

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

*In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

1. Transparency International Sri Lanka  
No.366, Nawala Road  
Nawala, Rajagiriya
2. Pulasthi R. K. Hewamanna  
No.366, Nawala Road  
Nawala, Rajagiriya

PETITIONERS

Supreme Court [Fundamental Rights]  
Application No. **56** /2024

Vs.

1. Hon. Attorney General  
Attorney Generals' Department  
Hulftsdorp, Colombo 12.
2. Mahinda Yapa Abeywardene  
Hon. Speaker of Parliament  
Parliamentary Complex,  
Sri Jayawardenapura, Kotte.
3. Dinesh Gunawardena
4. Manusha Nanayakkara
5. Susil Premjayantha
6. Vidura Wickramanayake
7. Douglas Devananda
8. Bandula Gunawardena
9. Nalin Fernando
10. Mahinda Amaraweera
11. Prasanna Ranatunga
12. Kanchana Wijesekera
13. Pavithra Devi Vanniarachchi
14. M.U.M Ali Sabry
15. Ramesh Pathirana
16. Harin Fernando
17. Jeevan Thondaman
18. Wijeyadasa Rajapakse
19. Tiran Alles



20. Nimal Siripala de Silva
21. Sarath Weerasekara
22. Wimal Weerawansa
23. Udaya Prabhath Gammanpila
24. P. Saman Kumara Undugoda
25. Jagath Samarawickrama
26. Madhura Withanage
27. Premnath C. Dolawaththa
28. Gamini Lokuge
29. Jagath Kumara Sumithraarachchi
30. Sajith Premadasa
31. S.M. Marikkar
32. Harsha De Silva
33. Patali Champika Ranawaka
34. Mano Ganesan
35. Anura Kumara Dissanayake
36. Nalaka Godahewa
37. Indika Anurudhdha
38. Arachchilage Sisira Jayakody
39. Antony Nimal Lanza
40. M.W.D. Sahan Pradeep Withana
41. Sudarshini Fernandopulle
42. Prasanna Ranaweera
43. Kokila Gunawardhana
44. Lasantha Alagiyawanna
45. Ajith Mannapperuma
46. Milan Sajith Jayathilake
47. Upul Mahendra Rajapaksha
48. Sarath Fonseka
49. Harshana Rajakaruna
50. Kavinda Heshan Jayawardhana.
51. Vijitha Herath
52. Rohitha Abegunawardhana
53. Sanjeeva Edirimanna
54. Piyal Nishantha De Silva
55. Jayantha Samaraweera
56. Anupa Pium Pasqual
57. Lalith Ellawala
58. Rajitha Senarathne
59. Kumara Welgama
60. Dilum Amunugama
61. Mahindananda Aluthgamage
62. Lohan Ratwatte
63. Anuradha Jayaratne
64. Keheliya Rambukwella



65. Wasantha Yapa Bandara
66. Gunathilaka Rajapaksha
67. Udayana Chaninda Kirindigoda
68. Abdul Rauf Hakeem
69. Abdul Haleem Mohomed Hasim
70. Velu Kumar
71. Lakshman Kiriella
72. Janaka Bandara Tennakoon
73. N. Nalaka Bandara Kottegoda
74. Pramitha Bandara Tennakoon
75. Rohana Dissanayaka
76. Rohini Kumari Kavirathna
77. R.M.C.B. Rathnayake
78. S.B. Dissanayake
79. Marudapandy Rameshwaran
80. Nimal Piyatissa
81. Palani Digambaram
82. Velusamy Radhakrishnan
83. Mailvaganam Udayakumar
84. Mohan Priyadarshana De Silva
85. Chandima Weerakkody
86. Isuru Dodangoda
87. Shan Wijayalal De Silva
88. Geetha Samanmalee Kumarasingha
89. Gayantha Karunathilaka
90. Nipuna Ranawaka
91. Karunadasa Kodithuwakku
92. W. Weerasinghe
93. Buddhika Pathirana
94. Namal Rajapaksha
95. D.V Chanaka
96. Chamal Rajapaksha
97. Upul Sanjeewa Galappaththi
98. Ajith Rajapaksha
99. Dilip Wedaarachchi
100. Sivagnanam Sritharan
101. M.A Sumanthiran
102. Tharumalingam Siththarththan
103. Angajan Ramanathan
104. C.V Wigneshwaran
105. Charles Nirmalanathan
106. A. Adaikkalanathan
107. S. Noharathalingam
108. Kader Masthan
109. Rishad Bathiudeen



110. Kulasingam Thileepan
111. Shanakiyan Rasamanikkam
112. Kovinthan Karunakaram
113. Sivanesathurai Chandrakanthan
114. Sathasivam Viyalendiran
115. Dissanayaka Wimalaweera
116. Raja Thilak Rajapaksha
117. Mohamed Mohamed Harees
118. Mohamed Cassim Mohamed Faizal
119. Safiul Mohamed Muzhaaraff
120. Ataullah Ahmad Lebbe Marikkar
121. H. Nandasena
122. Muhamedu Shariff Thowfeek
123. Imran Maharroof
124. Kapila Nuwan Athukorala
125. Rajavarothayam Sampanthan
126. Mahinda Rajapaksha
127. Johnston Fernando
128. Basnayaka Gunapala Rathnasekara
129. Dayasiri Jayasekara
130. Asanka Samithajeewa Navarathna
131. H.M. Samanpriya Herath
132. D.B. Herath
133. Anura Priyadarshana Yapa
134. Jayarathna Herath
135. Shantha Bandara
136. Udukumburage Sumith
137. Nalin Bandara Jayamaha
138. J.C. Alawathuwala
139. Ashoka Abeysinghe
140. Amarasena Thushara Indunil
141. Jagath Priyankara
142. Arundika Fernando
143. Chinthaka Amal Mayadunna
144. Ashoka Priyantha
145. Hector Appuhami
146. Niroshan Eardley Priyantha Perera
147. Abdul Ali Sabri Mohamed Raheem
148. S.M. Chandrasena
149. Channa Jayasumana
150. Uddika Premarathna (resigned w.e.f  
27/02/2024. Seat currently vacant)
151. Shehan Semasinghe
152. Duminda Dissanayaka
153. Dullas Alahapperuma
154. K.P.S. Kumarasiri



155. Abdul Rahuman Ishak
156. Rohana Bandara Wijesundara
157. Maithreepala Sirisena
158. Roshan Ranasinghe
159. Sampath Athukorala
160. Gamalath Siripala
161. Kins Kumar Nelson
162. Sudarshana Denipitiya
163. Thenuka Vidanagamage
164. Chamara Sampath Dassanayake
165. Dilan Anslam Perera
166. Vadivelu Suresh
167. A. Aravind Kumar
168. Shashindra Rajapaksha
169. Kumarasiri Rathnayaka
170. Vijitha Berugoda
171. A.P. Jagath Pushpakumara
172. Gayashan Nawananda
173. Dharmasena Wijesingha Herath
174. Premalal Jayasekara
175. Janaka Wakkumbura
176. Gamini Waleboda
177. Akila Ellawala
178. Vasudeva Nanayakkara
179. Nayana Wasalathilake
180. Muditha Prishanthi
181. John Senevirathna
182. Heshan Withanage
183. Waruna Priyantha Liyanage
184. Thalatha Athukorala
185. Kanaka Herath
186. Ranjith Siyambalapitiya
187. Tharaka Balasuriya
188. Rajika Wickramasinghe
189. H.R.S. Dushmantha
190. Udayakantha Gunathilaka
191. L.H. Sudath Manjula
192. Kabeer Hashini
193. Ven. Athuraliye Rathana Thero
194. Vajira Abeywardene
195. Sujith Sanjaya Perera
196. G.L.Pieris
197. Sagara Kariyawasam
198. Jayantha Ketagoda
199. Jayantha Weerasinghe



200. Manjula Wijekoon Dissanayake
201. Ranjith Bandara
202. Charitha Herath
203. Gevindu Kumaratunga
204. Mohamed Musammil
205. Tissa Vitharana
206. Yadamini Gunawardhane
207. Suren Raghavan
208. Seetha Kumari Arambepola
209. Mohamed Faleel Marjan Azmi
210. Thavaraja Kalai Arasan
211. Ranjith Madduma Bandara
212. Tissa Attanayake
213. Imtiyas Bakeer Markar
214. Eran Wickremaratne
215. Harini Amarasuriya
216. A.H.M Fowzie
217. Ali Zahir Moulana
218. Dhammika Perera
219. Mayantha Dissanayake
220. Diana Gamage
221. A.L.M Athaullah
222. Priyankara Jayaratne
223. S. Kajendran
224. G.G Ponnambalam
225. Lalith Varna Kumara
226. C. Thissakuttiarachchi

*The 2<sup>nd</sup> to 226<sup>th</sup> Respondents, are all members of Parliament, Parliamentary Complex, Sri Jayewardenepura Kotte.*

227. The Secretary General of Parliament  
Parliamentary Complex,  
Sri Jayewardenepura Kotte.

228. Inspector General of Police  
Police Headquarters  
Colombo 1

#### RESPONDENTS



On this 28<sup>th</sup> day of February 2024

TO HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

The PETITION of the Petitioners above-named, appearing by Ms. Thushari Jayawardena, their Attorney-at-Law states as follows:

SCOPE OF THE APPLICATION

The instant application seeks to *inter alia* challenge the certification of the 'Online Safety Act, No.1 of 2024' by the 2<sup>nd</sup> Respondent, at a time when Parliament was prorogued, thus infringing the fundamental rights of the Petitioners, as guaranteed by Articles 12(1) and 14 the Constitution and/or resulting in the imminent infringement of the fundamental rights of the Petitioners and the People of Sri Lanka guaranteed under Articles 10, 11, 12(1), 12(2), 12(3), 13(1), 13(2), 13(3), 13(4), 13(5), 13(6), 14(1), 14A and 17, as morefully stated hereinafter.

