



## **A COMPARATIVE LEGAL ANALYSIS OF THE SRI LANKAN ONLINE SAFETY ACT OF 2024 FROM THE HUMAN RIGHTS PERSPECTIVE**

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In the contemporary age of digital technology, where online communication platforms play a significant role in public discourse, upholding fundamental rights poses complex challenges. The Sri Lankan Online Safety Act, No. 9 of 2024 (OSA), presumably aimed at enhancing online safety, has been extensively debated and scrutinised due to the potential restrictions that the Act can have on the human rights and democratic values enshrined in Sri Lankan and international human rights legal framework. This situation warrants a comprehensive examination of the compatibility of OSA with the established norms, standards and principles of human rights law. The main objective of this research is to comparatively analyse the compatibility of the Act with selected national and international human rights provisions. Accordingly, the study explores the restrictions of the OSA on specific fundamental rights, including freedom of speech, expression, and privacy. Additionally, the study focused on the practical implications of this legislation on individuals and society. This study focuses on the research question of whether the OSA is compatible with the prevailing human rights framework and whether it restricts selected fundamental rights. This research employs a doctrinal legal research methodology based on literature review of primary sources including the OSA, 1978 Constitution and international legislation, secondary sources and tertiary sources encompassing books and articles. Results revealed that the OSA adversely restricts selected human rights with the potential for arbitrary exercise of power. Hence, in conclusion, this research recommends the compelling necessity for a comprehensive legal analysis of the provisions of OSA and developing remedial legal provisions to uphold human rights. Furthermore, this research provides a significant contribution to online safety by extending a comparative evaluation of the existing human rights landscape and judicial remedies available to mitigate potential abuses arising from the OSA. Moreover, it contributes to the ongoing conversation about online safety measures, civil liberties, and the necessity to find a proper equilibrium between security considerations and human rights.

**Keywords:** Online Safety Act, human rights, freedom of speech, Constitution of Sri Lanka, right to privacy

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### **INTRODUCTION**

In the contemporary digital era, the advent of digital technologies has revolutionized how individuals interact, express themselves, and access information. However, the digital transformation has also raised significant concerns regarding the protection of human rights in the online domain. Consequently, to address the challenges posed by the digital age, the Sri Lankan parliament took a legislative initiative by enacting the Online Safety Act, No. 9 of 2024 (OSA) on 24<sup>th</sup> of January, 2024. It has emerged as a pivotal instrument aimed to safeguard citizens in the digital sphere. Although the OSA presumably aimed at enhancing online safety, it has raised concerns regarding the severe restrictions that the Act can have on civil liberties, human rights, and democratic values enshrined in the Constitution, particularly the freedom of speech and expression and international human rights legal instruments to which people in Sri Lanka are entitled. Critics argue that the passing of the OSA is a significant blow to human rights in Sri Lanka undermining freedom of expression and suppressing dissent (Sri Lanka: Online Safety Act major blow to freedom of expression, 2024). Moreover, many parts of the OSA do not meet international human rights standards, including overbroad provisions and vaguely worded subjective offences. This research conducts a comparative legal analysis of the OSA concerning local and international human rights frameworks, mainly focusing on freedom of speech, expression and privacy. This study also examines the potential conflicts arising between online safety measures and human rights and evaluates whether it effectively balances the necessity for online safety with the preservation of human rights.

### **Objectives**

The primary aim of this research is to comparatively analyse the compatibility of the OSA with the selected local human rights standards and international human rights conventions, mainly focusing on freedom of speech, expression, and privacy within the fundamental rights framework. Additionally, the study comprehensively analyses the specific legal provisions of the OSA, to understand whether OSA has restricted the operation of selected fundamental rights stipulated in the human rights framework. Through a critical evaluation of the provisions of OSA and their implementation, this study seeks to propose recommendations for revising the relevant OSA provisions to mitigate their rigidity and suggestions for a better online safety legislature.

### **Hypothesis**

It is postulated that the implementation of the OSA in Sri Lanka is incompatible with existing local and international human rights frameworks and has resulted in significant restrictions on human rights, leading to potential limits on freedoms, including speech, expression, privacy, and access to information. This hypothesis stems from the notion that unbalanced online safety measures may erode human rights, impose disproportionate constraints on civil liberties, and weaken the rule of law.

