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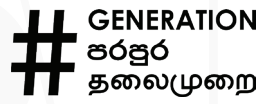
A study on the criminalisation of
online expression in Sri Lanka



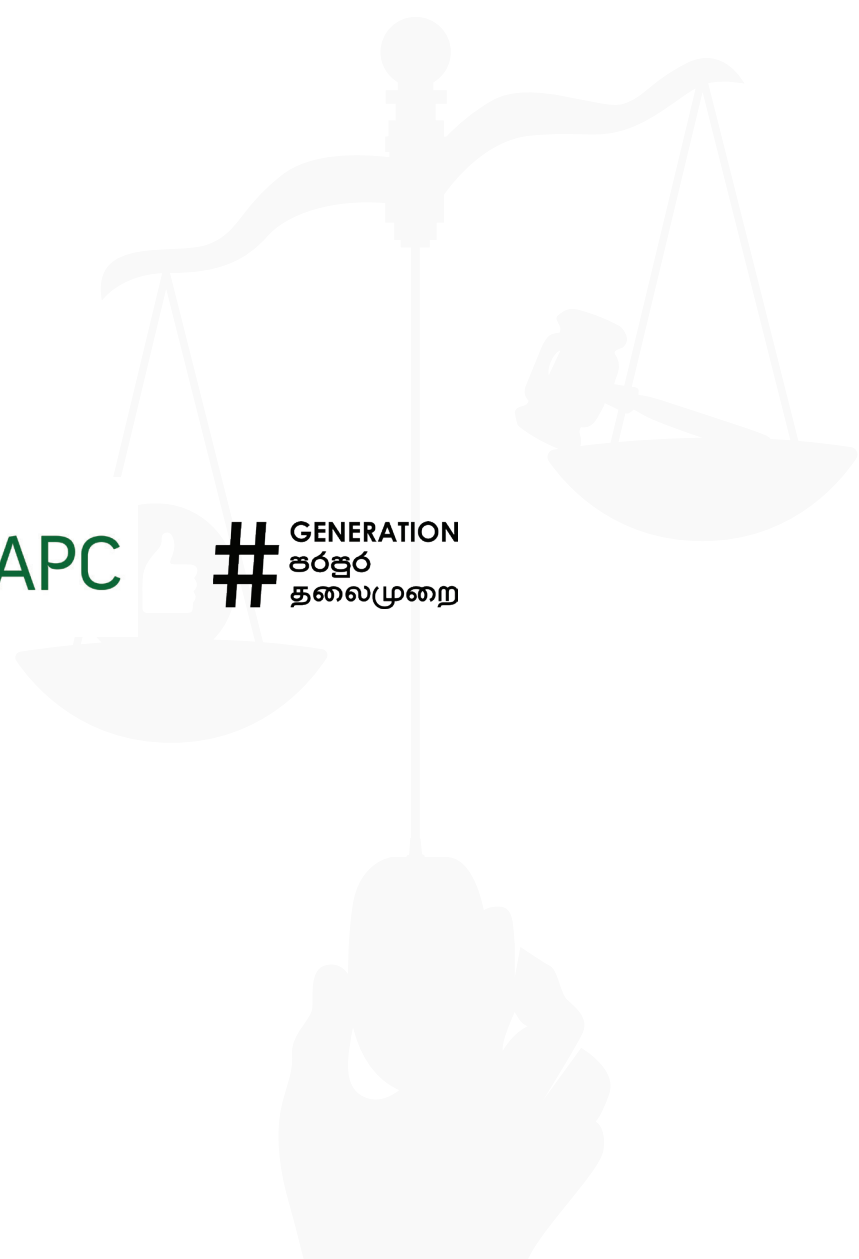
This research was conducted by Hashtag Generation, supported by the Association for Progressive Communications under the Cyberrights Research Initiative and Localised Legal Almanac (CYRILLA) Collaborative. CYRILLA aims to organise and make accessible digital rights-related jurisprudence so that a wide range of actors can more readily and confidently access legal trends as they shape and impact digitally networked spaces, highlighting threats to human rights and opportunities for policy and legal reform.

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GLOSSARY

Acronym	Description
ATB	Anti-Terrorism Bill (September 15, 2023)
CCA	Contempt of Court, Tribunal or Institution Act No. 8 Of 2024
CID	Criminal Investigation Division, Sri Lanka Police
Constitution	The Constitution of Sri Lanka
The Covenant	International Covenant on Civil and Political Rights of 1966
ERs	Emergency Regulations
HRCSL	Human Rights Commission of Sri Lanka
ICCPR Act	International Covenant on Civil and Political Rights Act No. 56 of 2007
MOM	Media Ownership Monitor at Verité Research
OCHA	Online Criminal Harms Act
OSA	Online Safety Act No. 09 of 2024
POFMA	Protection from Online Falsehoods and Manipulation Act
PSO	Public Security Ordinance
PTA	Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

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01.

SITUATING FREEDOM OF EXPRESSION IN SRI LANKA

With the rapid evolution of the digital sphere, traditional boundaries of free(dom of) expression have been traversed. The Internet and social media companies like Google, Microsoft, X (formerly Twitter) and Meta, hold much influence over what we know as the information ecosystem. For countries in the 'global South' such as Sri Lanka, the internet in many ways has provided avenues to connect and engage beyond physical borders, language differences, and racialised geopolitics. This technological infrastructure has also heightened the fact that freedom of expression entails the right to receive, seek and share information through any given media (International Covenant on Civil and Political Rights, 1966).

Sri Lanka's post-colonial history is pockmarked with contradicting narratives around race, religion, class, caste, and gender. The country has a vivid history of struggle, dissent, and campaigns of crackdowns, predominantly affecting ethnically minoritised Tamils and Muslims, and the economically disadvantaged. The increased digital penetration across the country means that these domestic conflicts now transcend national boundaries.

The unfettered expansion of free expression into the digital sphere continues to challenge the State's position as an arbiter of information. Legislating around the use of the internet—particularly social media—has become a rite of passage for South Asian states now, often with deeply problematic implications on freedom of expression, dissent, assembly, privacy, and religious belief. Sri Lanka's legal regime around expression in the digital space is situated within the broader regional context, specifically its geographical neighbours and aspirational models of 'development' in India and Singapore, respectively.

In India, the [Information Technology Act of 2000](#) (amended in 2008) is criticised for its lack of clear and precise definitions for terms such as "cyber-terrorism", "data breach", and "cyber threat" and for not establishing a comprehensive framework to safeguard personal data and privacy. The subsequent [Digital Personal Data Protection Act](#) passed in 2023 was modelled on the European Union's General Data Protection Regulation and stipulates the capability to provide exemptions to the Central Government and does not provide criteria to counter excessive surveillance practices and the exemptions provided legally enable the Government to continue its practice of surveillance.

Singapore has long remained an aspirational model of development for Sri Lanka, and more recent comments about legislating on cyberspace have also referenced the Southeast Asian State (Ranasinghe, 2020). The country has several laws including the Computer Misuse Act of 1993, [Cybersecurity Act of 2018](#), [Personal Data Protection Act of 2012](#), [Protection from Online Falsehoods](#)

and Manipulation Act of 2019 (POFMA), and Online Criminal Harms Act (OCHA) of 2023. The OCHA's inclusion of offences relating to "harmony between different races, religions, or classes of the population" impacting freedom of expression negatively has been consistent since enactment. The POFMA enables any Government Minister to order correction notices and to restrict or remove access to content if they are of the opinion that it contains false statements. It is important to note that several provisions of Sri Lanka's Online Safety Act No. 09 of 2024 (OSA) appear to be inspired by POFMA.

02. POLITICS, CULTURE, & THE LAW

Attempts by the State to regulate online expression have gained pace since the early 2010s. (Davies, 2015) Sri Lanka's use of the digital sphere has evolved into a tour de force of mobilisation, galvanising collective dissent of the 2022 Aragalaya (trans. struggle) protests resulting in the resignation of a sitting President. The use of social media hashtags and livestreams to raise awareness attracted thousands to join the protests that played a key role in changing Sri Lanka's political landscape.

During the Aragalaya, activists, journalists and members of civil society were arbitrarily arrested and called in for questioning at the Criminal Investigation Department (CID), amongst other intimidation tactics in the Government's broader attempt to stifle dissent. In April 2022, following a violent crackdown on protests, then-President Gotabaya Rajapaksa declared an emergency curfew and issued a block on social media platforms (Deutsche Welle, 2022).