THE PETITIONERS

1. The 1<sup>st</sup> Petitioner is a body incorporated under and in terms of the Companies Act, No.7 of 2007, is a juristic person with the capacity to sue and be sued, and is represented by a membership of whom more than three-fourths are citizens of Sri Lanka.
2. The primary objects of the 1<sup>st</sup> Petitioner are, *inter alia* to encourage the growth of democratic concepts, practices and governance in Sri Lanka, to promote accountability, the eradication of corruption in public institutions, departments, and other areas of both government and private sector entities, to take steps to promote and bring about transparency and integrity in governance, and to work towards the eradication of corruption from all spheres of life in Sri Lanka.
3. The 2<sup>nd</sup> Petitioner is an Attorney-at-Law and the Chairman of the Board of Directors of the 1<sup>st</sup> Petitioner.
4. In terms of Article 3 of the Constitution, sovereignty is vested in the People of the Republic of Sri Lanka, and sovereignty includes the powers of government, fundamental rights and franchise.
5. The Petitioners have filed the instant application in the PUBLIC INTEREST, and also in the interest of the 1<sup>st</sup> Petitioner's members, including the 2<sup>nd</sup> Petitioner, *inter alia* in terms of



Article 28 of the Constitution, to uphold and defend the Constitution, safeguard the rule of law and the fundamental rights and freedoms of citizens of Sri Lanka.

6. The Petitioners state they have a clear and direct interest to institute this application, being concerned in infringement and/or imminent infringement of the fundamental rights of the citizens of Sri Lanka from the acts and/or omissions of one or more Respondents, as morefully stated hereinafter.

*Copies of the Certificate of Incorporation of the 1<sup>st</sup> Petitioner, the names and particulars of the Directors of the 1<sup>st</sup> Petitioner, and its Articles of Association, compendiously marked P1 are annexed hereto and pleaded as part and parcel hereof.*

#### THE RESPONDENTS

7. The 1<sup>st</sup> Respondent is the Honourable Attorney General, who has been made a party to this Application in compliance with the Rules of Your Lordships' Court, and the Constitution.

Furthermore, as detailed below, the 2<sup>nd</sup> Respondent has publicly stated that, his purported certification of the Online Safety Bill was preceded and/or fortified by the approval given therefor by the 1<sup>st</sup> Respondent, and that the purported document certified by him on 01/02/2024 was compliant with the contents and conclusions of Your Lordships' Court in the Special Determination thereupon.

8. The 2<sup>nd</sup> Respondent is a Member of Parliament, and the incumbent Speaker of the Parliament, who purported to certify into 'law' on 01/02/2024, a document titled 'Online Safety Act No. 09.2024', which is of no force or avail in law and a nullity.

9. The 3<sup>rd</sup> to 226<sup>th</sup> Respondents (in addition to the 2<sup>nd</sup> Respondent) are Members of the current Parliament of the Republic, including several of them who comprise the Cabinet of Ministers, and are made parties hereto for the purpose of giving notice of this Application. No relief is sought against the 3<sup>rd</sup> to 226<sup>th</sup> Respondents.

10. The 227<sup>th</sup> Respondent is the Secretary General of Parliament of the Republic, and is made a party hereto to serve notice of this Application on the 2<sup>nd</sup> to 226<sup>th</sup> Respondent Members of Parliament.

11. The 228<sup>th</sup> Respondent above-named is the apex functionary of the Police Department, and is charged with the proper, efficient and transparent administration of the Police Service in Sri Lanka, in terms of the law.

12. The Petitioners state that the actions and/or inactions of the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 228<sup>th</sup> Respondents, as detailed herein and/or impugned in this Application constitute 'executive



or administrative action' within the meaning and contemplation of Articles 17 and 126 of the Constitution.

#### THE BACKGROUND AND/OR ANTECEDENCE TO THE PRESENT APPLICATION

13. On or about 18.09.2023, a Bill titled "*Online Safety Act No. \_ \_ \_ of 2023*" [hereinafter referred to as 'the Bill'] was published in the Government Gazette Extraordinary, and placed on the Order Paper of Parliament on 03.10.2023.

*Copies of the Bill in English, Tamil and Sinhala languages, compendiously marked P2 are annexed hereto and pleaded as part hereof.*

14. On 02/10/2023, the Human Rights Commission of Sri Lanka (HRCSL) had presented its Preliminary Observations and Recommendations on the Bill to the Minister of Public Security with copy to H.E. the President.

*A copy of letter dated 02/10/2023 together with annexures thereto marked P3 is annexed hereto and pleaded as part hereof.*

15. Subsequent to the Bill being placed on the Order Paper of Parliament, approximately 45 Petitions were filed in Your Lordships' Court, on or around 03/10/2023, by several citizens of Sri Lanka, under and in terms of the provisions of Article 121 of the Constitution.

16. The Petitions challenged in whole and/or in part the consistency of the said Bill with the Constitution, on the ground that one or more provisions of the Bill were inconsistent with and/or violative of the Constitution, requiring passage in Parliament with a special (two-third) majority in Parliament and/or with a referendum.

17. It is very significant that not a single Intervention-Petition was filed by any person in 'support' of the Online Safety Bill, giving credence to the fact that the citizenry, as a whole, opposed the passage of the Bill.

18. Thus, with the exception of the 1<sup>st</sup> Respondent, the Honourable Attorney General, who in principle supported the enactment of the Bill into law, no member of the general public filed any Intervention-Petitions seeking to oppose the determination of inconsistency of the said Bill.

19. Approximately 45 Petitions were filed in Your Lordships' Court by several Petitioners in SC (SD) Numbers 67-70/2023, 71-77/2023, 79-81/2023, 83-86/2023, 87-101/2023, 103-107/2023, 109/2023, 111/2023, 112/2023, 115-118/2023 and 120/2023.



20. The Petitioners contended that several, if not all, the provisions of the Bill were inconsistent with the Constitution. Therefore, prior to the commencement of hearing of the said 45 Petitions, the Honourable Attorney General, on 18/10/2023 notified Your Lordships' Court that over 30 amendments were proposed to be incorporated to the Bill at the Committee stage deliberation of the Bill.
21. The "proposed amendments to the Bill intended to be moved as Committee Stage" were not subject to prior publication and/or notification to the citizens of Sri Lanka, including those who may have sought to petition Your Lordships' Court, had they known that the law to be passed would entail such "amendments".
22. There was also no prior notice to the citizens who were Petitioners in court, as copies of a document containing the "amendments" were only made available to the Counsel for the Petitioners subsequent to commencement of the hearing.
23. Learned Counsel appearing for the Petitioners were *ex facie* deprived of the opportunity to obtain proper instructions from the Petitioners and/or duly study, reflect and determine the Constitutionality of the Bill (if amended as proposed) in their submissions.
24. Accordingly, the right to be heard, under and in terms of the Constitution, was denied to citizens who had not filed Petitions as they were unaware of the substantial amendments that were intended to be made, as well as citizens who were Petitioners, as they and their Learned Counsel were *ex facie* not given adequate notice in respect of the "amendments".
25. The failure to provide proper notice of the amendments *ex facie* diminished the ability of the Petitioners and their Counsel to assist Your Lordships' Court to undertake and make fuller determination of inconsistencies with the Constitution.
26. It was under such circumstances that the Petitions filed were heard by Your Lordships' Court on 18/10/2023 and 19/10/2023, and upon the conclusion of oral submissions, parties were directed to file their written submissions on 20/10/2023.
27. As reflected in page 11 of the Special Determination, at the commencement of hearing of the Petitions, on 18/10/2023 (and not at any time before), the Honourable Attorney General submitted to Your Lordships' Court, and to Counsel appearing for the Petitioners, a document containing proposed Committee Stage amendments which were to be effected to the Bill, and which said amendments were said to have already been approved and agreed to by the Ministry of Law and Order.

*A copy of the said document furnished by the Hon. Attorney General in Open Court that the Petitioners have been able to obtain is annexed hereto marked P4 and pleaded as part hereof.*



28. The Petitioners state that the aforesaid document *ex facie* evinced that, even prior to the commencement of hearing into these matters on 18/10/2023, the Ministry of Law and Order (or the Ministry of Public Security) had agreed to effect amendments to over 30 out of the 57 Clauses in the Bill.
29. However, these amendments were not made known to the citizens of Sri Lanka during the period in which they could exercise their rights to petition Your Lordships' Court, if so advised, in consideration of such "intended" amendments.
30. On 07/11/2023 Your Lordships' Court communicated its determination on the Bill in the manner provided for in Article 121(3) of the Constitution, and the same was notified and read out by the 2<sup>nd</sup> Respondent in Parliament and directed to be published in the Hansard on the same day.