### **Research Questions**

To achieve the aforementioned objectives and test the hypothesis, this research addresses the following key research questions:



What are the specific legal provisions of the OSA that have implications for the human rights ideology in Sri Lanka?

How compatible is the OSA with the fundamental rights framework within the context of local and international legal instruments in terms of theory and practice?

What are the recommendations and suggestions that can be made to improve online safety legislation in relation to human rights?

## **METHODOLOGY**

This paper adopts a doctrinal legal research methodology comprising literature review of primary and secondary sources to investigate compatibility of the OSA with local and international human rights framework. Doctrinal research methodology, which is a systematic analysis and interpretation of legal principles, statutes, doctrines and jurisprudence relevant to the research topic, is employed since this study proceeds to engage in a comparative analysis of the legal provisions of OSA and the existing human rights framework. Primary information sources include the Online Safety Act, the 1978 Constitution and international legal instruments, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the American Privacy Rights Act (APRA) of 2024. Besides, secondary information sources encompassing related local and foreign books, newspapers, magazines and the internet are utilized to supply additional insight and context. Thus, this research approach involves critically examining and evaluating prevailing doctrinal sources comprising desk-based research methods to understand and analyze the laws related to the current research.

## **RESULTS AND DISCUSSION**

The comparative legal analysis on the compatibility of the passed OSA in 2024 with human rights within the local and international human rights framework revealed significant restrictions on individual freedom and human rights. This study builds on existing literature regarding the intersection of internet governance and human rights, as highlighted by DeNardis (2004) and Klang & Murray (2011), who explored global politics within information societies. Laidlaw (2017) further emphasizes the necessity of corporate responsibility in regulating speech online, drawing parallels to Sri Lanka's OSA and its potential for overreach. Further literature highlights the evolving discourse on digital rights and regulation. Godwin (2003) explores the defence of free speech in the context of digital platforms, advocating for strong protections against censorship. Deibert et al. (2011) examine how power dynamics and legal frameworks shape rights and rules in cyberspace, revealing the complex interplay between regulation and individual freedoms. Elkin-Koren (2003) delves into the law and economics of intellectual property in the digital age, addressing the limitations and challenges of current legal approaches. In addition, Sander (2019) discusses the promise and pitfalls of applying a human rights-based approach to content moderation, emphasizing its potential to safeguard freedom of expression and its limitations in managing harmful content.

The research findings shed light on the potential adverse impacts of online safety measures and the need to balance online safety and the preservation of human rights. In light of history, multiple online safety instruments have evolved to regulate social media platforms in Sri Lanka. A recent analysis of the regulation of social media platforms in Sri Lanka highlights the constitutional guarantee of freedom of speech and expression under Article 14(1)(a), which includes social media (Gunatilleke, 2023). However, this freedom is subject to restrictions under Articles 15(2) and 15(7) for purposes like protecting racial and religious harmony, defamation, and public order. Currently, Sri Lanka needs more specific laws targeting social media, leading to regulation through various existing laws. Key legislation includes the Police Ordinance, Penal Code, Antiquities Ordinance, Public Security Ordinance,



Prevention of Terrorism Act, Sri Lanka Telecommunications Act, Computer Crimes Act, and the International Covenant on Civil and Political Rights Act. These laws cover offences such as spreading false information, insulting religion, and inciting violence, which can apply to social media content. Additionally, Sri Lanka's National Information and Cyber Security Strategy proposes new laws to address cybercrimes, implicating social media regulation. Institutional bodies like the Computer Crimes Investigation Division and the Information and Communication Technology Agency are involved in enforcing these regulations. Civil society criticizes the selective enforcement of these laws against dissenting voices. It expresses distrust in the intentions regarding passing new legislation, such as the OSA (Statement on the Online Safety Act No. 09 of 2024, 2024). There is concern over social media companies' failure to effectively moderate harmful content. In response, a voluntary Code of Practice for tech companies has been proposed, aiming to self-regulate and ensure accountability without increasing governmental power. This code seeks to balance protecting freedom of expression with the need to address harmful online content. The analysis underscores the complexities and ongoing debates surrounding social media regulation in Sri Lanka, emphasizing the need to safeguard fundamental rights while addressing concerns about security and public order. Severe implications comprise restrictions to freedom of speech, expression, and privacy that the Act can have on human rights and democratic values enshrined in the local and international legal instruments to which people in Sri Lanka are entitled.