This would not be the first attempt by the Sri Lankan State to have blocked social media platforms. The 2018 anti-Muslim riots in Digana, for example, were catalysed on Facebook and YouTube by Amith Weerasinghe, leader of Sinhala Buddhist extremist group Mahason Balakaya. The group and others like it had been spreading Islamophobic rhetoric on social media for years before, culminating in calling upon people to engage in the "long-overdue act of addressing the issue by thronging Digana town" (Senaratne, 2021). In a matter of hours, Sinhalese Buddhist mobs had descended upon Digana and destroyed homes, businesses and other property of many Muslim families in the area. The Government blocked social media to prevent further escalation of violence.

What we are seeing in the years since Digana and then Aragalaya is a regulatory model premised on criminalisation. This model is situated within an enforcement mechanism with a history of abuse, and mismanagement, and one with little to no public faith. With Internet users increasingly turning towards online expression, be it to express dissent against Governments or to simply have an online presence, the State has consistently tried to intervene and curtail expression.

LAWS

Sri Lanka has several laws that govern the freedom of expression in general, without a specific focus on online expression.

Primarily, it is the [Constitution of Sri Lanka](#) that enshrines this right. Article 14(1)(a) of the Constitution provides for freedom of speech and expression, including publication. However, this freedom is not absolute and the restrictions to it are set out in Article 15 of the Constitution. Article 15(2) states that this right can be subject to restrictions as may be prescribed by law in the interests of racial and religious harmony or with regard to Parliamentary privilege, contempt of court, defamation or incitement to an offence. Furthermore, Article 15(7) provides for all fundamental rights recognised in Articles 12 (right to equality); 13(1) (freedom from arbitrary arrest); 13(2) (freedom from arbitrary detention) and 14 (freedom of speech, assembly, association, occupation and movement) to be restricted on grounds of national security, public order, and the protection of public health, morality, or to secure due recognition and respect for the rights and freedoms of others, or for the purpose of meeting the just requirements of the general welfare of a democratic society. Article 15(8) states that the fundamental rights enshrined in Articles 12(1), 13 and 14, in their application to the members of the Armed Forces, Police Force and other forces that are responsible for maintaining public order shall be subject to restrictions. Apart from these specific grounds of limitation, Article 16 states that all laws, both written and unwritten, that are in existence at the time of the Constitution coming into force remain valid notwithstanding any inconsistency with the fundamental rights Chapter of the Constitution.

Freedom of expression as provided for in the Constitution has subsequently been expanded by the Courts in several instances. Prior to the Nineteenth Amendment to the Constitution which recognised the right to information as a fundamental right, judges have held that the freedom of expression includes the right to receive information (*Abeysekera v Rubasinghe*, 2001).

In *Mohottige and Others v Gunatillake (1992)*, the Court held that freedom of expression includes the right to fairly and within reasonable limits, criticise the Government. To this end, the Court has made determination on what a reasonable criticism might be in contrast to defamation. In *Malalgoda v AG and Another*, the applicant had all his publications seized by the police on the basis that his work was defamatory not only to the Government but also to members of the public. The Court held that freedom of expression which included the freedom of publication does not include the licence to defame and vilify others.

Sri Lanka became a signatory to the [International Covenant on Civil and Political Rights](#) (the Covenant) in 1980 and enacted the [ICCPR Act No. 56 of 2007](#) (ICCPR Act) to seemingly incorporate the treaty into domestic legal architecture. The primary purpose of this Act, supposedly, was to recognise rights that were not already recognised under the Fundamental Rights Chapter of the 1978 Constitution. The Act, however, has been enforced in a manner that is almost entirely antithetical to its stated purpose, as will be seen in the subsequent sections of this report. In light of this, it is important to note the comments of Chief Justice Sharvananda in *Joseph Perera v. Attorney-General*: "Laws that trench on the area of speech and expression must be narrowly and precisely drawn to deal with precise ends. Overbreadth in the area has a peculiar evil, the evil of creating chilling effects which deter the exercise of that freedom. The threat of sanctions may deter its exercise almost as patently as the application of sanctions. The State may regulate in that area only with narrow specificity."

This report analyses the existing legal landscape on freedom of expression to examine the ways in which online expression has been criminalised in Sri Lanka. The analysis intends to identify the key legal applications to online expression and content, and the relationship between the State, digital technology, and expression.

03. METHODOLOGY

The methodology used to conduct the research included a literature review of the existing laws and case law relating to freedom of expression in Sri Lanka and a set of key informant interviews. Using case law and recent events, we analysed how these laws have been used to at times, curtail fundamental freedoms, with a focus on expression in the online space. Furthermore, the laws were categorised according to the methodology developed by [SMEX](#) and the Association for Progressive Communications for CYRILLA, into the following groups; legal foundations, fundamental rights and freedoms, governance of online and networked spaces, sectoral laws, and other laws. At the initial stage of the research, Sri Lanka did not have specific legislation addressing online expression. Therefore, the key informant interviews with experts in the field helped us gain a better understanding of how the existing legislation would apply in regulating the online sphere. We were able to identify five thematic areas which are dissent and assembly, media freedom, ethno-religious issues, gender and sexual identity, and contempt of court and the report entails a discussion on freedom of expression in the digital space focusing on these themes.

Since the enactment of the OSA, which aims to criminalise expression in the online sphere, we had to take into account its possible impact on freedom of online expression. However, since it is yet to be seen in action, the analysis of it is limited to our interpretation of the provisions and the key informants' views.

04.

DISSENT AND ASSEMBLY

Despite freedom of expression being a right that is constitutionally protected, it is frequently restricted in relation to anti-Government dissent. In Sri Lanka, this is often done by way of emergency regulations or statutes such as the [Penal Code](#), and the [Prevention of Terrorism \(Temporary Provisions\) Act No. 48 of 1979](#) (PTA), on the pretext of public order, national security, counter-terrorism, etc. The case of *Amaratunga v Sirimal and Others*, famously referred to as the Jana Ghosha (peoples' noise) case is notable as it relates to a protest against certain actions of the Government. The protest entailed a 15-minute noisy cacophony by the ringing of bells, the tooting of vehicle horns, the beating of drums, etc. When the petitioner did not comply with the police order to stop beating the drum, his drum was broken with a rice pounder and he was assaulted. Even though the respondents argued that they acted in accordance with the law, the Court in its judgement held that criticism of the Government, its policies and of political parties is a permissible exercise of freedom of expression under Article 14(1)(a) of the Constitution and thereby, the petitioner's fundamental right of expression was violated.

With the evolution of social media as a form of communication and a platform to share information, mobilisation, documentation, and sharing of protests have changed (Palmieri-Branco, 2021). Social media provides a new platform for people to express dissent, and protesting online can take various forms such as social media campaigning, virtual sit-ins, and signing online petitions. In tandem, States and Governments have also stepped into a new era of surveillance and control, and repression has now taken a new face in the form of 'regulating the online sphere'. How the extension of freedom of expression to include dissent against Governments translates to anti-Government expression online is epitomised in the Aragalaya protest movement of 2022, where social media became a key tool in mobilising protestors and raising awareness. The quick spread of protests, which initially started in Colombo, to other parts of the country was facilitated by the sharing of information through social media.

EMERGENCY REGULATIONS

The authorities responded to the 2022 Aragalaya protests by serious and repeated violations of fundamental rights. Emergency Regulations (ERs) were imposed on three different occasions during the movement by President Gotabaya Rajapaksa in April and May 2022, and President Ranil Wickremesinghe in July 2022. The ERs contained sweeping and vaguely worded provisions that sought to severely clamp down on freedom of expression (International Federation for Human Rights, 2023). This was done on the pretext of preventing the spread of "false information and rumours". For instance, Regulation 15 of [Extraordinary Gazette No. 2289/07](#) prohibited the communication verbally or through social media, of statements, images or false rumours that were

likely to cause public disorder. Furthermore, in April 2022, the Government headed by Gotabaya Rajapaksa imposed a 15-hour nationwide block on social media platforms. In July 2022, the crowds that gathered at Galle Face Green, which was also called GotaGoGama, experienced a loss of internet and mobile connectivity. Some speculated this was due to signal jammers that were deployed at the Presidential Secretariat building adjacent to the protest site (News Cutter, 2022). These measures severely restricted the freedom of expression of people in the digital sphere, impeding the free flow of accurate information.

The declaration of ERs is provided for by the Public Security Ordinance (PSO). The PSO grants the President the power to declare an emergency and to make regulations that “appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community”. One of the main issues with the PSO is that it does not define what constitutes an emergency, leaving the Ordinance open to wide interpretation. The President is vested with the sole discretion in declaring a state of emergency. Since independence, Sri Lanka has been under ERs almost continually, rather than at exceptional times. Even subjects such as setting up of school boards, banking, forestry, and quality control of salt were regulated through ERs by the President throughout history (Udagama, 2015). 2022 saw ERs being used to curtail the expression of dissent online. However, because courts have previously held that freedom of expression extends to anti-Government expression, and because international standards on freedom of expression state that it should be protected regardless of frontiers and regardless of which media is used, it could be argued that the use of ERs and the PSO to restrict anti-Government dissent online was unnecessary and unjust.