*A copy of the Special Determination of Your Lordships' Court in respect of the 'Online Safety Bill' marked P5 is annexed hereto and pleaded as part hereof.*

*The Petitioners most respectfully reserve the right to obtain and furnish the said relevant Hansard, dated 07/11/2023, if deemed necessary by Your Lordships' Court, marked as P5(a).*

#### THE SPECIAL DETERMINATION OF YOUR LORDSHIPS' COURT

31. Your Lordships' Court, in making the Special Determination, was inclined to consider *inter alia* as to whether [vide, page 29 of the said Determination], the said new proposed amendments notified by the Hon. Attorney General on 18/10/2023 were consistent with Article 78(3) of the Constitution.
32. The Petitioners state that in doing so, Your Lordships' Court took cognizance of the rationale behind the enactment/introduction of Article 78(3) of the Constitution by way of the Twentieth (20<sup>th</sup>) Amendment to the Constitution.
33. The Petitioners respectfully state that the said amendment introduced by way of Article 78(3) of the Constitution constitutes and/or entails a Constitutional prohibition on any substantial change to a Bill from the version which was gazetted and placed on the Order Paper of Parliament, which is what the general public is aware of, and is the subject of challenge before Your Lordships' Court in a Petition filed under Article 121 of the Constitution.
34. Article 78(3) also provides a Constitutional prohibition on the enactment into law through the legislature, of a Bill with significantly and/or substantially different form, content or



implication to that which the citizens were given the opportunity of challenging under Article 121 of the Constitution.

35. The Petitioners state that Your Lordships' Court, having considered the aforesaid suggested amendments submitted by the 1<sup>st</sup> Respondent, which were said to be 'agreed' to be effected at the Committee Stage pertaining to the said Bill in Parliament, observed that such amendments will not amount to a deviation from the merits and principles of the Bill [vide, at page 31 of the determination].
36. It was in this context, backdrop and assurance that Your Lordships' Court commenced hearing into the Petitions filed by the several Petitioners.
37. Your Lordships' Court was pleased to consider *inter alia* as to whether any Clauses of the Bill were 'vague' or 'ambiguous' so as to be inconsistent with the Constitution [vide, pages 38 and 39 of the Bill]; whether the punishments stipulated in the Bill were excessive [vide, page 40] and whether certain provisions of the Bill encroached upon the exercise of judicial power.
38. Having scrutinized and analysed the Clauses of the Bill, Your Lordships' Court concluded thus [vide, at pages 61 and 62 of the Determination], to wit;
- (i) Clauses 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 and 56 are required *to be passed* in Parliament by a special majority as required by Article 84(2) of the Constitution.
  - (ii) However, if Clauses 3, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 36, 37, 42, 45, 53 and 56 are amended at the Committee Stage in Parliament, subject to the determination made in respect of several Clauses referred to above, this Bill may be passed in Parliament with a simple majority.

#### PASSAGE OF THE BILL IN PARLIAMENT

39. The Petitioners state that, on or about the 23/01/2024 the print media disclosed that the Bill was to be taken up for debate in Parliament on the same day.

*A copy of an article which appeared on the Ada Derana news site entitled 'Parliament to debate the Online Safety Bill today' marked P6 is annexed hereto and pleaded as part hereof.*

40. As per the Parliament website, the Bill had ostensibly been passed in Parliament on 24/01/2024 'with amendments' by a simple majority vote, with 108 votes in favour and 62 votes against it.



*A copy of the webpage entitled 'The Online Safety Bill passed in Parliament with a majority vote with amendments' dated 24/01/2024, marked P7 is annexed hereto and pleaded as part hereof.*

#### PURPORTED CERTIFICATE OF THE SPEAKER

41. On or about 01/02/2024, a communique had been issued by the office of the 2<sup>nd</sup> Respondent, stating *inter alia* that:

*'Hon. Mahinda Yapa Abeywardana, Speaker of Parliament today (Feb. 01) endorsed the certificate on the Online Safety Bill which was passed in Parliament with amendments following the two-day debate held on 23<sup>rd</sup> and 24<sup>th</sup> January 2024. Accordingly, the said Bill will come into effect as the Online Safety Act No. 09 of 2024'.*

*A copy of the said communique entitled 'Speaker endorses the certificate on Online Safety Bill' marked P8 is annexed hereto and pleaded as part hereof.*

#### PROROGATION OF PARLIAMENT

42. In terms of Article 79 of the Constitution, the 2<sup>nd</sup> Respondent-Speaker is required to duly certify that a Bill has been duly passed by Parliament.
43. It is very pertinent that, as at the time the Bill was purported to be certified into 'law' by the 2<sup>nd</sup> Respondent, on or about 01/02/2024, the Parliament stood prorogued by H.E the President.
44. H.E the President by virtue of powers vested in him under Article 70 of the Constitution had prorogued Parliament with effect from midnight of 26/01/2024 and fixed 07/02/2024 as the next date for the commencement of the next session of Parliament.

*A copy of the Gazette Extra Ordinary No. 2368/25 dated 26/01/2024 is annexed hereto marked P9 and pleaded as part hereof.*

45. The effect of Parliament being prorogued as aforesaid is *inter alia* described by the Parliament website as follows:

##### *"Constitutional Provisions*

*During the prorogation the Speaker continues to function and the Members retain their membership even though they do not attend meetings of Parliament. The effect*



*of a prorogation is to suspend all current Business before the House and all proceedings pending at the time are quashed except impeachments. A Bill, motion or question of the same substance cannot be introduced for a second time during the same Session. However, it could be carried forward at a subsequent Session after a prorogation.*

#### *Pending Business of Parliament*

*"All matters which having been duly brought before Parliament, have not been disposed of at the time of the prorogation of Parliament, may be proceeded with during the next Session," states the Paragraph (4) of Article 70 of the Constitution.*

*In the light of this constitutional provision, a prorogation does not put an end to pending Business. Thus, a pending matter may be proceeded with from that stage onwards after the commencement of the new Session. At the beginning of a new Session all items of Business which were in the Order Paper of Parliament need to be re-listed, if it is desired to continue with them".*

(Emphasis added)

*A copy of an extract of the Parliament website marked P10 is annexed hereto and pleaded as part hereof.*

46. The effect of prorogation of Parliament is set out in Article 70(4) of the Constitution, which by implication prohibits the 2<sup>nd</sup> Respondent from acting in the manner in which he has purported to act (which is impugned through this application), during the period in which Parliament stood prorogued.
47. Accordingly, the actions of the 2<sup>nd</sup> Respondent in purporting to certify the said Bill on or about 01/02/2024 when Parliament stood prorogued, is *ex facie* unconstitutional, illegal, void *ab initio* and a nullity.
48. The 2<sup>nd</sup> Respondent was constitutionally barred and restrained from proceeding with and/or proceeding to endorse or certify in any manner whatsoever the said Bill during the period in which Parliament stood prorogued.
49. Furthermore, the Petitioners believed that the findings of Your Lordships' Court in the Special Determination would be fully complied with prior to the Bill being certified as being passed into law.
50. The Petitioners had no reason to believe that the 2<sup>nd</sup> Respondent would certify the Bill into law without the Bill being passed by the requisite special (2/3) majority as determined to be necessary by Your Lordships' Court whilst any one or more of the inconsistencies highlighted by Your Lordships' Court remained.



51. It was in this context, and whilst the Parliament stood prorogued, that the Petitioners became aware that the Online Safety Bill had purportedly been certified by the 2<sup>nd</sup> Respondent and passed into 'law' by way of a purported document called the 'Online Safety Act No. 09 of 2024' [hereinafter referred to as the 'document'] on 01/02/2024.

*A copy of the document entitled "Online Safety Act No. 09 of 2024" published by the Government Printer is annexed hereto marked P11 and pleaded part and parcel hereof.*

52. The Petitioners were shocked and dismayed that this purported act of certification had taken place at a time when the Parliament stood prorogued by Presidential Proclamation, in blatant disregard of Constitutional provisions, Parliamentary Practice and Standing Orders of Parliament published in terms of Article 74 of the Constitution.

53. The HRCSL addressed a letter to the 2<sup>nd</sup> Respondent, with copies to H.E. the President, the Minister of Public Security and the 1<sup>st</sup> Respondent, dated 08/02/2024, setting out its observations with regard to the 'Online Safety Act No. 09 of 2024' which had ostensibly been certified on 01/02/2024 and published in the Gazette on 02/02/2024 stating *inter alia* thus:

- a) The Supreme Court in its Determination had found over 30 Clauses to be inconsistent with the Constitution and that certain omissions in the Bill were inconsistent with Articles 12(1) and 14(1)(a) of the Constitution.
- b) Therefore, the Bill could only be enacted by Parliament with a Special Majority of not less than 150 Members (*i.e.* two-thirds) of the Parliament. However, if all the amendments recommended by Court were introduced at the Committee Stage, the Bill could be enacted with a Simple Majority.
- c) It was therefore incumbent on Parliament to introduce all necessary amendments recommended by Court if it was to enact the Bill with a Simple Majority.
- d) Upon a careful review of the Act it is observed that several sections of the Act, which had ostensibly been certified by the 2<sup>nd</sup> Respondent, are non-compliant with the Determination of Your Lordships' Court, including especially Sections 13 (Clause 13 of the Bill), 16 (Clause 17 of the Bill), 19 (Clause 21 of the Bill), Section 20 (Clause 22 of the Bill), 27 (Clause 31 of the Bill).