The comprehensive analysis of the specific provisions of the OSA, including Section 2, Section 3, Section 4, Section 5, Section 19, Section 20, Section 21 and Section 25 indicated that it granted extensive powers to authorities in online safety (Online Safety Act, 2024). While such powers are necessary to address online safety effectively, there were concerns about the potential for abuse and human rights restrictions. The broad definitions and online safety related offences provided room for interpretation, which, if not carefully managed, could lead to overreach and curtailment of civil liberties (News First, 2024). In light of recent events surrounding the enactment of the OSA, CPA condemns the enactment of such a draconian law that can further limit freedom of speech and the right to dissent (Statement on the Online Safety Act No. 09 of 2024, 2024). The fundamental rights in the Sri Lankan 1978 Constitution are enshrined in Chapter 3, which guarantees diverse essential rights and freedoms to the citizens of Sri Lanka, including the liberty, personal security, the right to freedom of thought, conscience, and religion, the right to freedom of expression, assembly, and association, and the right to privacy (Wickramaratne, 2006). They reflect the commitment of the state to protect and uphold the rights and freedoms of its citizens, promoting equality, justice, and dignity for all. The Human Rights Commission of Sri Lanka raised concerns about the OSA, noting discrepancies with the Supreme Court's determination on the corresponding Online Safety Bill, highlighting the importance of full compliance to safeguard the fundamental rights of the citizens (HRCSL Press Notice 08 02 2024 on Observations on the Online Safety Act, No. 9 of 2024 – HRCSL, n.d.). Moreover, many parts of the Act do not meet international human rights standards. Sri Lanka is a State party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees the rights to freedom of expression and privacy (Sri Lanka: Online Safety Act Major Blow to Freedom of Expression - Sri Lanka, 2024). Potential regulatory impact on business process outsourcing and knowledge process outsourcing organizations operating in Sri Lanka stems from the proposed American Privacy Rights Act (APRA) of 2024. Prima facie, the lack of affirmative data minimisation, strict retention limits, disposal obligations, and transparency requirements in the OSA are in significant contrast with the proposed APRA's strong, rightful emphasis on purpose-limited retention and user visibility (Sanjana, 2024).

Research findings reveals that the provisions of OSA are significantly different from procedural manner with the existing human rights framework. Section 2 of the OSA extends the Act's application to any person who commits an offence under the Act, regardless of whether they are inside or outside Sri Lanka, and includes offences against Sri Lankan citizens or the state, irrespective of the location, allowing the Sri Lankan government to prosecute individuals anywhere for online statements affecting Sri Lankan citizens or the state. This extraterritorial reach can suppress free speech and conflict with other nations' legal frameworks. Section 3 of the OSA, which outlines the Act's objectives, includes protecting persons from harm caused by the communication of prohibited statements online. The broad



and vague definition of "prohibited statements" raises concerns about arbitrary enforcement and suppression of dissent. Section 4 and Section 5 detail the appointment of Online Safety Commission, which has significant powers to regulate online content. The appointment process, controlled by the President and approved by the Constitutional Council, needs more independence, potentially leading to biased decision-making. Section 19 empowers the Commission to direct Internet Service Providers and intermediaries to remove or block prohibited content, which could lead to extensive censorship and compromise the free flow of information online. The vague definitions of prohibited content and the broad enforcement powers can lead to overreach and censorship. Additionally, this section may necessitate surveillance, raising significant privacy issues. Sections 20 and 21 criminalize disseminating "false statements" that threaten national security or public order, using ambiguous terms that allow for subjective interpretation. This ambiguity can be exploited to criminalize legitimate criticism and dissent, creating a chilling effect on free speech due to the severe penalties involved. Section 25 mandates the registration of websites offering social media functionalities, potentially increasing government surveillance and control over online activities. This requirement can infringe on privacy and deter the establishment of new platforms, stifling innovation and diversity in the digital space. Together, these provisions seriously threaten democratic freedoms and human rights in Sri Lanka. These sections highlight that the OSA is lucidly incompatible with the freedom of speech and expression, including publication guaranteed under Article 14 (1) (a) of the Sri Lankan constitution, Article 19 of the Universal Declaration of Human Rights, adopted in 1948, stating the freedom of opinion and expression, the International Covenant on Civil and Political Rights (ICCPR) which guarantees the rights to freedom of expression and privacy and the American Privacy Rights Act (APRA) of 2024. The significant points of concern are particularly vague definitions and broad powers granted to the Commission, a lack of clear safeguards against misuse and the potential for arbitrary application.