SECTION 120

During the Aragalaya, the hashtag #GotaGoHome was symbolic of the common demand for the removal of those in power, especially President Gotabaya Rajapaksa. It was widely used on social media, and there were social media pages and groups created under this tagline which garnered a lot of reach. Threatened by the wide attention the protests were gaining in early 2022, the authorities arrested Anuruddha Bandara, an activist, for actively promoting the hashtag campaign on social media and for posting on social media about a protest happening in Kandy (Wickramasinghe, 2022). He was arrested under Section 120 of the Penal Code which constitutes an offence similar to that of sedition: conduct or speech inciting people to rebel against the authority of the State.

Section 120 has been widely criticised for the use of vague and overbroad language that violates Sri Lanka’s obligations under the ICCPR Act. The ICCPR Act prohibits the restriction of freedom of expression unless they are strictly construed and proportionate. Critics have stated that Section 120 amounts to a “broad definition of sedition as an offence” (Crawley et al., 2015). It has been used to crush dissent and clamp down on protests. Over the years, Governments have abused this law to target critics and it is made evident in the number of journalists and activists arrested under Section 120 (*Confronting Accountability for Hate Speech in Sri Lanka: A Critique of the Legal Framework*, 2018).

In 2021, Chamila Jayasinghe of the Sri Lanka Administrative Service was arrested under Section 120 of the Penal Code over a Facebook post he published, on the basis that he inconvenienced the

Government as a Government official due to the post (“Public Officials Told to Stay Mum: Former SLASA President Explains How,” 2021). His post concerned the deforestation that was taking place in the Sinharaja forest reserve. His arrest was a warning signal to Government officials to refrain from criticising the Government, thereby alienating them from contributing to the promotion of good governance.

Sedition laws such as Section 120 of the Penal Code seek to infringe on freedom of expression over and beyond what is permitted under international law. They are used by governments arbitrarily, in bad faith, to clamp down on dissent. Such laws must be reviewed alongside the constitutionally protected freedom of expression and the purpose of the restriction. One could also question the necessity for the offence of sedition in modern democracies. As Lord Denning stated, “The offence of seditious libel is now obsolescent”, but its definition “was found to be too wide. It would restrict too much the full and free discussion of public affairs” (Baron Denning, 1984, 295).

PREVENTION OF TERRORISM ACT

The PTA is another tool that has been weaponised by successive Governments to target dissenting voices. It has widely been used against the Tamils during and after the war ended in 2009. Furthermore, after the Janatha Vimukthi Peramuna insurrection in 1989, the PTA was used to detain many Sinhalese youth. Recently, it was used to detain hundreds of Muslims after the Easter Sunday attacks in 2019, and in 2022, the Government targeted civil society activists during the Aragalaya by making arrests under the PTA.

The PTA has also been used to target online expression in various instances. In 2020, Tamil journalist Murugupillai Kokulathasan was arrested under the PTA in Batticaloa for his social media posts about commemoration events related to the civil war (Human Rights Watch, 2022). Additionally, the PTA has been used to detain several people for social media posts that commemorated Tamil fighters who lost their lives in the civil war. In 2021, MP Shanakiyan Rasamanickam stated in Parliament that the PTA has been used to detain over 100 people over social media posts (Human Rights Watch, 2022). These are attempts by the Government to deny memorialisation under the guise of ‘national security’, and ‘glorifying terrorism’.

The [Anti-Terrorism Bill](#) (ATB) that was gazetted in Parliament in September 2023 is set to replace the PTA. The Supreme Court in February 2024 determined certain provisions in the Bill to be inconsistent with the Constitution and that it must be passed with a special majority in Parliament if the amendments proposed by the Court aren’t given effect. Critics of the Bill are of the opinion that it is more draconian than the PTA itself (Anti-Terrorism Bill Version 2.0: Still Worse Than the PTA, 2023). It grants wide powers to the executive and contains a broad definition of terrorism that is not in compliance with international standards. Analysed in the context of the abuse of the PTA, one can only expect the ATB to enable similar violations of rights if not more. Further, Sections 10 and 11 of the ATB refer to offences ‘encouragement of terrorism’ and ‘dissemination of terrorist publications’ through the internet or electronic media. A person convicted by the High Court on these offences could be liable to rigorous imprisonment for a term not exceeding fifteen years or to a fine not exceeding rupees one million or to both such fine and imprisonment. In addition to these penalties, the Court may order the movable and immovable property of a convicted person to be forfeited.

ONLINE SAFETY ACT

The newly enacted OSA contains provisions that aim to curtail dissent in online spaces. Among the wide variety of offences included in the Act, Section 14 of the OSA prohibits the online communication of false statements that would intentionally provoke a riot. This offence carries a unique penalty for instances of statements resulting in a riot or not. The former carries a penalty of imprisonment for a term not exceeding five years, or to a fine not exceeding five hundred thousand rupees or both. The latter carries a penalty of imprisonment for a term not exceeding three years, or to a fine not exceeding three hundred thousand rupees or both. Furthermore, Section 19 prohibits the circulation of false reports with the intention to cause mutiny or an offence against the State. If convicted of this offence the penalty stands at a term of imprisonment for a term not exceeding seven years, or to a fine not exceeding seven hundred thousand rupees, or both. The language used in these provisions is vague and therefore open to abuse as has been the case with legislation such as the PTA. These provisions could be used to stifle dissent against Governments.

05. MEDIA FREEDOM

“The ability of journalists to report freely on matters of public interest is a crucial indicator of democracy” is how Freedom House defines media freedom (Media Freedom, n.d.). Similarly, the U.S Helsinki Commission categorises it as a fundamental right for all forms of media—including print, radio, television, and online media, ‘to operate freely in society without Government control, restriction, or censorship’ (*Freedom of the Media – CSCE, n.d.*).

The World Press Freedom Index of 2023, compiled by Reporters Without Borders, ranked Sri Lanka at 135 out of 180 countries, indicating a challenging environment for journalism. With a global score of 45.85/100, the country’s media landscape was assessed as “difficult”, on the spectrum spanning from “very serious” to “satisfactory” (Index | RSF, n.d.). In fact, press freedom in Sri Lanka has worsened over the years (Table 1), coinciding with the resurgence of Sinhala Buddhist nationalist extremism and electoral victories of populist political factions. RSF’s analysis indicates that Sri Lanka’s media freedom issues are intricately linked to its history of civil unrest and lack of diversity within media, as well as the political influence that is prevalent within the sector.

Presently, Sri Lanka hosts a diverse media landscape comprising over 75 daily and weekly print publications, 20

Year	Ranking
2023	135/180
2022	146/180
2021	127/180
2020	127/180
2019	126/180
2018	131/180
2017	141/180
2016	141/180
2015	165/180
2014	165/180
2013	162/179

“The World Press Freedom Index for Sri Lanka (2013-2023) by Reporters Without Borders”

television channels, and 50 radio stations. The Media Ownership Monitor (MOM) of Verité Research, in 2018, examined ownership structures across 46 media outlets, spanning print, broadcast, and online platforms. While identifying ownership of news websites can be challenging, MOM traced ownership of at least 44 outlets to 23 families and individuals (*Media Ownership Monitor Sri Lanka 2018, n.d.*).

State-owned media holds significant sway in the industry, with the Ministry of Mass Media overseeing key outlets such as the Sri Lanka Broadcasting Corporation, Rupavahini Corporation, Independent Television Network, and Associated Newspapers of Ceylon Limited. However, these outlets, encompassing print, radio, television, and online platforms, lack substantial editorial independence (*Sri Lanka | RSF, n.d.*).

Further, the ownership concentration is pronounced, with 23 individuals owning 44 leading media outlets. Predominantly privately owned, the top four owners in print, television, and radio exert significant influence, contributing to audience concentration. State-owned media feature prominently among the top four owners in print and television, with State ownership extending across all four mediums in 2017. Further, the State is the sole regulatory body for the sector. Political affiliations are apparent in media outlets, particularly in print, where at least six companies have direct ties to individuals in political office or their associates (*Media Ownership Monitor Sri Lanka 2018, n.d.*).