*A copy of the letter of the HRCSL dated 08/02/2024 marked P12 is annexed hereto and pleaded as part and parcel hereof.*

54. The Petitioners were shocked and dismayed to become aware that the 2<sup>nd</sup> Respondent who had purported to certify into 'law' on 01/02/2024 the ostensible document 'Online Safety Act No. 09 of 2024' had purported to do so in blatant disregard of several



provisions, conditions and conclusions which had been categorically set out by Your Lordships' Court in the determination on the Bill.

55. The Petitioners state that quite apart from the invalidity which attaches to the act of the 2<sup>nd</sup> Respondent in purporting to certify the Bill during the period in which the Parliament stood prorogued, the blatant failure, disregard and disobedience to comply with the conditions set out in the said determination is an affront to good governance and the jurisdiction constitutionally vested in Your Lordships' Court to check a Bill for any inconsistency with any provision(s) of the Constitution.

56. The purported actions of the 2<sup>nd</sup> Respondent are unconstitutional, illegal, *ab initio* void and a nullity, and accordingly, the purported action of the 2<sup>nd</sup> Respondent does not result in the enactment of the Online Safety Bill into 'law'.

57. The purported document titled 'Online Safety Act No. 09 of 2024' has not been duly enacted through certification into law by the 2<sup>nd</sup> Respondent and has not 'become law' within the meaning and contemplation of Article 80(3) of the Constitution.

58. As provided for by Article 123(4) of the Constitution, any Bill purported to be passed contrary to a determination of Your Lordships' Court would not be a Bill passed according to 'law' and hence does not become 'law' and Article 80(3) has no application to the present instance.

59. Several inconsistencies exist in the purported document titled 'Online Safety Act No. 09 of 2024' *vis-à-vis* the determination of Your Lordships' Court in respect of the Bill. The following table sets out in brief, several inconsistencies to wit;

Clause No.	Original Wording of the Bill	Amendments Proposed by AG	Observations of the SC	Additional Amendments of the SC	Steps Required to be followed in Parliament
Clause 3	<p>The objectives of this Act shall be-</p> <p>(a) to protect persons against damage caused by communication of false statements or threatening, alarming or distressing statements;</p> <p>(d) to prevent the financing, promotion and other support of online locations which repeatedly</p>	<p>(a) to protect persons against damage or harm caused by communication of prohibited statements.</p>	<p>The Court stated that 'clause 3 of the Bill seeks to introduce a legal regime to regulate activities carried out online within and outside Sri Lanka to protect children and adults from being</p>	<p>(a) to protect persons against <i>damage or harm caused by communication of prohibited statements.</i></p>	<p>The SC's amendment to Clause 3(a) (in addition to the AG's amendment) and the AG's amendment to Clause 3(d) would be required for Clause 3 to be enacted with a simple majority</p>



	communicate false statements of fact in Sri Lanka.	(d) to prevent the financing, promotion and other support of online locations which repeatedly communicate <i>prohibited statements</i> in Sri Lanka.	abused through the internet.		
Clause 5	Subject to the provisions of section 6, the Commission shall consist of five members appointed by the President having qualifications and experience in one or more of the fields of information technology, law, governance, social services, journalism, science and technology or management.	<p>(1) The Commission shall consist of five members appointed <i>by the President, subject to the approval of the Constitutional Council, from among the persons</i> having qualifications and experience in one or more of the fields of information technology, law, governance, social services, journalism, science and technology or management.</p> <p>(2) <i>Subject to the provisions of section 6, the President shall recommend the names of five persons to be appointed as members of the Commission under subsection (1), to the Constitutional Council for approval.</i></p>	<p>The Court observed that, as the Bill has set out criteria for appointing members, 'the existing Clause 5 of the Bill does not infringe Article 12 (1) of the Constitution.</p> <p>The Court acknowledges that the AG recommended amendments to Clause 5, but does not state that these changes are required for the Clause to be enacted with a simple majority.</p>	None.	<p>Although Court suggests in the Conclusion that Clause 5 requires a special majority of Parliament to be enacted unless amended, Court appears to suggest at an earlier point in the determination that Clause 5 is not inconsistent with Article 12(1) and requires no further amendment.</p> <p>However, the Court acknowledges that the AG has proposed amendments to Clause 5, and it may be presumed that Parliament is required to adopt the AG's amendment at Committee stage.</p>



Clause 7	(2) The President may, for reasons assigned, remove a member of the Commission from his office.	Replace with:  <i>(2) A member of the Commission may be removed from his office by the President, subject to the approval of the Constitutional Council following a hearing of the relevant member...</i>	The Court observes that the AG's amendment 'does not set out the time period that an inquiry on a removal of a member should be concluded' and is thus inconsistent with Article 12(1) and requires to be passed by a special majority in Parliament.'  N.B. The Court inadvertently refers to 'Clause 5' when referring to the AG's amendment to 'Clause 7',	Add provision stating that an inquiry held against the Chairman, or a member of the Commission should be concluded within three months or six months from the date of the suspension.	The AG's amendment to Clause 7(2) along with the specification of a time period of three or six months would be required for Clause 7 to be enacted with a simple majority
Clause 9	(5) All matters for decision by the Commission shall be decided by a majority of the votes of the members of the Commission. The decision supported by the votes of a majority of the members of the Commission on any matter shall be deemed to be the decision of the Commission on that matter.  (Emphasis added)	(5)...Commission <i>n present and voting at the meeting at which the decision is taken. The decision so supported</i> by the votes of a...	No specific observations.	None.	The AG's amendment to Clause 9(5) would be required for Clause 9 to be enacted with a simple majority.
Clause 11	(b) to issue notices to persons who communicate false	(b) to issue notices to persons who	The Court observes that an order from	None.	The AG's amendments to Clause



	<p>statements that constitute offences under this Act, to stop the communication of such statements.</p> <p>(c) to issue directives to persons who communicate prohibited statements under this Act, to stop the communication of any such statements.</p> <p>(d) to issue notices to any internet access service providers or internet intermediary to disable access to an online location which contains a prohibited statement by the end users in Sri Lanka or to remove such prohibited statement from such online location</p> <p>(i) to carry out such investigations and provide such services upon being directed by any court.</p>	<p>communicate <i>prohibited statements...</i></p> <p>[Delete]</p> <p>Replace with: <i>(i) to carry out such investigations as may be necessary to exercise and perform the powers and functions of the Commission.</i></p> <p>Add new power: <i>(q) to appoint, employ and dismiss members of the staff of the Commission and to exercise disciplinary control over such staff.</i></p>	<p>the Magistrate is required (following an inquiry) for the internet access service provider or internet intermediary to disable access to an online location.</p>		<p>11(b) and (i), and the deletion of Clause 11(c) would be required for Clause 11 to be enacted with a simple majority.</p> <p>It is unclear as to whether the addition of another power under Clause 11(q), as recommended by the AG, would be required for Clause 11 to be enacted with a simple majority.</p>
Clause 12	<p>Any person, whether in or outside Sri Lanka, who poses a threat to national security, public health or public order or promotes feelings of ill-will and hostility between different classes of people, by communicating a false statement, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five</p>	<p>... shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine <i>not exceeding five hundred thousand rupees</i> and in the event of a second or subsequent ...</p>	<p>No specific observations.</p>	<p>None.</p>	<p>The AG's amendments to Clause 12 would be required for Clause 12 to be enacted with a simple majority.</p>



	years or to a fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.				
Clause 13	Any person, whether in or outside Sri Lanka who communicates a false statement which amounts to contempt of court, in the opinion of any court which exercises the special jurisdiction to punish the offence of contempt of court, in terms of paragraph (3) of Article 105 of the Constitution, commits an offence and the provisions of that Article and sections 18 and 55 of the Judicature Act, No.2 of 1978 shall apply in sentencing such person.	... of the Constitution or any other law-making provisions in respect of the offence of contempt of court, commits an offence and the provisions of that Article or such law and sections 18 and 55 of the Judicature Act, No.2 of 1978 shall apply in sentencing such person.	The Court observes that enacting legislation in respect of contempt of court is within the legislative competence of Parliament.	Further amend the proposed Clause: (1) by conferring jurisdiction in terms of Article 105(3) of the Constitution to hear and determine such cases instead of conferring jurisdiction on the Magistrates Court; (2) subject to the provisions of section 49(3) of the Judicature Act No. 37 of 1979; and (3) such conferring of jurisdiction shall be in addition to the powers conferred on the District Court, Family Court, Magistrates Court and Primary Court by section 55 of the Judicature Act No. 37 of 1919.	The AG's amendment to Clause 13 along with the SC's proposed amendments would be required for Clause 13 to be enacted with a simple majority.
Clause 14	Any person, whether in or outside Sri Lanka who maliciously or wantonly, by communicating a false statement gives provocation to any person intending or knowing it to be likely that such provocation, will cause the offence	(a) if the offence of rioting be committed in consequence of such provocation, be liable to imprisonment of either description for a term not	The Court observes: 'a careful consideration of clauses 14(a) and (b) show that the said clauses are vague and ambiguous'	None.	The AG's amendments to Clause 14 would be required for Clause 14 to be enacted with a simple majority.