Additionally, the OSA presents significant incompatibilities with international human rights standards, particularly when compared to frameworks including the ICCPR and the UDHR, which guarantee freedom of expression and privacy. The OSA's vague definitions of "prohibited statements" and its broad enforcement powers risk arbitrary censorship, conflicting with Article 19 of the ICCPR and the principles of free speech mentioned in UDHR. Furthermore, compared to APRA of 2024, which emphasizes transparency and data retention limits, the OSA falls short in safeguarding user rights. These comparisons highlight the need for reforms to align the OSA with international standards, ensuring it balances online safety with the protection of fundamental human rights.

## CONCLUSION

The OSA in Sri Lanka has significant implications for human rights within the local and international human rights framework. A comparative legal analysis shows that the OSA passed in 2024 is significantly incompatible with the fundamental rights framework within the context of local and international legal instruments in terms of theory and practice. Specific provisions of the OSA can have potential restrictions on human rights as stipulated in the human rights ideology, unveiling significant shortcomings that jeopardize fundamental freedoms in the digital era. The broad provisions and ambiguous definitions in the OSA pose risks to the rights to freedom of speech, expression, privacy, and access to information, as enshrined in both domestic and international legal frameworks. Hence, in conclusion, the findings of the current research reveal that the OSA passed in 2024 is not compatible with domestic or international standards of human rights framework in a democratic approach which demands the necessity for appropriate recommendations and suggestions.

## Recommendations

Several recommendations can be made based on a comparative analysis of the provisions of OSA. In contemporary context, the human rights violations in the landscape of online safety have gained significant importance. It is crucial to maintain a balance between public safety and the protection of human rights. Initially, human rights shall be protected and it is essential to ensure that the OSA respects



the existing fundamental rights framework. Although the OSA aims to ensure online safety, it is identified to be incompatible in a conceptual sense with fundamental rights ideology. Hence, the Act has to be amended in this regard as it restricts the freedom of speech, expression, and privacy of the general public. Section 2 should be revised to limit its extraterritorial reach. Sections 3, 20, and 21, which contain vague definitions and broad enforcement powers, shall be amended to prevent misuse and ensure they do not restrict upon freedom of speech entrenched in Article 10 of the 1978 Constitution and international human rights conventions. Sections 19 and 25 should be reviewed to ensure they do not lead to excessive censorship or government surveillance, and adequate safeguards should be implemented to protect individuals' privacy and prevent misuse of surveillance powers. Additionally, the appointment process for the Online Safety Commission shall be reformed to ensure its independence and impartiality. Thus, adequate measures should prevail to prevent the abuse of powers granted under the Act and to protect individuals from human rights restrictions. Further, strengthening oversight mechanisms, including independent judicial review and robust parliamentary scrutiny are essential to ensure the Act's implementation remains compatible with the human rights framework. Any ambiguities or problematic provisions should be addressed through repeal or amendments to ensure the Act strikes an appropriate balance between national security concerns and the protection of human rights. Finally, Sri Lanka should actively cooperate in international cooperation to develop effective online safety measures prioritising human rights. Collaborative efforts with international organizations and other countries can contribute to creating a comprehensive and rights-respecting legal framework to address online safety.

In conclusion, protecting fundamental human rights is of paramount importance in the context of online safety legislation. The Online Safety Act in Sri Lanka should be carefully reviewed, amended, and implemented to ensure it upholds the constitutional framework. By adopting the recommended measures, Sri Lanka can demonstrate its commitment to effectively addressing the challenges posed by the digital landscape and strike an appropriate balance between online safety and upholding human rights in the digital age.

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