Over the last twenty years, a minimum of 44 media members have been assassinated or declared as missing persons (*Sri Lanka | RSF, n.d.*). Despite the cessation of journalist killings post-2015, no perpetrators have been brought to justice (*RSF, FPU and the CPJ Create the People's Tribunal to Indict Governments, Seek Justice for Murdered Journalists, 2017*). Numerous journalists have endured arrests, detentions, assaults, threats, intimidation, and harassment under various administrations. Media organisations have been targeted to the level of dysfunction through arson attacks and legal battles, with notable instances including the English weekend paper *Sunday Leader* and Tamil daily newspaper *Uthayan*, both known for their strong criticisms of the Government (*Reporters Without Borders, 2013*). This pattern of suppressing the media continues even today, as evidenced by the treatment of journalists like Tharindu Jayawardena and networks like MTV for their coverage of protests and movements of dissent (*Fernando, 2022*). The assassinations of Lasantha Wickrematunge (*Butler, 2022*), Mylvagnanam Nimalaranjan (*Lawson, 2000*) and the disappearance of Prageeth Ekneligoda (*Dhawan, 2024*) are some prolific cases of media suppression in Sri Lanka.

LAWS AND CASES

Notably, in the case of *Kurukulasuriya and Jayasekara v Sri Lanka Rupavahini Corporation and Others*, the judges held that “the media is not restrained from publicising or broadcasting criticism”, and that such criticism is legitimate, thereby, expanding the freedom of expression to publications through the media.

Section 5 of the [Profane Publications Act No. 41 of 1958](#) makes it an offence to publish content insulting religious belief, or ridiculing any figure, picture, emblem, device or other thing associated with, or sacred to the followers of any religion. Interestingly, the term “profane publication” is defined to be any newspaper, book, film, picture or other visible representation that insults a

religion or its founder or any deity or saints venerated by its followers. The Act does not expressly target online expression. However, the phrase “visible representation” could be interpreted to include online expression. The existence of such provisions in Sri Lankan law provides space to legitimise arrests of persons like Sepal Amarasinghe, (Gunatilleke, 2023) and Indika Rathnayake (Udin, n.d.). Amarasinghe was arrested over publishing alleged defamatory remarks on YouTube about the tooth relic. Rathnayake was arrested based on a complaint by a Buddhist monk over certain Facebook posts made by him relating to Buddhism. It was alleged that his posts propagated myths about Buddhism. Even though these arrests were made under different legislation such as the ICCPR, and were criticised for violating freedom of expression, Acts such as the Profane Publications Act and the Press Council Law which prohibit ‘profane’ content could also be weaponised to target such expression, including online

ERs have been a constant source of media freedom infringement in Sri Lanka. The ERs issued in April 2019 after the Easter Sunday attacks had specific provisions that dealt with ‘control of publications’ (Gunatilleke, 2019). It gave the Competent Authority¹ the power to prohibit the printing, publishing and distribution of any newspaper that could be prejudicial to national security. It defined ‘newspaper’ to be any form of publication, and this would potentially include online publication too. The Competent Authority was empowered to seize any printing press if they were thought to be producing content that was prejudicial to national security even if the content was not intended to be published. Along with the ERs, the Government also imposed a nationwide social media ban following the bombings with the intention of preventing the spread of misinformation. Senior Researcher Sanjana Hattotutwa commented on social media bans stating that “while a ban on social media helps to contain the spread of rumours, it also hampers efforts by journalists to push back on them” (Hassan et al., 2019).

RECENT DEVELOPMENTS

During the Aragalaya in 2022, many journalists who were covering protests and calling for action on social media were intimidated, harassed or arrested by the police and security forces. In July 2022, four Sirasa TV journalists who were reporting on the protests near Prime Minister Ranil Wickremesinghe’s residence were attacked by the police and Special Task Force (International Federation of Journalists, 2022). Despite there being video evidence of the journalists being attacked by the authorities, Senior Superintendent of Police Romesh Liyanage, who was present at the site, denied his presence at the time of the assault and any knowledge of the attack, during an inquiry by the HRCSL (Sri Lanka Brief, 2022). Even though he was suspended for the assault, he was reinstated after being found not guilty based on a confidential, internal inquiry conducted by the police.

In June 2022, journalist Tharindu Uduwaragedara was summoned to the CID without clear reasoning for the summons except that it was related to his YouTube channel (International Federation of Journalists, 2022). More recently in July 2023, he was dragged out of a three-wheeler,

¹ According to Emergency Regulation 2, a ‘Competent Authority’ is defined as ‘any person appointed by name, or by office, by the President to be a competent authority’

grabbed by his hair and manhandled by police officers despite him explaining that he was merely reporting the protest that was taking place, and subsequently, he was unlawfully arrested (Committee to Protect Journalists, 2023).

The OSA, the latest addition to the set of draconian laws that curtail freedom of expression in Sri Lanka, includes provisions for infringing media freedom. Section 11 gives the Online Safety Commission sweeping powers to determine 'false statements' and take measures to 'prohibit' its circulation on online channels. The Commission can also issue orders to remove or block content, sites and locations through directives issued to persons and online service providers (*Online Safety Bill & Anti-Terror Bill – Law Making To End Democracy & Fundamental Rights Of Sri Lankan Citizens, 2023*). Sri Lankans are yet to see this law in practice, but it will embed a culture of State-sponsored harassment of online activists, journalists, writers, trade unions, civil society organisations, and any individual who is critical of the Government and its policies. Furthermore, Section 20 of the Act seeks to protect targeted persons whose "private information" is published online in order to cause harassment, and "harassment" is defined broadly to include the causing of "offence", "alarm" or "distress". This provision reintroduces criminal defamation which was repealed by an amendment to the Penal Code in 2002. This provision has serious implications for media freedom as it fails to strike a balance between protecting individuals online and freedom of expression.

The proposed ATB also includes provisions that would expressly curtail media freedom. Sections 10 and 11 provide for any organisation to be proscribed as a 'terrorist' organisation and publication deemed to be a 'terrorist' publication. Detentions for these offences can be made through executive orders and the military is given the power to arrest and detain. These are powers that the authorities did not have under the PTA, therefore it is evident that the ATB intends to further curtail the fundamental freedoms of citizens.

Another recent attempt to constrain media freedom has been the announcement of the Broadcasting Authority Bill in 2023. The Bill aims to establish a central authority to regulate electronic media. Furthermore, the Bill would introduce a process of annual licence renewal, which would make journalists and media organisations cautious about criticising the Government. Leader of the Opposition Sajith Premadasa has argued that this requirement will make privately-owned media organisations subservient to the State, the same way State-run media has been (Kotelawala, 2023). The Bill was met with severe opposition and advocacy for self-regulation has begun. In 1997, a similar Bill was tabled by Parliament but was determined to be unconstitutional by the Supreme Court (Dullewe, 2023). The present Bill is set to be tabled in Parliament amidst the opposition to it, and if passed, would have severe consequences on media freedom (Rodrigo, 2024).

The discussion on media freedom in Sri Lanka is evidence of multiple attempts by the State to curtail freedom of expression, specifically the freedom of journalists and media workers. This has been enabled by laws that explicitly infringe on media freedom, incidents of State harassment, intimidation and even the killing of journalists, and a long culture of impunity for these crimes. The State is increasingly attempting to regulate the online space and this will inevitably affect media freedom, the impact on citizens' lives will be far-reaching and hard to reverse. With the media sector lacking diversity in ownership and being highly dependent on major political clans, coupled with the lack of accountability and corruption in governance, the media freedom of citizens is severely at risk.

06.

ETHNORELIGIOUS CONFLICT

Following a prolonged 30-year civil conflict, Sri Lanka continues to grapple with deeply ingrained ethnoreligious tensions. The historical interaction between the majority Sinhala and minority Tamil and Muslim ethnic groups, coupled with diverse religious affiliations including Buddhism, Hinduism, Islam, and Christianity, has been a prominent source of discord. The legacy of the civil war which concluded in 2009 remains vivid in the collective consciousness, leaving unresolved grievances and breeding distrust among communities. The intertwining of ethnicity and religion further complicates the situation, leading to instances of discrimination and violence.

To better contextualise this backdrop, it is essential to understand the formal recognition of Buddhism to be the 'foremost' religion of the country, as stated in the Constitution (Article 9), with the State being entrusted to protect and foster the Buddha Sasana. This is juxtaposed with the absence of explicit blasphemy laws, yet individuals can still face repercussions for offending Buddhism.

PROSECUTION FOR DISTURBING RELIGIOUS HARMONY

The case of *Razik Mohamed Ramzy v B.M.A.S.K. Senaratne & Others* serves as a poignant illustration of the Sri Lankan government's tendency to prosecute individuals or groups under the guise of 'national interest', thereby stifling freedom of expression based on ethnicity or religious beliefs. Razik's arrest in April 2020 by the CID and subsequent detention stemmed from a Facebook post he made in Sinhala, advocating for Muslims to engage in an 'ideological jihad' using pens and keyboards. However, Razik, a Sri Lankan Muslim and former public servant, maintained that his post was a response to what he perceived as a malicious campaign blaming Muslims for the spread of COVID-19, which elicited death threats against him. Despite proactive measures such as self-censorship and lodging complaints about threats to the Inspector General of Police, Razik found himself facing serious charges.

Razik faced charges under three Sections of different legal acts. Firstly, he was charged under Section 120 of the Penal Code, which deals with 'exciting or attempting to excite disaffection'. Secondly, he faced allegations under Section 3(1) of the ICCPR Act, pertaining to the propagation of war or advocacy of national, racial, or religious hatred leading to incitement of discrimination, hostility, or violence. Finally, he was accused under Section 6 of the Computer Crimes Act No. 24 of 2007 for intentionally causing a computer to perform functions endangering national security, the national economy, or public order.

In his defence, Razik argued that his post was misconstrued and misrepresented by the authorities. The Supreme Court ultimately ruled in his favour, identifying flaws in the State's case and determining that Razik's actions did not constitute the offences for which he was charged. The Court highlighted that Razik's use of the term 'jihad' was prefaced by 'ideological' and advocated for peaceful means of communication, rather than inciting violence or discrimination. This landmark ruling underscored the importance of upholding freedom of expression and protecting individuals from arbitrary prosecution based on their ethnicity or religious beliefs, setting a significant precedent in Sri Lanka's legal landscape.

SHAKTHIKA SATHKUMARA

In April 2019, Sathkumara was arrested under suspicion of violating Section 291B of the Penal Code—which prohibits insults to religion—and Section 3 of the ICCPR Act. These charges were prompted by a short story titled 'Ardha' (half) that he had shared on his Facebook page (A/HRC/WGAD/2020/8 Advance Edited Version, 2020). The story drew criticism from Buddhist groups due to its references to homosexuality within the Buddhist clergy and its unconventional portrayal of the legendary story of Siddhartha in Buddhist literature (*Day of the Imprisoned Writer 2019 - Take Action for Shakthika Sathkumara—PEN International, 2023*). Following his arrest, Sathkumara endured a period of pre-trial detention in a crowded prison until August 2019, when he was eventually granted bail. Throughout the ordeal, Sathkumara maintained that his post-modernist style story was not crafted to insult Buddhism or cause offence to religious sentiments.

NATHASHA EDIRISOORIYA

Sri Lankan stand-up comedian Natasha Edirisooriya was arrested in May 2023, stemming from her performance on the 'Modabhimanaya' (fools pride) comedy program in April 2023 (Gunasekara, 2023). A video of her performance became viral on social media platforms, in which Edirisooriya refers to Prince Siddhartha in a satirisation of parental expectations. Accused of 'defaming Buddhism', her arrest was prompted by a virulent campaign led by several Buddhist monks and Sinhala extremists. The Commissioner of Buddhist Affairs, along with several other monks, complained to the CID urging her arrest under the ICCPR Act. Edirisooriya was charged under Sections 3(1) and 3(2) of the ICCPR Act and remanded by the Fort Magistrate's Court. However, in July 2023, the Colombo High Court released Edirisooriya on bail emphasising the importance of interpreting Section 3 of the ICCPR Act within the context of "freedom of speech and expression". The Court stressed that there was no evidence suggesting the comedian had 'advocated or propagated religious hatred' and her comments don't have elements that constitute an 'incitement to discrimination, hostility or violence' (Rupasinghe, 2023).

In summary, the cases of Ramzy Razik, Shakthika Sathkumara, and Nathasha Edirisooriya share significant similarities. They all were charged under Section 3 of the ICCPR Act and involved similar stakeholders and procedural issues to name but a few. As of today, Razik, arrested in April 2020, had charges dropped by the Attorney General in September 2023. The Supreme Court's ruling in his favour issued in November 2023, came after a delay of over three years. Similarly, charges against Sathkumara were dropped in February 2021, after his arrest in April 2019. Both endured extended remand periods and faced challenges obtaining bail through the High Court, a process that took more than four months each. Sathkumara's legal ordeal is still ongoing, with hearings for his

fundamental rights case challenging the charges against him delayed in the Supreme Court. Nathasha Edirisooriya is still awaiting a decision from the Attorney General's Department regarding prosecution on charges brought against her.

These developments suggest a troubling pattern wherein the dropping of charges against individuals like Razik and Sathkumara points to the potentially vindictive nature of how laws, such as the ICCPR Act, are being wielded by the Government. It indicates a trend where legal mechanisms are used not to uphold justice but rather to suppress free expression, creating a chilling effect within the public sphere. This is coupled with the extension of Sinhala Buddhist dominance extending to the online sphere, where individuals are criminalised prior to the initiation of formal proceedings. This pre-emptive criminalisation is exemplified by Razik's case, who faced threats online. This extremism seems to extend to the State itself where the use of legislation such as the ICCPR Act is exploited to legitimise the curtailing of freedoms. Such practices raise serious concerns about the erosion of civil liberties and the abuse of power to stifle dissent and curtail fundamental rights.

CRITICISMS OF THE USAGE OF SECTION 3 OF THE ICCPR ACT

The HRCSL has issued guidelines outlining the scope of Section 3 of the ICCPR Act (HRCSL, 2020). These guidelines emphasise that constitutionally protected expression cannot be prohibited under the ICCPR Act, and therefore, the act of 'shocking, offending, or disturbing' individuals based on nationality, race, or religion alone cannot justify prohibition. They advocate for the adoption of the six-part threshold test outlined in the Rabat Plan of Action to determine the parameters of Section 3 of the ICCPR Act (*United Nations, 2013*). Under this test, the context, speaker, intent, content and form, extent, and potential harm of expression are evaluated. The HRCSL also stresses that the prohibition of advocacy of hatred under Section 3 should only apply if it constitutes intentional incitement to discrimination, hostility, or violence.

In Nathasha Edirisooriya's case, the High Court judge granted bail after applying the threshold test and found that no evidence had been established [that the audience for Edirisooriya's comic routine] "had engaged in any hostility or violence in relation to the target group or against the target group which is Buddhists" (Fernando, 2023). The judge emphasised the judiciary's duty to impartially assess cases and not detain individuals solely based on investigators' requests (Nanayakkara, 2023).

The Supreme Court, referencing HRCSL guidelines in the Razik case, stated that the purpose of Section 3 of the ICCPR Act is to enforce Article 20 of the Covenant. Article 20 prohibits propaganda for war and advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. The Supreme Court clarified that Section 3 is aimed at safeguarding citizens from the impacts of war and expressions of hatred, rather than 'criminalising blasphemy.'

In his article *How a human rights law became a tool of repression in Sri Lanka* Dr. Gehan Gunetilleke, Attorney-at-Law and Commissioner of the Human Rights Commission of Sri Lanka (HRCSL), examines the background and purpose of Article 20 of the Covenant. He notes that after the

Second World War, UN member states pledged to prohibit hate speech inciting violence based on identity, drawing from lessons learned from the Holocaust (Gunatilleke, 2023). Dr. Gunatilleke identifies flaws in Section 3 of the ICCPR Act, which aims to mirror Article 20 of the Covenant but exhibits significant deficiencies. Firstly, Sri Lanka's Section 3 lacks specificity, failing to differentiate between distinct forms of incitement outlined in the international treaty. For example, the consequences of offences like 'inciting violence' and 'inciting discrimination or hostility' and subsequent punishments vary greatly. While states can adjust penalties for different types of incitement, Section 3(1) clunkily groups all forms together. Secondly, Section 3(4) permits warrantless arrest and renders offences non-bailable, enabling arbitrary detention without evidence. This provision allows prolonged detention until a High Court appearance, penalising individuals without prosecution, as seen in the cases of Ramzy Razik, Shakthika Sathkumara, and Nathasha Edirisooriya.

Echoing similar concerns, the Supreme Court, in the obiter of Razik's case, addressed the allowability of prolonged remand custody under the ICCPR Act. The judgement predicts that such leeway given to law enforcement spills over to other infringements such as arrests without sufficient cause, lack of due diligence, objectivity during the investigation, and instances where police discretion was compromised. Similarly, the High Court in Edirisooriya's case stressed the responsibility of investigators, emphasising that arresting a person solely based on a complaint, especially if the complainant holds societal influence, is not the investigator's role. Instead, investigators should carefully assess the case facts, legal interpretations of applicable laws, and Sri Lanka's international obligations and accountability in matters of this nature (Gunasekara, 2023).

DOES SRI LANKA HAVE BLASPHEMY LAWS?

The Merriam-Webster dictionary defines blasphemy "to be a great disrespect shown to God or to something holy, or to something said or done that shows this kind of disrespect" (*Blasphemy Definition & Meaning, 2024*). Dr. Gunatilleke argues that the concept of blasphemy is not explicitly addressed in Sri Lankan law. However, legal provisions such as Section 290 of the Penal Code and Section 31 of the Antiquities Ordinance cover offences related to objects and sites considered sacred by religious groups. [End Blasphemy Laws](#)² supports these claims by listing 290-292 of the Penal Code, Section 2(1)(h) of the PTA, and Section 3 of the ICCPR Act (Sri Lanka, 2021), which Dr. Gunatilleke argues, primarily concerns offences against individuals, rather than offences against specific faiths or sacred objects. Nonetheless, Sri Lanka has employed the ICCPR Act to address perceived acts of blasphemy that targeted the concept of religion rather than the specific nature intended in the ICCPR Act. This was addressed in the Supreme Court's commentary in Ramzy Razik's case which said that Sri Lanka has in many instances used the ICCPR Act outside of its mandate, in some instances, as a blasphemy law.

A clear example of this is the arrest of Sepal Amarasinghe for allegedly making defamatory comments about the Temple of the Tooth Relic. Likewise, following the Easter Sunday attack in 2019, Abdul Raheem Masaheena was arrested due to her clothing, which featured a ship's wheel mistaken for a sacred Buddhist symbol, the dharmachakra (Human Rights Watch, 2019). The United

² *End Blasphemy Laws; an organisation dedicated to abolish blasphemy laws worldwide*
<https://end-blasphemy-laws.org/>

States Commission on International Religious Freedom in its report on Religious Freedom Conditions in Sri Lanka (2021) cited the case of Indika Rathnayake as an example of the 'enforcement' of blasphemy Laws in Sri Lanka. Rathnayake was arrested for allegedly spreading fictitious concepts about Buddhism and Buddha (Udin, n.d.). Therefore, Dr. Gunatilleke contends that in the misapplication of Section 3 of the ICCPR Act, individuals in each of these cases were not accused of inciting discrimination, hostility, or violence against the Buddhist community. Instead, they were charged with directly offending Buddhism or a revered Buddhist symbol.

ANTI-MINORITY SENTIMENTS AND THE SUPPRESSION OF FOE

This section addresses the utilisation of the laws (mainly the PTA) to prosecute members of ethnic or religious minorities in Sri Lanka, thereby impinging on their freedom of expression. While the primary objective of the PTA is to address legitimate concerns regarding terrorism, its broad provisions have led to numerous instances of violations of freedom with Sri Lankan authorities standing accused of wielding extensive powers to conduct searches, make arrests, and detain individuals under the PTA. Human Rights Watch criticised the new regulations introduced to the PTA in March and April of 2021 for including vague language to make it easier for the Government to target religious communities that have not engaged in terrorism (*Sri Lanka: 'Religious Disharmony' Order Threatens Minorities, 2021*). Following the Easter Sunday Attacks investigations, the PTA has faced criticism for its role in the indefinite detention of Muslims and Tamils. Notable cases include Ahnaf Jazeem (Human Rights Watch, 2021), Murugupillai Kokulathasan (2022 Country Reports on Human Rights Practices: Sri Lanka, n.d.), and Fazl Muhammed Nizar (2021 Country Reports on Human Rights Practices: Sri Lanka, n.d.). Prosecutions targeting minority groups continue as authorities utilise the PTA, ICCPR Act, and Penal Code to apprehend and punish Government critics, while also curbing online freedom of expression.

The cases of Murugupillai Kokulathasan and Fazl Muhammed Nizar show how the PTA can be wielded to infringe upon freedom of expression in online spaces. Murugupillai Kokulathasan, a Tamil journalist and photographer associated with the Batticaloa Press Club, was arrested by the Terrorism Investigation Department in November 2020. He faced accusations of sharing images of the Liberation Tigers of Tamil Eelam on Facebook during the Maaveerar Naal commemoration. After spending over 470 days in detention under the PTA, he was granted bail only in March 2022 (Tamil Journalist Released on Bail Following Over 470 Days in Detention, 2022). Similarly, Fazl Muhammed Nizar, a Muslim businessman and writer, was apprehended by the CID in January 2020 under the PTA due to a Facebook post criticising the Government's heavy-handed governance methods. In Court, the CID asserted that the individual had shared multiple statements on his Facebook profile that were considered derogatory towards various groups, including monks, posing a threat to the cohesion of inter-ethnic harmony and coexistence (*Media Freedom Rights Monitoring Report, 2021*). Obtaining a 90-day detention order under the PTA in January 2020, the police detained Nizar, and as of December 2020, he remained in detention—the last known update to his case (*2021 Country Reports on Human Rights Practices: Sri Lanka, n.d.*).

THE NEW APPARATUS TO INFRINGE ON FREEDOM OF EXPRESSION

The government's new approach focuses more on regulating online expression. This isn't to suggest that existing laws haven't already been used to infringe upon individuals' freedom of expression, as evidenced by past incidents.

The introduction of the OSA provides another avenue for prosecuting individuals for online behaviours, although Government encroachments on people's rights existed before this legislation. Dr. Gunatilleke claims that the codification of the OSA which defines specific offences related to online expression will undoubtedly influence how individuals interact on digital platforms (*G. Gunatilleke, personal communication, 10 January 2024*). The government's intended objectives will likely be realised by potentially deterring individuals like Razik or Sathkumara from expressing their thoughts or creations in online spaces.

In 2023, IGP Deshabandu Tennakoon created a specialised unit inside the Computer Crime Investigation Division of the police to investigate allegations of religious hate crimes perpetrated through social media channels (*New Unit: Important Notice for All Social Media Users From Police, 2023*). The unit's intention, as outlined in its email which contains the word 'religious' (ccid.religious@police.gov.lk), marks the government's latest effort to curb freedom of expression online.

In light of all these incidents, it becomes apparent that freedom of expression, particularly on religious or ethnic expression in Sri Lanka, has been stifled, especially on online platforms. These cases reflect a broader trend where individuals are targeted and prosecuted for expressing views that challenge or diverge from mainstream religious narratives or ideologies. The involvement of Buddhist religious figures as complainants underscores the significant influence they wield in shaping public discourse and influencing legal proceedings. Such limitations on freedom of expression will hinder individual rights and threaten the pluralistic nature of Sri Lankan society, perpetuating a culture of censorship and even self-censorship.

07.

GENDER AND SEXUAL EXPRESSION

The right to sexual expression comes within the right to freedom of expression as it is no less important than political and religious expression. A feminist approach to freedom of expression entails expanding the traditional idea of freedom of expression to “understand it as freedom for our voices, bodies, sexualities, work, hobbies, relationships, communities, organising and all other aspects of our lives to take up space online and on ground” (Perera, 2023) without being subject to surveillance, censorship, violence and other forms of control. Globally, feminist and queer expression in the online space has been subject to control and surveillance, and this must be recognised as a part of a larger political project of censorship and curtailing of fundamental freedoms (Expression, n.d.). This section will focus on the Sri Lankan context of curtailing freedom of expression in relation to gender and sexual identities.

Sri Lankan laws such as the [Obscene Publication Ordinance No. 4 of 1921](#), the Penal Code, and the [Vagrants Ordinance No. 4 of 1841](#) are widely used to curtail the expression of gender and sexual identities both online and offline. These pieces of legislation were introduced during the colonial project with the aim of regulating and censoring gender and sexual identities because the colonised were viewed as “hypersexual, degenerate savages who needed to be civilised and enlightened through a benevolent European civilising project” (Wanniarachchi & Samarajiva, 2021).

In 2021, a couple who were involved in filming an explicit video at the Pahanthudawa waterfall in Balangoda were arrested, given a one-month imprisonment and subjected to a fine on the basis that they could “potentially tarnish the reputation of Sri Lanka” (Weragoda & Medawala, 2022). The video was trending across all social media platforms and widely shared on personal messaging apps such as WhatsApp (Irugalbandara & Gunatilake, 2021). Much of the public conversation surrounding the incident focused on the ‘indecent’ of the video and the impact it had on Sri Lanka’s ‘cultural security’. Religious leaders wrote to the President stressing the urgency to take down the video, and warned that tourists will get “the wrong idea about the Sri Lankan tourism industry” as a result of this video. Many were of the opinion that inaction would result in normalising “indecent” behaviour for our children, and setting an unhealthy example of “acceptable behaviour”.

While it was not confirmed under which laws the couple were arrested, lawyers and legal experts were of the opinion that they were likely to be charged under both the Obscene Publications Ordinance and the Penal Code. Section 2 of the Ordinance prohibits selling, distributing, importing/exporting or printing for sale or hire, making or producing, or publicly exhibiting any “obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, video cassettes, or any other obscene objects”. Section 285 of the Penal Code essentially covers the same elements, although it does not deal with the making or

producing of 'obscene content'. However, 'obscene' has not been defined in either piece of legislation, and this leaves space for wide interpretation. In Sri Lanka, it is the police that have been the first interpreters of it. In the absence of a proper definition of 'obscene' in Sri Lankan law, one could refer to the Black's Law Dictionary which vaguely defines 'obscene' using terms such as "extremely offensive under contemporary community standards of morality and decency" and "grossly repugnant to the generally accepted notions of what is appropriate". Furthermore, neither of the laws address 'pornography' explicitly, but they have been applied to criminalise pornographic content.

The existence of such laws has a direct impact on freedom of expression in Sri Lanka. Even pornography created by consenting adults can be seen as 'obscene' by some, especially if the content is being shared outside of what is deemed to be 'appropriate' contexts such as adults-only websites. While 'obscene' should not be considered to be an objective test of expression, it is interesting how laws on obscene publications have been used to target consenting adults having sex and instances of non-consensual porn, revenge porn, and child abuse and exploitation exist online without being targeted by authorities. There are thousands of Facebook groups and pages involved in the sharing of images and videos of women and children for sexual exploitation. Many pointed out that the aforementioned managed to evade the police's radar, but that the police managed to track down the couple involved in the Pahanthudawa video within days (Irugalbandara & Gunatilake, 2021). The use of these laws to interfere with the private lives of consenting adults as opposed to applying the law in good faith to address the very prevalent abuse and sexual violence is evidence of how certain laws are weaponised to target expression of gender and sexual identities, and by extension, curtail freedom of expression in both offline and online spaces.

Sri Lanka has also experienced a history of various forms of artistic expression being censored on the pretext of 'obscenity'. Movies like Aksharaya and Flying Fish which were political critiques were censored, and 'obscenity'/'sexual explicitness' were some of the reasons for censorship (Wanniarachchi & Samarajiva, 2021).

In the aftermath of the 'Pahanthudawa incident', a draft Bill to deal with "obscene publications produced through information technology and other media" was gazetted in Parliament without public consultation, and there was no transparency as to whether stakeholders were consulted. It was presented in Parliament under the pretext of protecting women and children from widespread online violence and sexual harassment. However, many civil society actors, artists, and other stakeholders raised several objections regarding the Bill, and it was rescinded. These Bills which are presented to Parliament in supposed 'good faith' aim to control the right to engage in forms of expression that may be perceived by some as 'controversial' or 'immoral'.

Sections 365 and 365A of the Penal Code are widely misused to criminalise individuals belonging to the LGBTQI+ community in Sri Lanka, and they are subjected to severe violence and oppression. These provisions criminalise any type of sex that is considered 'unnatural', and this widely applies to sexual acts between same-sex individuals. In 2019, three gay men who were in a hotel room were arrested, not because they were engaged in sexual relations, but simply because they had condoms in their wallets (Maduwage, 2020). According to the 2018 performance report of Sri Lanka Police, the police had prosecuted 33 people for homosexuality in 2016 (Performance Report - Sri Lanka Police, 2018). In August 2022, a private member Bill was proposed to repeal 365A of the Penal Code. However, no action has been taken by the Government to act upon it. As a result of the weaponisation of these Sections against the LGBTQI+ community, members of the community find

it doubly hard to seek redress when they are victims of online violence and exploitation and in situations of non-consensual intimate image sharing, as they will be further penalised by the authorities. Therefore, these provisions not only penalise the LGBTQI+ community and curtail their freedom of expression both online and offline but also limit their access to justice.

Transgender people are subject to severe discrimination by way of Section 399 of the Penal Code which criminalises ‘cheating by personation’. They are targeted by the authorities on the basis that they are “pretending” to be of a different gender (Amnesty International, 2019). This provision is replicated in the newly introduced, heavily criticised OSA under Section 18, with the addition of the idea that impersonation happens in the online space. An important point to note is that the OSA provision does not include the element of ‘cheating’, which means that all forms of impersonation is criminalised through the OSA. According to the same provision, if convicted of this offence, you will be liable to imprisonment which may extend up to three years or to a fine not exceeding three hundred rupees or both. This curtails people’s freedom to have an anonymous online presence, engage in satire, etc. Sachini Perera, Executive Coordinator of RESURJ, a transnational feminist alliance of younger feminists from the Global South, stated that being able to function anonymously online helped queer people explore their gender identity more freely and build communities through this anonymous identity (S. Perera, personal communication, 22 February, 2024). She further stated that anonymity is a feminist principle, enabling experimenting with gender identity, safety for queer persons and women facing discrimination, in dismantling taboos of sexuality and heteronormativity. Therefore, with this new provision, they would be forced to either leave the online space or reveal their identity.

Sachini Perera also highlighted this provision criminalising ‘impersonation’ is a product of what civil society organisations and activists have been asking for; to criminalise online trolling and bullying. There is now a requirement for an exact online replica of who we are in our day-to-day lives. She makes note of the Social Media Declaration 2019, an initiative by civil society organisations that intended to “create a guideline/declaration in this regard, and that it should come from within Sri Lankan media and civil society itself” (Gunawardena, 2019). She stated that looking at it from a queer, working-class perspective, it was evident that it was formulated by a certain class of people. The use of phrases such as “responsible use of social media,” (Social Media Declaration, 2019) which if contextualised, risks drawing parallels between words like “obscene”, and “indecent”, and therefore calls for introspection about embedded biases in coming up with solutions.

In 2023, the HRCSL issued guidelines for police officers to ensure non-discrimination of the transgender community, emphasising that they too are entitled to the constitutionally protected right to equality (Constitution of Sri Lanka, Article 12). These guidelines were based on the Yogyakarta Principles (Yogyakarta Principles, 2017) which apply international human rights law to sexual orientation and gender identity. Prior to this, in 2022, the Inspector General of Police issued an apology on behalf of the police for the harassment LGBTQI+ people are subject to at police stations. This was followed by a circular titled “Matters to be considered when dealing with transgender people and people who have undergone gender transition” (IGP Issues Circular to Police on Dealing With Transgender Persons, 2023). Despite these developments, the LGBTQI+ community continues to be targeted both online and offline, and their freedom of expression continues to be curtailed.

It is important to frame freedom of expression in a broader sense so that it encompasses the expression of gender and sexual identities. Moreover, in coming up with solutions for the curtailing of freedom of expression, we must be conscious of heteronormative and colonial ideas having a

place in policy formulation. As much as criminal law is used to respond to online gender-based violence and violations of bodily autonomy, it cannot be used to curtail legitimate expression of sexual and gender identities. Laws regulating the online space that are enacted on the pretext of protecting women and children serve no purpose if women, children, and queer people have to worry about freely existing online. They must protect the freedom of expression online for women, queer people and children by refraining from censoring their online expression and content relating to sexual and reproductive health.

08. CONTEMPT OF COURT

The Sri Lankan Constitution addresses contempt of court, with the Supreme Court deriving its authority primarily from Article 105(3) of the Constitution. This provision, when read alongside Article 136, grants the Supreme Court broad rule-making powers. Specifically, Article 105(3) empowers the Supreme Court to both establish rules regarding contempt and to punish contempt, whether it occurs within or outside the court's confines. These wide powers have been subject to criticism as there is virtually unlimited discretion accorded to the Supreme Court to adjudicate in contempt matters (Asian Human Rights Commission, 2022).

It's essential to juxtapose these powers with the fundamental right to freedom of speech and expression, including publication, as articulated in Article 14(1) (a) of the Constitution, which acts as a crucial counterbalance to the authority of the Supreme Court in matters of contempt. The jurisdiction of the Supreme Court over contempt, therefore, is theoretically circumscribed by the protections afforded by the fundamental right to freedom of speech and expression.

The law on contempt of court in Sri Lanka was not codified in a single piece of legislation till the enactment of the [Contempt of Court, Tribunal or Institution Act No. 8 of 2024](#) (CCA). Despite the long absence of specific legislation on contempt of court till now, Sri Lanka has a wealth of jurisprudence emanating from the judiciary regarding contemptuous behaviour. However, the lack of a dedicated legislative framework meant that the understanding and application of contempt laws were often subject to interpretation, leading to inconsistencies, ambiguities and arbitrariness in its enforcement. Dr. Gehan Gunatilleke, highlighted the need for a more refined approach to the contempt law in Sri Lanka, emphasising the necessity to distinguish between different types of contempt based on their nature (G. Gunatilleke, personal communication, 10 January, 2024).

The CCA includes provisions designed to balance freedom of expression and contempt, and Sections 3(2)(d)(ii) and (iii), interpreted alongside the term "publish"³ extend the Act's scope to

³ *Contempt of a court, Tribunal or Institution Act 2024, Section 16; 'Publish' means, to disseminate, distribute, exhibit, provide or communicate by oral, visual, written, electronic or other means including by way of newspaper, radio, television or through the use of the internet or other online communication system, to the public at large or a member of the public, and includes causing to be published, and "publication" is to be construed accordingly.*

encompass internet and online forms of expression. If convicted for contempt of court, Article 105(3) of the Constitution prescribes imprisonment or a fine, or both. Common law defences are codified under the Act, with provisions such as public information not being subject to contempt, information being accurate and without malice or intention to impair justice, and fair comment being included.

The draft law on contempt of court proposed by the Law Commission of Sri Lanka in 2008 contains an explanation which recognises the harshness of the then contempt law as follows, *'Too Harsh a law on contempt can act as a barrier to the development of a healthy and a vibrant jurisprudence. Ideally, a legal system should encourage both spontaneous and reflective criticism of judgements while preserving the sanctity and dignity of the courts and ensuring the smooth and effective administration of Justice'* (Draft Bill on Contempt of Court, 2008). The current Act has significant differences in approaching Contempt as opposed to the draft Bill proposed by the Law Commission. It has also specifically addressed freedom of expression online, reflecting the specific intention of the legislature to restrict and or bring online expression under the purview of the law, unlike the draft law of the Law Commission.

A notable incident which raised public interest in the matter of contempt of court was when actor-politician Ranjan Ramanayake's statements regarding a fundamental rights case relating to the dissolution of Parliament in 2018 were found to be contemptuous by the Supreme Court in 2022; SC Rule 03/19 (Sooriyagoda, 2022). This was his second contempt of court charge, with the first being issued in 2021 in relation to his statements attempting to expose judicial corruption; ***Sunil Perera v Ranjan Ramanayake***. Even though his comments were not originally made online—they were made once on a TV program and the other time as a voice recording to the media—they gained wide traction on social media with everyone expressing an opinion on the judgement. He was sentenced to a four-year prison term by the Supreme Court. An online petition asking for his release gained over 7000 signatures in a few days with support being expressed by many people. Academic Asanga Welikala commented on the 2021 decision stating that it was excessive and a public apology would suffice. He further stated that many countries of the Commonwealth that use English law principles have enacted legislation to regulate contempt of court powers which lie completely at the discretion of the court (Ranawana, 2021).

In this regard, a particularly interesting and potentially dangerous development is the recently enacted OSA, which notably includes provisions aimed at preventing contempt of court or statements prejudicial to the authority and impartiality of the judiciary in line with Article 105(3) of the Constitution, i.e. imprisonment or fine, or both (Online Safety Act, 2024). This Act was enacted despite heavy pushback with a record number of 45 petitions challenging the Act at the Bill stage (SC Concludes Hearing of Petitions Challenging Online Safety Bill, 2023). The main argument of the civil society and human rights defenders was that it poses a significant threat to freedom of expression. Originally campaigned as an act to defend women and children from online violence, the OSA's inclusion of provisions related to contempt of court raises concerns about its broader implications. Critics argue that the Act's broad scope could have a chilling effect on free speech, especially considering the shrinking civic spaces in Sri Lanka. While it is yet to be seen how the OSA or the CCA will be implemented, the compounding effect of the two laws on online expression will predictably have a stifling, chilling effect on public discourse.

09.

THE ONLINE SAFETY ACT & THE FUTURE OF ONLINE EXPRESSION

The Government gazetted the Online Safety Bill in September of 2023 (Center for Policy Alternatives, 2023). Subsequently, nearly fifty petitions were filed against the Bill challenging its constitutionality in the Supreme Court (Samaraweera and Tennekoon, 2023) and the apex court's verdict determined 31 clauses to be unconstitutional and further stated that if these were not amended, a special majority in Parliament was needed for the Bill to become law. A mere five months later, the OSA was signed into law, intending to dramatically regulate the content of online communication. Subsequently, the HRCSL wrote to the Speaker of Parliament stating that a number of Sections of the Act were non-compliant with the Supreme Court's determination (Economy Next, 2024) and Opposition MP M. A. Sumanthiran, member of Ilankai Tamil Arasu Katchi party, filed a petition in the Supreme Court challenging the Speaker's signing of the Bill into law as he claimed that the Bill was not adopted legally. However, the petition was dismissed without taking it up for consideration (Newswire, 2024). The OSA cannot be assessed in a vacuum. Instead, it must be viewed along with the way existing legislation such as the PTA and ICCPR Act is being abused to curtail freedom of expression, as was discussed extensively in the preceding sections. However, the analysis of its provisions given above is evidence that the OSA has immense potential to violate freedom of expression in the online space.

The OSA establishes an Online Safety Commission that is tasked with implementing it. The Commission has sweeping powers including issuing notices to persons communicating 'prohibited statements' to cease such communication, issuing directives to persons, service providers, and internet intermediaries to remove content or restrict access, and issuing codes of practice for service providers. The Commission will consist of five members appointed by the President, subject to approval by the Constitutional Council. Critics of the OSA have commented on this appointment process as it reduces the role of the Constitutional Council to a mere stamp of approval. The purpose of the Council is to ensure the appointment of an independent Commission which will in turn ensure that the Act is not misused, and this process of approval prescribed by the OSA undermines the role of the Council and politicises the Commission.

The Online Safety Commission's broad powers would essentially vest it with the authority to stifle legitimate criticism by restricting statements that the Commission deems to amount to a false or prohibited statement or prohibit 'online locations', which consist of a plethora of things including websites, webpages, chatrooms/forums, "or any other thing that is hosted on a computer and can be seen, heard or otherwise perceived by means of the internet" (Online Safety Act, 2024). In standard criminal legal practice in Sri Lanka, these processes are conducted in compliance with an order issued by a competent court of law. The HRCSL has commented that the Commission is vested with quasi-judicial powers and stated that this should not be the case (Economy Next,

2023). Furthermore, the OSA enables the subject Minister, the Minister of Public Security, to appoint experts to assist the Police in investigations and accompany them during search procedures. These individuals can also be given the power to require a person to hand over any documents or device, provide traffic data, or be orally examined. Such wide powers given to private individuals leave avenues for abuse, and this is emphasised by the OSA not providing for judicial review of the actions of the Commission.

The context within which the OSA was introduced to Parliament in the aftermath of the Aragalaya is quite interesting. Critics have said that the Government is “frightened out of its skin” and is therefore introducing the OSA to protect itself from the possibility of another Aragalaya (Pinto-Jayawardene, 2023). Even though the Online Safety Bill was promoted as one that would protect women and children, the true intentions were seen during the Parliamentary debates about the OSA on 23rd January 2024. MP Tiran Alles commented that the OSA aims to protect not just MPs but also their families from “false stories being published on social media” (Column 37, 2024). The lack of a transparent, meaningful, and inclusive consultative process with stakeholders and local groups during the drafting of the OSA has also been severely criticised (Global Network Initiative, 2023). The process was shrouded in secrecy overall, with no transparency around the already rushed process of drafting and passing the Bill into law. In fact, some have also noted that the Government neglected to make mandatory changes required by the Supreme Court determination and instead passed the Bill with a simple majority (Centre for Policy Alternatives, 2024).

The OSA outlines four offences broadly; communication of prohibited statements, child abuse using online statements, creation of bots for illegal activities and offences related to prohibited areas. The use of phrases such as “a threat to national security, public health or public order” or “promotes feelings of ill will and hostility”; “maliciously or wantonly gives provocation to [...] the offence of rioting to be committed” and “outrage the religious feelings of any class of persons, insults or attempts to insult the religion or religious beliefs of that class” are vague and overbroad, and therefore have the potential to include expression that is protected under human rights law. It is important to note that even though the OSA came into force in February, the Online Safety Commission which is tasked with its implementation has not been appointed yet. Sri Lankans are yet to see this law in action. However, the discussion thus far is evidence of the undemocratic nature of the OSA’s implementation.

The general approach of successive governments in enacting laws that aim to address violence is generally protectionist: there is a protracted focus on harm, and this is further coloured by the cultural politics of Buddhism, majoritarianism, and militarism. Harm is thus defined in specifically cultural and political ways, and the protectionist approach attempts to address harm retroactively, rather than centring the agency and autonomy of the people affected by these harms, both online and offline. The OSA, within the political legal contexts outlined in this report, would have seriously detrimental implications on freedom of expression, conscience, and assembly online. Such regulations will only continue to serve the interests of vested political interests and populist politics and undermine the authority of the judiciary in serious ways. Good faith law-making around preventing harm and ensuring online safety must thus focus on expanding freedom of expression instead of curtailing it, and understanding the role of the online space as vital to civic discourse and political participation.

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