	<p>of rioting to be committed, shall –</p> <p>(a) if the offence of rioting be committed in consequence of such provocation, be liable to imprisonment of either description for a term not exceeding five years, or with fine or with both such imprisonment and fine; and</p> <p>(b) if the offence of rioting be not committed, be liable to imprisonment of either description for a term not exceeding three years, or with fine, or with both such imprisonment and fine.</p>	<p>exceeding five years, or with fine <i>not exceeding five hundred thousand rupees</i> or with both such imprisonment and fine; and</p> <p>(b) if the offence of rioting be not committed, be liable to imprisonment of either description for a term not exceeding three years, or with fine <i>not exceeding three hundred thousand rupees</i>, or with both such imprisonment and fine.</p>	<p>and thus 'inconsistent with Article 12(1), and therefore, the said Clause should be approved by Parliament by a simple majority.'</p> <p>N.B. although the Court states that the Clause should be approved by a 'simple' majority, the conclusion does not follow from the observation that it is inconsistent with the Constitution, and, therefore, it may be presumed that it is an inadvertent typographical error, and the proper term the Court meant to use was 'special' majority. The Court acknowledges that the AG recommended amendments to Clause 14.</p>		
Clause 15	Any person, whether in or outside Sri Lanka who by communicating a false statement, voluntarily causes disturbance to any assembly lawfully engaged in the performance of	... and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine	The Court observed that 'the amendment intends to set an upper limit to the sentence to provide more clarity in	None.	The AG's amendments to Clause 15 would be required for Clause 15 to be enacted



	religious worship or religious ceremonies, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	<i>not exceeding three hundred thousand rupees,</i> or to both such imprisonment and fine and in the event of a second or subsequent conviction...	the second or subsequent conviction.'  The Court acknowledges that the AG recommended amendments to Clause 15.		with a simple majority.
Clause 16	Any person, whether in or outside Sri Lanka who, with the deliberate intention of wounding the religious feelings of any other person (in this section referred to as the "target person"), communicates a false statement to the target person, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding two years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	[Delete]	The Court observes that 'a close scrutiny of Clause 16 of the Bill shows that there is ambiguity or vagueness in the said Clause.'  The Court acknowledges that the AG's recommendation.	None.	The AG's amendments to Clause 16 would be required (i.e., the deletion of the Clause).
Clause 17	Any person, whether in or outside Sri Lanka who with the deliberate and malicious intention of outraging the religious feelings of any class of persons, insults or attempts to insult the religion or the religious beliefs of that class by communicating a false statement, commits an offence and shall on conviction be liable to	... shall on conviction be liable to imprisonment of either description for a term not exceeding three years, or to a fine <i>not exceeding three hundred thousand rupees</i> or to both such imprisonment and fine and in	The Court observes that 'while the ostensible aim of Clause 17 is to protect religious sentiments from intentional and malicious falsehoods, its actual scope extends	None.	The AG's amendments to Clause 17 would be required for Clause 17 to be enacted with a simple majority.



	imprisonment of either description for a term not exceeding three years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	the event of a second or subsequent conviction ...	beyond the remit of "online safety", as traditionally understood. Online safety, in its quintessential sense, is concerned with safeguarding users from immediate digital threats, such as cyberbullying, phishing, scams, or exposure to harmful content. The focus is on creating a safe environment where users can navigate and interact without fear of personal harm, privacy breaches, or digital manipulation.'		
Clause 18	(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, or damage or loss to the Government.	... commits the offence of " <i>online cheating</i> " and shall on conviction be liable to imprisonment for a term <i>which may extend to seven years or to a fine not exceeding seven hundred thousand rupees,</i>	No specific observations.	(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to <i>cause damage or harm</i> to that person in body,	The SC's amendment to Clause 18(b) along with the AG's amendments would be required for Clause 18 to be enacted with a simple majority.



	...commits the offence of "cheating" and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	or to both such imprisonment and fine and ....		mind, reputation, or property, or damage or loss to the Government,	
Clause 19	Any person, whether in or outside Sri Lanka who, by means of an online account  (a) pretends to be some other person; (b) knowingly substitutes one person for another; or (c) represents that such person or any other person is a person other than the person really is, commits the offence of "cheating by personation" and shall on conviction be liable to imprisonment of either description for a term not exceeding five years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	.. means of an online account, <i>cheats by</i> –  (a) <i>pretending</i> to be some other person; knowingly substitutes one person for another; or <i>representing</i> that such person or any other person is a...  commits the offence of " <i>online cheating by personation</i> " and shall on conviction be liable to imprisonment of either description for a term <i>which may extend to three years or to a fine not exceeding three hundred thousand rupees</i> , or to both ...	No specific observations.	None.	The AG's amendments to Clause 19 would be required for Clause 19 to be enacted with a simple majority.
Clause 20	Any person, whether in or outside Sri Lanka who intentionally insults by communicating a false statement, and thereby gives provocation to any other person (in this section referred to as the "target person"), intending or knowing it	[Delete]	The Court observes that the 'vague and broad terms which seek to constitute a penal offence are inconsistent with Article 12(1) of the	None.	The AG's amendments to Clause 20 would be required (i.e., the deletion of the Clause).



	to be likely, that such provocation will cause such target person to break the public peace, or to commit any other offence, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding five years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.		<p>Constitution' and that 'the broad scope to which the provisions of this clause will apply an impermissible abridgement of the rights contained in Article 14(1)(a) of the Constitution.'</p> <p>The Court acknowledges that the AG recommended amendments to Clause 20 and that if the amendments are made the clause may be passed with a simple majority.</p> <p>N.B. Since the AG has recommended complete deletion of the Clause, it may be presumed that the Court also recommends the same.</p>		
Clause 21	Any person, whether in or outside Sri Lanka who communicates any false statement, with intent to cause any officer, sailor, soldier, or airman in the navy, army or air force of Sri Lanka to mutiny, or with intent to cause fear or alarm to the public, induces any other person to commit	... and shall on conviction be liable to imprisonment of either description for a term not exceeding seven years, or to a fine <i>not exceeding seven hundred thousand rupees</i> , or to both such	The Court observes that, 'the introduction of a specific clause that criminalizes the communication of false statements with intent to cause mutiny	None.	The SC's concern that Clause 21 deviates from the principal objective of the Bill would need to be addressed along with AG's amendments for Clause 21



	an offence against the State or against the public tranquility, commits an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding seven years, or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	imprisonment and fine and in the event ....	and offences against the State is overly expansive and not strictly aligned with the intended scope of the proposed law.' The Court further observes that 'by focusing on broader national security concerns and public order, the clause deviates from the principal objective of protecting Internet users and the public from online harm and providing for their safety.'		to be enacted with a simple majority.
			N.B. The Court has not specified what amendment should be introduced to address the above concern.		
			The Court acknowledges that the AG recommended amendments to Clause 21.		
Clause 22	(1) Any person, whether in or outside Sri Lanka who willfully makes or communicates a <b>statement of fact</b> , with intention to cause harassment to another	(1) Any person, whether in or outside Sri Lanka who willfully makes or communicates <i>a statement</i> , with intention to	No specific observations.	Amend the illustration in the Clause.  N.B. The Court has not specified what amendment should be	The AG's amendment to Clause 22(1) along with the amendment of the illustration would be



	person (in this section referred to as the "target person"), by publishing any "private information" of the target person or a related person of the target person, and as a result causes the target person or any other person harassment, commits an offence and...	cause harassment to another person ...		introduced to the illustration.	required for Clause 22 to be enacted with a simple majority.
Clause 23	<p>(1) Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location-</p> <p>(a) commits or aids and abets an act which constitutes an offence within the meaning of section 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, 365A or 365B of the Penal Code upon a child; Or</p> <p>(b) publishes any photograph, audio or video of abusive or phonographic nature relating to a child, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding twenty years or to a fine, or to both such imprisonment and fine and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.</p>	<p>Replace with:</p> <p><i>(1) Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location commits or aids and abets an act upon a child, which constitutes an offence within the meaning of section 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, 365A or 365B of the Penal Code commits an offence and shall on conviction be liable to the punishment for each such offence as specified in the Schedule hereto:</i></p> <p><i>Provided however, in the case of aiding and abetting to commit an offence under section 363 of the Penal Code in</i></p>	No specific observations.	None.	The AG's amendments to Clause 23 would be required for Clause 23 to be enacted with a simple majority.



	(2) Where any person is convicted for an offence under subsection (1), such person shall, in addition to the penalty specified therein, be liable to pay such compensation as may be ordered by court, to the child or group of children in respect of whom such offence was committed.	<i>respect of a child, every reference to a "woman" in subsection (2) of section 364 of the Penal code shall be read and construed as a reference to a "child" for the purpose of this section. Any person, whether in or outside Sri Lanka, who, by way of an online account or through an online location, publishes any photograph, audio or video of abusive or pornographic nature relating to a child, commits an offence and shall on conviction be liable to imprisonment for a term not less than two years and not exceeding twenty years or to a fine not exceeding one million rupees, or to both such imprisonment and fine.</i>			
Clause 25	Any person who fails to comply with any directive issued in respect of such person by the Commission under paragraph (c) of section 11 within twenty four hours of its receipt commits an offence and shall on conviction be liable to imprisonment for a	[Delete]	No specific observations.	None.	The AG's amendments to Clause 25 would be required (i.e., the deletion of the Clause).



	term not exceeding five years or to a fine not exceeding one million rupees and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.				
Clause 26	<p>(1) A person aggrieved by the communication of a prohibited statement which is seen, heard or otherwise perceived by the users of internet based communication services (in this Act referred to as the "end users") in Sri Lanka, by any other person, may either orally, in writing or in electronic form, make a complaint providing information pertaining to such communication to the Commission.</p> <p>(5) Where the Commission is of the opinion that sufficient material exists that a prohibited statement has been communicated, the Commission shall carry out investigations through the officers of the Commission...</p> <p>(6)(a) If the Commission is satisfied, that sufficient material exists that a prohibited statement has been communicated, it may, taking into consideration the seriousness of the matter and the likelihood of damage or harm caused by such prohibited statement, issue notice to the person who communicated such prohibited statement, to take measures to prevent the circulation of such prohibited statement.</p> <p>Add: (9) Where-</p>	<p>(5) ... investigations through the officers of the Commission <i>During such investigations, an opportunity to be heard shall be given to the person alleged to have communicated such prohibited statement.</i></p> <p>(6)(a) If the Commission is satisfied, that sufficient material exists that a prohibited statement has been communicated, it may, taking into consideration the <i>seriousness of the matter and the likelihood of damage or harm caused by such prohibited statement, issue notice</i> to the person who communicated such prohibited statement, to take measures to prevent the circulation of such prohibited statement.</p>	<p>The Court observes that, (i) 'there is no final determination of rights of persons by the Commission in terms of clauses 26(5) and 26(6) (b) of the Bill,' and (ii) 'there are no penal consequences that are imposed by the Commission directly through the issuance of a notice under clause 26(5) of the Bill', thus 'a notice issued under clause 26 of the Bill cannot be construed as a judicial function.'</p>	<p>(1) ...</p> <p>...in Sri Lanka, by any other person, <i>may either orally, in writing or in electronic form,</i> make a complaint providing information pertaining to such communication to the Commission.</p>	<p>The SC's amendment to Clause 26(1), and the AG's amendment to Clause 26(5), 26(6) (a) and 26(9) would be required for Clause 26 to be enacted with a simple majority.</p>



	such prohibited statement, issue notice to the person who communicated such prohibited statement, to take measures to prevent the circulation of such prohibited statement.	<i>a person fails to act in accordance with the provisions of paragraph (b) of subsection (6); or an internet access service provider or internet intermediary fails to act in accordance with the provisions of subsection (8), the Commission may apply to the Magistrate's Court by way of petition and affidavit to obtain an order directing such person or internet access service provider or internet intermediary, as the case may be, to comply with such provisions and the provisions of section 27 shall mutatis mutandis apply in relation to such application.</i>			
Clause 27	(6) Where the person against whom a conditional order is made under subsection (2) intends to show cause, such person shall appear before the Magistrate making that order within a period of one week of making such order and move to have the order set aside or modified in the manner hereinafter provided	(9) Where the person against whom any order is made ...  ... <i>prohibited statement in Sri Lanka</i> ...	No specific observations.	The word 'one week' is to be replaced with 'two weeks' or a longer period.  N.B. At the end of the determination, the Court made the general recommendation that all references to 'one week' be made to 'two weeks' or a longer period.	The SC's amendment to Clause 27(6), the AG's amendment to Clause 27(9) and the deletion of Clause 27(9)(b) would be required for Clause 27 to be enacted with a simple majority.



	<p>(9)(a) Where the person against whom any order is made under this section fails to comply with such order within the period and in the manner ordered by the Magistrate, such person commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million rupees and the Magistrate may order the Commission to take steps to –</p> <p>(i) disable access by end users in Sri Lanka to the online location containing such communication of the statement of fact in Sri Lanka; or ...</p> <p>(b) Where the offence under paragraph (a) is a continuing offence, such person shall be liable to an additional fine of five hundred thousand rupees for each day during which such offence is continued.</p>	[Delete]			
Clause 28	<p>(2) In the event of the receipt of a complaint referred to in subsection (1), the Commission shall file a petition with the Magistrate's Court seeking a conditional order directing the internet intermediary on whose online location such prohibited statement was communicated, to disclose the information regarding</p>	<p>(2) In the event of the receipt of a complaint referred to in subsection (1), the Commission <i>shall make an application to the Magistrate's Court by way of petition and affidavit</i> seeking a conditional order directing ....</p>	No specific observations.	<p>The Court recommends that the word 'one week' should be replaced with 'two weeks' or a longer period.</p> <p>N.B. The Court refers to Clause 27(7), but since Clause 27(7) does not refer to 'one week', it may be presumed that the</p>	<p>The SC's amendment to Clause 28(7), 28(8) and 28(10)(1) (in addition to the AG's amendment), the AG's amendment to Clause 28(2) and the deletion of Clause 28(10)(b) would be</p>



	<p>the identity of the person who communicated the prohibited statement.</p> <p>(7) Where the internet intermediary against whom a conditional order is made under subsection (3) intends to show cause, it shall appear before the Magistrate making that order within a period of one week of making such order and move to have the order set aside or modified in the manner hereinafter provided</p> <p>(10) (a) Where the internet intermediary against whom any order is made under this section fails to comply with such order within the period and in the manner ordered by the Magistrate, such person shall be liable to a penalty not exceeding ten million rupees.</p> <p>(b) Where the offence under paragraph (a) is a continuing offence, such internet intermediary shall be liable to an additional fine of one million rupees for each day during 30 which such offence is continued.</p>	<p>(10) Where the internet ...</p> <p>... the Magistrate, such person shall be liable to a fine not ...</p> <p>[Delete]</p>		<p>Court is referring to Clause 28(7).</p> <p>The Court suggests the replacement of the word 'penalty' with the word 'fine' in Clause 27(10).</p> <p>N.B. Since there is no Clause 27(10) of the Bill, it may be presumed that the reference is to Clause 28(10).</p>	<p>required for Clause 28 to be enacted with a simple majority.</p>
Clause 29	<p>(1) Any person who is aggrieved by the communication of a prohibited statement may, by way of a civil action, apply for an order directing the internet intermediary of the online location on which such</p>	<p>... a civil action <i>instituted in the District Court within the jurisdiction of which such aggrieved person resides</i>, apply for on order directing ....</p>	<p>No specific observations.</p>	<p>None.</p> <p>N.B. The determination has inadvertently omitted the actual amendment proposed by the AG: 'civil action instituted in the</p>	<p>The AG's amendments to Clause 29 would be required for Clause 29 to be enacted with a simple majority.</p>



	prohibited statement communicated to disclose any information regarding the identity or the location of the person who used such online location to communicate such statement using the inauthentic online account or both.			District Court within the jurisdiction of which such aggrieved person resides...'; which is on page 8 of the AG's proposed amendments submitted to Court.  The full version of the amendment is found in the original document submitted by the AG to Court.	
Clause 30	Where a person who engages in providing the following services fails to adhere to the relevant code of practice issued by the Commission by way of rules made under this Act, and thereby causes wrongful loss to any other person, such person shall be liable to pay damages by way of compensation to the person who suffered the loss: - (a) an internet intermediary service; (b) telecommunication service; (c) a service of giving public access to the internet; or (d) a computer resource service.	[Delete]	No specific observations.	None.  N.B. Page 8 of the AG's proposed amendments has been inadvertently left out of the Court's determination. It may be presumed that the Court intended for the AG's amendment to be adopted, i.e., that the Clause be deleted, given that Clause 30 is among the Clauses deemed to be inconsistent with the Constitution.	The AG's amendments to Clause 30 would be required (i.e., the deletion of the Clause).
Clause 31	(1)(d) a computer resource service.  (2)(d) has not complied with the provisions of this Act and any regulation or rule made	(1)(d) <i>computing</i> resource service.  Replace with: <i>2(d) has not complied with the provisions of this Act, any</i>	No specific observations.	None.  N.B. Page 8 of the AG's proposed amendments has been inadvertently left out of the Court's	The AG's amendments to Clause 31 would be required for Clause 31 to be enacted



	thereunder, in providing the service.	<p><i>regulation or rule made thereunder or any code of practice issued by the Commission by way of rules made under this Act, in providing such service.</i></p> <p>Add:</p> <p><i>2(3) Any person who fails to adhere to the relevant code of practice issued by the Commission by way of rule made under this Act, and thereby causes wrongful loss to any other person, shall be liable to pay damages by way of compensation to the person who suffered such loss.</i></p> <p><i>(4) For the purpose of this section- "computing resource service" includes any internet service provided by a person to the public using any means except by the use of an internet intermediary service, a telecommunications service or a service of giving public access to the internet; "telecommunication service" shall have the same</i></p>		<p>determination. It may be presumed that the Court intended for the AG's amendment to be adopted, given that Clause 31 is among the Clauses deemed to be inconsistent with the Constitution.</p>	with a simple majority.
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		<i>meaning assigned to such term in the Sri Lanka Telecommunications Act, No. 25 of 1991.</i>			
Clause 32	<p>(1)(a) three or more different prohibited statements have been or are being communicated to the end users in Sri Lanka on such online location which have been held to be a prohibited statement by the Magistrate's Court; and...</p> <p>(3)(d) the date on which the declaration expires or a formula by which that date may be worked out, which must not be later than two years after the date referred to in paragraph (c);</p> <p>(4)(a) on the date specified therein, or worked out in accordance with paragraph (d) of subsection (3); or</p> <p>(5) As soon as possible after a declaration is made and before the date comes into effect, the Commission shall-</p> <p>(a) publish, in such form and manner as may be prescribed, a notice in the Gazette -</p> <p>(i) stating that a declaration has been issued under this section; and</p> <p>(ii) setting out the URL, domain</p>	<p>(1) (a) three or more different prohibited statements have been communicated to the end users in Sri Lanka on such online location <i>in respect of which conditional orders were made absolute by the Magistrate under section 27</i>; and...</p> <p>Replace with: <i>(3)(d) the date on which the declaration expires;</i></p> <p>(4)(d) <i>on the date specified therein, in accordance ...</i></p> <p>(5) As soon as possible after a declaration is made and before the date it comes into effect. <i>the Commission shall publish, in such form and manner as may be prescribed, a notice in the Gazette -</i></p>	No specific observations.		The SC's amendment to Clause 32(12), the AG's amendments to Clauses 32(1), 32(3), 32(4), 32(5), and 32(16), and the deletion of Clause 32(15)(b) would be required for Clause 32 to be enacted with a simple majority.



	<p>name, or any other unique identifier of the online location, to which the declaration relates; and</p> <p>(b) make reasonable efforts to serve a copy of the declaration to the owner or operator of the declared online location.</p> <p>(12) ... such person shall appear before the Magistrate making that order within a period of one week of making such order and move to have the order set aside or modified ...</p> <p>(15)(b) Where the offence under paragraph (a) is a continuing offence, such owner or operator of a declared online location shall be liable to an additional fine of five hundred thousand rupees for each day during which such offence is continued.</p> <p>(16) The Commission may at any time suspend, vary or cancel a declaration made under this section for such period as the Commission may Determine.</p>	<p>(a) <i>stating that a declaration has been issued under this section: and</i></p> <p>(b) <i>setting out the URL, domain name, or any other unique identifier of the online location, to which the declaration relates.</i></p> <p>[Delete]</p> <p>(16) ...declaration made <i>under subsection (1)</i> for such ...</p>			
Clause 36	<p>(8) shall appear before the Magistrate making that order within a period of one week of making such order and move to have the order set aside or modified ...</p> <p>(11)(b) Where the offence under paragraph (a) is a continuing offence,</p>	<p>[Delete]</p>	No specific observations	The word 'one week' should be replaced with 'two weeks' or a longer period.	The SC's amendment to Clause 36(8), and the AG's recommendation to delete Clause 36(11)(b) would be required for Clause 36 to be enacted



	such internet intermediary shall be liable to an additional fine of five hundred thousand rupees for each day during which such offence is continued.				with a simple majority.
Clause 37	(1) Where the court deems necessary, the Minister may by Order published in the Gazette appoint a person, an institution or a body of persons having the specified qualifications and experience in information technology (hereinafter referred to as "an expert"), to assist any police officer in any investigation in respect of an offence under this Act.	(1) <i>The Minister may by Order published in the Gazette appoint a person, an institution or a body of persons having the specified qualifications and experience in information technology (hereinafter referred to as "an expert"), to assist any police officer in any investigation in respect of an offence under this Act.</i>	The Court observed that 'the lack of guidelines in appointing experts under the said clause violates Article 12(1) of the Constitution.'	<p>Add provision similar to that in the Computer Crimes Act, No. 24 of 2007 relating to appointing experts to assist investigations</p> <p>or</p> <p>Delete Clause 37 and replace with:</p> <p><i>37 (1) The Minister may, in consultation with the Minister in charge of the subject of Justice, appoint by Order published in the Gazette any public officer, an employee of a Government Department, Government Corporation or an employee of a Government Company, having the required qualification and experience in electronic engineering or software technology (hereinafter referred to as "an expert") to assist the Commission in the investigation</i></p>	The SC's amendment to Clause 37 would be required for Clause 37 to be enacted with a simple majority.



				<p><i>of an offence under this Act.</i></p> <p><i>(2) For the purposes of this Act "expert" includes-</i></p> <p><i>(a) any member of the staff of any University who possesses the prescribed qualification and, who is nominated by the Vice-Chancellor of the relevant University;</i></p> <p><i>(b) any public institution which in the opinion of the relevant University possesses the prescribed qualification and is nominated by the Vice Chancellor of such University:</i></p> <p><i>Provided that where an "expert" cannot be identified in terms of paragraph (a) or (b) above the Minister may, in consultation with the Vice Chancellor of the relevant University appoint any other institution which satisfies the prescribed qualification;</i></p> <p><i>(c) Universit y shall mean any University established under the Universities</i></p>	
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				<p>Act, No. 16 of 1978.</p> <p>(3) <i>The qualifications and experience (having regard to the specific areas of expertise) required to be fulfilled by an officer appointed</i></p> <p>(4) <i>under subsection (1) and the manner and mode of appointment and the conditions of appointment of such officer shall be as prescribed by regulations.</i></p> <p>(4) <i>For the purpose of an investigation under this Act, an expert called upon to assist the Commission shall, have the power to-</i></p> <p>(a) <i>enter upon any premises along with a police officer not below the rank of a sub inspector;</i></p> <p>(b) <i>access any information system, computer or computer system or any programme, data or information held in such computer to perform any function or to do any such other thing;</i></p> <p>(c) <i>require any person to disclose any traffic data;</i></p>	
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				<p>(d) orally examine any person;</p> <p>(e) do such other things as may be reasonably required, for the purposes of this Act.</p> <p>(5) An expert shall be paid such remuneration as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.</p> <p>(6) An expert may be called upon to assist the Commission or any police officer in the investigation of an offence under this Act and it shall be duty of the expert to render all such assistance as may be required for the purposes of such investigation. Where any proceedings have been commenced consequent to the findings of an investigation, it shall be the duty of the expert to make available for the purposes of such proceedings, any information, data, material or other matter that may be obtained by him in the</p>	
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				<i>course of such investigation.</i>	
Clause 42	<p>Save as expressly provided in this Act, the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, shall, mutatis mutandis apply to investigations, the trial of offences and to appeals from judgements, sentences and orders pronounced at any such trial under this Act.</p> <p>(Emphasis added)</p>	<p>(1) Save as expressly provided in this Act, the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, shall mutatis mutandis apply to investigations, <i>institution of proceedings</i>, the trial of offences and to appeals from judgements, sentences and orders pronounced at any such trial under this Act.</p> <p>Add:</p> <p>(2) <i>Where the Commission, on consideration of material collected in the course of investigations conducted under this Act, is satisfied that any person has committed an offence under the provisions of this Act, it may take steps to institute criminal proceedings in terms of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979.</i></p>	<p>The Court observes that 'the Clause, as amended, enhances Fundamental Rights by ensuring that all persons would be treated in a like manner and provide adequate safeguards to underpin the fundamental tenets enshrined under Article 12(1) of the Constitution.'</p>	<p>Add</p> <p><i>(2) Proceedings in a Magistrate Court shall be instituted by an officer, authorized in writing by the Commission on a written report being made to the Magistrate that an offence has been committed under this Act.</i></p> <p>N.B. It may be presumed that this addition would be Clause '42(3)', given that the AG's proposed amendment would be Clause '42(2)'</p>	<p>The SC's amendment to Clause 42(2)/(3) (in addition to the AG's original amendment) and the AG's amendment to Clause 42(1) would be required for Clause 42 to be enacted with a simple majority.</p>
Clause 45	<p>(1) A person who attempts to commit or to cause the</p>	[Delete]	No specific observations.	None.	The AG's recommendation to delete



	<p>commission of an offence under this Act and in such attempt does any act towards the commission of that offence commits an offence and shall be tried in the same manner, and shall on conviction be liable to the same punishment, as is prescribed by this Act for the first mentioned offence.</p> <p>(Emphasis added)</p>				<p>Clause 45(1) would be required for Clause 45 to be enacted with a simple majority.</p>
Clause 53	<p>(6) Every rule made under subsection (1) shall, within three months from the date of its publication in the Gazette, be placed before Parliament for approval.</p> <p>(Emphasis added)</p>	<p>(6) ... be placed before Parliament for approval <i>and any rule, which is not so approved, shall be deemed to be rescinded with effect from the date of such.</i></p>	<p>The Court observed that 'the said Clause 53 of the Bill is arbitrary and capricious due to absence of Parliamentary supervision as the subordinate legislation or promulgated with the authority of Parliament.' and requires to be passed by a special majority in Parliament.'</p> <p>The Court acknowledges the AG recommended amendments to Clause 53(6).</p>	None.	<p>The AG's amendments to Clause 53(6) would be required for Clause 53 to be enacted with a simple majority.</p>
Clause 56	<p>In this Act unless the context otherwise requires- ...</p> <p>"communicate" means communicating to one or more end users in Sri Lanka on or</p>	<p><i>(1) In this Act ...</i></p> <p><i>... a false statement or private information and ...</i></p>	No specific observations	None.	<p>The AG's amendments to Clause 56 would be required for Clause 56 to be enacted</p>



	<p>through the internet a statement of fact or private information ...</p> <p>"fact" includes anything or state of things which are seen, heard or otherwise perceived by the users of internet based communication services;</p> <p>(Emphasis added)</p>	<p>[Delete]</p> <p>Add:</p> <p><i>"publish" means making available to the public on or through the internet;</i></p> <p><i>(2) Any word or expression used in this Act and defined in the Penal Code but not defined in this Act shall have the same meaning assigned to such word or expression in the Penal Code.</i></p>			with a simple majority.
Addition al Clause			<p>The Court determined that the inclusion of several exceptions from the applicability of the Bill is required to address concerns raised with respect to the use of text messages for religious purposes, publications already available on the internet, and instances where an account is hacked.</p> <p>The Court held that the lack of exceptions</p>	<p>The Court recommended that the following exceptions be included in the Bill:</p> <p>(a) <i>If emails are the only user-generated content enabled by the service.</i></p> <p>(b) <i>SMS and MMS services</i></p> <p>(i) <i>if SMS messages are the only user generated content enabled by the service</i></p> <p><i>if MMS messages are the only user generated content enabled by the service,</i></p> <p>(iii) <i>if SMS messages and MMS messages are the only user</i></p>	<p>The Bill as a whole cannot be enacted with a simple majority unless these exceptions are brought in.</p>



			make several Clauses in the Bill inconsistent with the Constitution.	<p><i>generated content enabled by the service.</i></p> <p><i>(c) If one-to-one live aural communicati ons are the only user- generated content enabled by the service.</i></p> <p><i>(d) "One-to-one live aural communicati ons" has the meaning given by section 39(6).</i></p> <p><i>(i) The false statements, prohibited statements and other prohibited materials that are removed within 6 months from this Act comes into operation.</i></p> <p><i>(ii) Any materials that have been uploaded or interfered by third parties.</i></p> <p>N.B. The Bill does not contain a 'section 39(6)'</p>	
Clauses 12, 13, 15, 17, 18, 19, 21, 22, 23(1), 24, 33(6), 34(1), and	...and in the event of a second or subsequent conviction, such term of imprisonment or fine or both such imprisonment and fine may be doubled.	None.	The Court determined that 'taking into consideration the theories that are applicable to imposing punishments for crimes...the punishments	The punishments stipulated for a second or subsequent conviction should be deleted.	The SC's amendments to Clauses 12, 13, 15, 17, 18, 19, 21, 22, 23 and 24 would be required for these Clauses to be enacted



35(1)			<p>set out in the Bill for repeat offenders are excessive and therefore, such Clauses are violative of Article 12(l) of the Constitution.'</p> <p>N.B. Although the Court only refers to Clauses 12, 13, 15, 17, 18, 19, 21, 22, 23(1), and 24, Clauses 33 (6), 34 (1), and 35 (1) also contain the same provision. It may be presumed that Court intended for these Clauses to also be amended.</p>		<p>with a simple majority.</p> <p>Additionally, the SC's implicit amendments to Clauses 33(6), 34(1), and 35(1) would be required for these Clauses to be enacted with a simple majority.</p>
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60. The Petitioners state that they are reliably aware that many of the Respondents above named, by their actions have directly and/or indirectly admitted that the purported Bill which was ostensibly 'certified' by the 2<sup>nd</sup> Respondent on 01/02/2024 in whole or in part was inconsistent with the Constitution.

**ACTIONS OF THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS ARE VIOLATIVE OF FUNDAMENTAL RIGHTS GUARANTEED BY THE CONSTITUTION TO CITIZENS AND PERSONS IN SRI LANKA**

61. The Constitution ensures the exercise of sovereignty of the People and stipulates that "*the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum...*" [vide, Article 4(a)].

62. Sovereignty is in the People is explained and is inalienable, and includes the powers of government, fundamental rights and the franchise [vide, Article 3].



63. The Parliament, comprising the elected representatives of the People, is duty bound to safeguard the human rights of the People of the country in accordance with the requirements of the Constitution adopted by the People, having been elected only to function at all times in terms thereof.
64. In terms of Article 63 of the Constitution, all Members of Parliament are only allowed to participate in any business as Members of Parliament (except for voting to elect a Speaker at the beginning of the term of Parliament) after taking and subscribing to an oath to uphold the Constitution.
65. Upholding the Constitution necessarily entails adherence to its mandatory requirements to ensure Constitutional consistency of enactments. The Speaker, being a Member of Parliament is also required to uphold the Constitution in that respect.
66. The Directive Principles of State Policy enshrined in Article 27 *'shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society'*.
67. Chapter VI of the Constitution which sets out the "Directive Principles of State Policy and Fundamental Duties" including Article 27(2) and (4) therein, set out a list of objectives to be pursued with a view to sustaining the full realization of the rights of the People.
68. Considering the above in the light of the procedure followed in the purported enactment of the "Online Safety Act No. 09 of 2024", the rights of the citizens guaranteed under the Constitution had not been safeguarded and upheld as several Constitutional inconsistencies highlighted by the Supreme Court in its Determination had not been given effect to and/or complied with.
69. It is evident that several Clauses which were advised to be deleted by the Supreme Court, had not been deleted when the purported document titled Online Safety Act No. 09 of 2024 was published.
70. Mere or partial compliance with the determination of the Supreme Court in respect of a Bill renders the document contrary to the Constitution and bereft of Constitutional validity and cannot be enacted into law.
71. What is required is total (and not selective or partial) compliance, especially in the present circumstance, since the impugned document/actions of the 2<sup>nd</sup> Respondent have a direct bearing on the fundamental rights of the People guaranteed under and in terms of the Constitution, including especially, Article 12(1) and Article 14.
72. The Supreme Court in its determination *inter alia* stated that *"...the supreme court is required to suggest the amendments that should be made at the committee stage to avoid any inconsistency with the constitution. Further, if the supreme court specifies the nature*



*of the amendments which should be made to a bill or any of the clauses in order for them to cease any inconsistencies with the constitution, the bill will be amended at the committee stage in parliament by incorporating the amendments specified by the supreme court..."* (vide page 31).

73. The Supreme Court determined that *"... the bill can be passed by a simple majority in parliament, subject to the amendments stated above..."* (vide page 62).

74. Whilst what was contained in the determination of the Supreme Court was not followed in its entirety, only a part of the determination which makes reference to the 'simple majority' requirement was followed [which in any event was to be given effect to only in the event the amendments set out in the determination/or proposed by the Hon. Attorney General] without fully complying with the other alternative stipulations in the determination which made reference to a Special Majority in the event certain amendments were not effected.

75. The Petitioners state that, despite the glaring illegality attached to the actions of the 2<sup>nd</sup> Respondent in purporting to certify the Online Safety Bill as being validly passed into law, the 2<sup>nd</sup> Respondent has purported to justify his actions by issuing a communique dated 06/02/2024 which appears on the Parliament website, and *inter alia* reads thus:

*"...the office of the Speaker states that the Online Safety Bill was passed by the Parliament in accordance with the Supreme Court's determination, as was confirmed by the Attorney General's Department. Since the legislative process of the Parliament takes place jointly with the Attorney General's Department and the Legal Draftsman's Department, there is no opportunity to act in a manner that is not in accordance with a Supreme Court determination regarding a Bill or in violation of the Constitution. ..."* (emphasis added).

Further, in purported further justification of his actions, the said communique of the 2<sup>nd</sup> Respondent states that the 1<sup>st</sup> Respondent – Hon. Attorney General had informed him through the Additional Solicitor General who was present in Parliament that *'all the mandatory amendments in accordance with the determination given by the Supreme Court had been included in the amendments at the time of the Committee Stage'*.

*A copy of the communique of the 2<sup>nd</sup> Respondent dated 06/02/2024 which appears on the website of the Parliament website marked P13 and pleaded as part hereof.*

76. In light of the said statement of the 2<sup>nd</sup> Respondent, the Petitioners are compelled to extend the reliefs prayed for herein against the 1<sup>st</sup> Respondent as well, in view of the said statement attributed by the 2<sup>nd</sup> Respondent to the Hon. