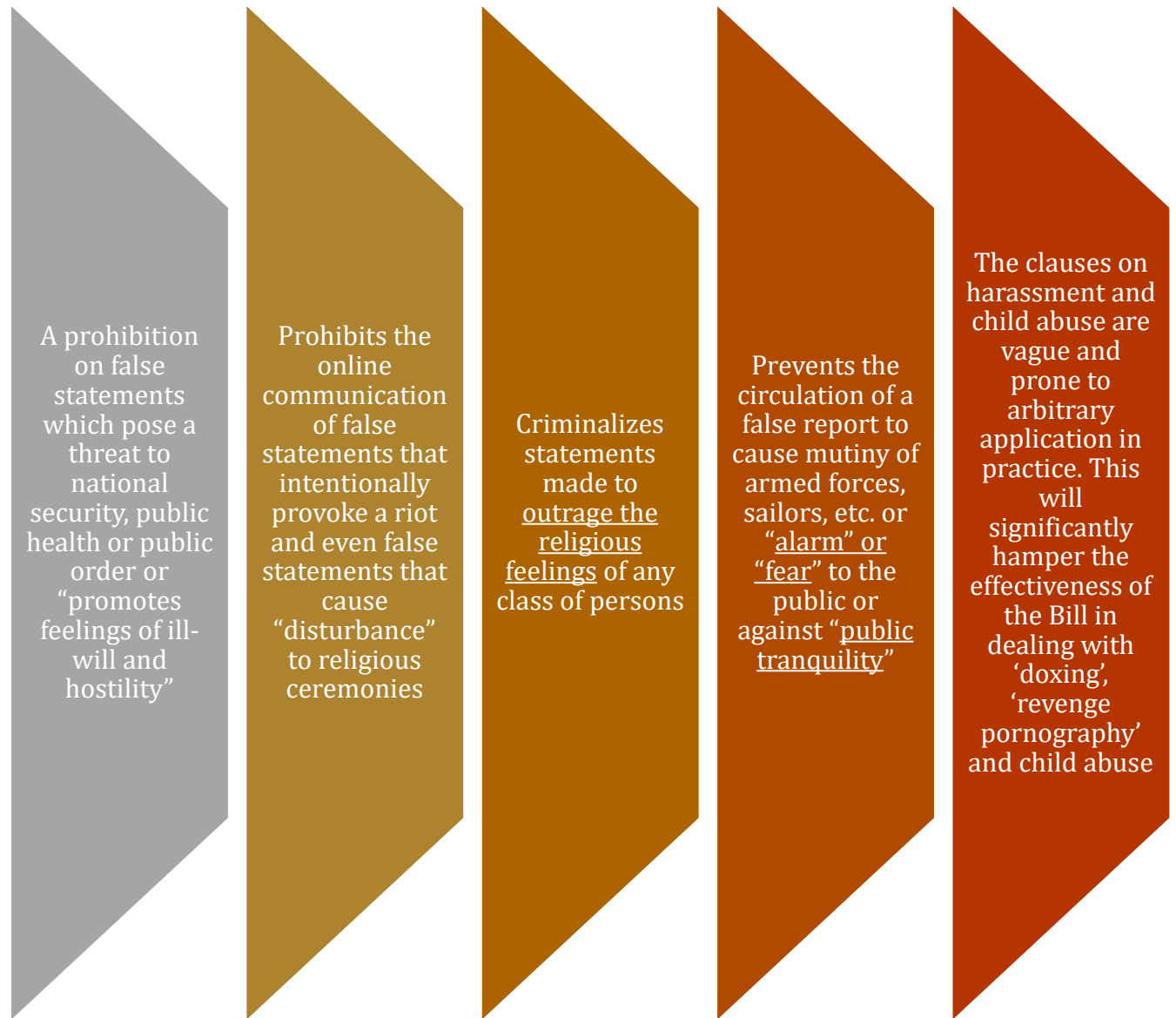
• Issue codes of practice (i.e., rules for service providers and internet intermediaries)

• Advise the Government on all matters concerning online safety

Obtain police assistance in conducting investigations

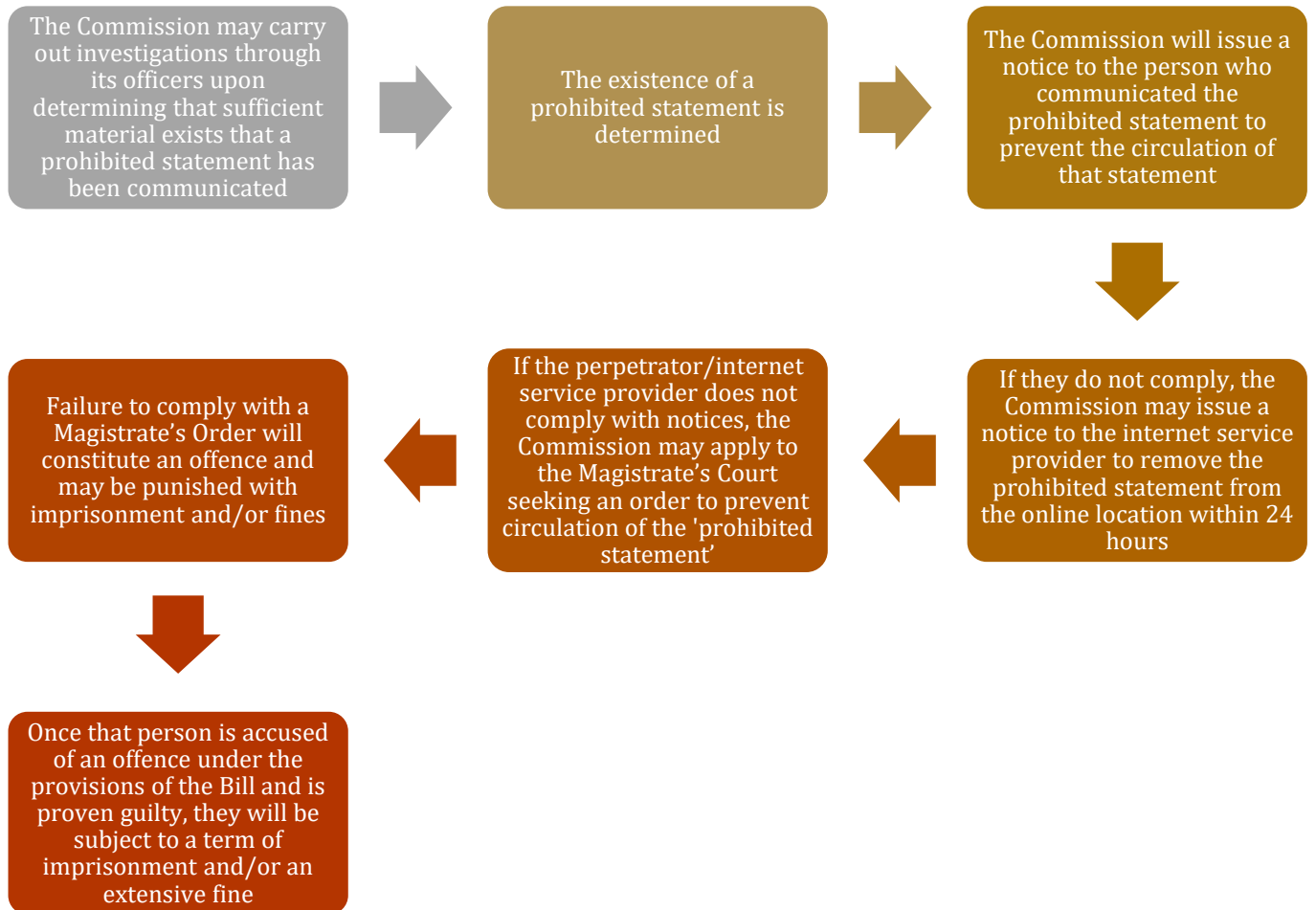
Q3. What are the key offences listed within the Online Safety Bill?

The Online Safety Bill provides for a wide variety of offences, with varying punishments including imprisonment and/or fines.



Q4. What is the procedure of enforcement attached to violations of the Online Safety Bill?

The following is the process provided in the proposed Bill:



Q5. Are there any pieces of legislation in Sri Lanka already regulating the internet and crimes listed in the Online Safety Bill?

There are multiple pieces of legislation already regulating the offences provided for within the Online Safety Bill, as follows:

Statute	Provision	Comments
Penal Code (Ordinance No.2 of 1883)	Sections 150, 291, 291A, 291B, 484 and 485	These Sections of the Penal Code discuss wantonly provoking a riot (150), disturbing a religious assembly (291), wounding (291A) and outraging religious feelings (291B), an intentional insult to provoke a breach of the

		<p>peace (484) and circulating false reports to cause a mutiny (485).</p> <p>The Bill replicates these provisions and exacerbates the punishment imposed.</p>
International Covenant on Civil and Political Rights Act (No.56 of 2007)	Article 3	Sri Lanka, under Article 3, already restricts the propagation of national, racial or religious hatred that instigates discrimination, hostility or violence. The Bill, by prohibiting false statements that may incite “ill-will and hostility between different classes of people”, is only creating a vaguer Article 3, prone to arbitrary usage.
Computer Crimes Act (No.24 of 2007)	Sections 6 and 17	<p>Section 6 of the Computer Crimes Act criminalizes causing a computer to endanger national security, the national economy or public order. The Bill also attempts to criminalize online communications of false statements that pose a threat to national security or public order.</p> <p>Section 17 CCA provides for appointing experts (public officers) by the Minister to assist in police computer crime investigations. This is similar to the Bill’s procedure of appointing experts.</p>
Obscene Publications Ordinance (No.04 of 1927)	Section 2	Section 2 of the Obscene Publications Ordinance provides that it is an offence to produce and distribute obscene writings, drawings, prints, paintings, printed matter, pictures, etc. The Bill reproduces such a prohibition by preventing the communication of ‘prohibited statements’ that cause ill-will, hostility, etc.
Electronic Transactions Act (No.19 of 2006)	Section 2	Section 2 of the Electronic Transactions Act sets out as one of its objectives the promotion of public confidence in the authenticity, integrity and reliability of data messages, electronic documents, electronic records or other communications. The Bill is similar in its attempts to regulate the truth of statements made online.

Nonetheless, issues of harassment by the exposure of private information online and child abuse online remain unregulated within Sri Lanka. However, the OSB does not adequately deal with these issues.

Q6. Why did the Centre for Policy Alternatives claim that the Online Safety Bill violated the fundamental rights of citizens?

The citizens of Sri Lanka are granted a limited pre-enactment review under Article 121 of the Constitution, offering a brief opportunity to assess potential legal implications before a Bill becomes Law. Importantly, 45 petitions challenging the constitutionality of the Online Safety Bill were submitted to the Supreme Court between the 3rd and 17th of October 2023. The hearing concluded on the 18th and 19th of October. The petitioners emphasized;

- the need to examine the potential abuses of power embedded in the Bill's clauses, and
- that the court should initially assess the Bill as published in the Gazette and upon identifying any inconsistency with constitutional provisions, evaluate proposed amendments—whether suggested by the Attorney General or otherwise.



Q7. How does the Online Safety Bill impact internet intermediaries and internet service providers?

The Bill introduces a framework that may place significant pressure on internet intermediaries/internet service providers to comply with the Commission’s directives, potentially affecting their autonomy, operational efficiency and legal responsibilities, outlined as follows:

The Problem	Conflicting Constitutional Provision	Implications
Forced Publication of Opposing Views (11(a))	14(1)(a) and 10	The Commission can issue directives to individuals, service providers, or internet intermediaries to publish opposing views, potentially violating freedom of expression. For example, a priest promoting the exclusive correctness of the Buddhist path might be compelled to publish alternative views.
Removal of Content without Court Order (11(d) and 11(f))	14(1)(a) and 10	The Commission's authority to issue notices and recommendations for content removal without a court order may infringe on constitutional rights, impacting service providers and end users.
Pressure on Service Providers (11(f),11(k), and 53(1)(b))	14(1)(g)	Recommendations to service providers, coupled with the Commission’s website registration authority, may exert undue pressure on compliance, potentially violating the right to conduct activities freely.
Policing Information Dissemination (11(h))	12 and 14(1)(a)	Recommendations to disable access without a court order may violate constitutional rights, as it allows policing of information dissemination without proper legal scrutiny.
Rule-Making Power without Guidelines (11(j))	12(1)	The Commission's rule-making power without clear guidelines and specific criteria violates the right to equality, raising concerns about transparency and equal protection under the law.

Q8. Can the Online Safety Bill with the proposed Committee Stage amendments be enacted into law?

The Supreme Court communicated its determination to the Deputy Speaker of Parliament on the 7th of November 2023. The Court determined that, with 31 Committee Stage Amendments, the Bill could be passed by a simple majority.

Amendments were specified for clauses related to false statements about events, contempt of court, incitement of uprising, disturbance of religious meetings, and statements with the intent to hurt religious sentiments.

The Court concluded that, with these amendments, neither the Online Safety Bill nor its provisions were inconsistent with the Constitution.

Q9. How does Sri Lanka's Online Safety Bill compare to internet-related legislation in other jurisdictions?

Compared to internet-related legislation in jurisdictions like the UK, the Sri Lankan Online Safety Bill falls short in providing clear definitions, robust protections for freedom of expression and comprehensive child protection measures. Concerns emanate due to concentrated presidential powers and a potential lack of independence for the Online Safety Commission.

United Kingdom	Germany	Singapore
<ul style="list-style-type: none">• UK's Online Safety Bill provides a wide range of laws focusing on child protection and safer social media platforms.• It is praised for its advanced and multifaceted approach, featuring clear thresholds, duties safeguarding democratic rights, and holistic measures for online safety.	<ul style="list-style-type: none">• Germany's amended Network Enforcement Act (NetzDG) demonstrates a concerted effort to combat online hate speech and fake news, with provisions focusing on user-friendly complaint procedures, appeals mechanisms, expanded transparency reports and enhanced supervisory powers.• Unlike the Sri Lankan Bill, the German amendment aims to strengthen effectiveness by ensuring accessibility, transparency, and a fair appeals process in addressing harmful online content.	<ul style="list-style-type: none">• Sri Lanka's Bill took great inspiration from Singapore's Protection from Online Falsehoods and Manipulation Act. However, the Sri Lankan Bill diverges notably.• Sri Lanka's Bill encompasses a broader range of offences, subjectively defines 'prohibited statements', lacks a clear appeals process, introduces social media platform registration and raises concerns about redundancy with existing laws.

The differences underscore the necessity for careful consideration regarding clarity, freedom, and effective regulation in the Sri Lankan Online Safety Bill.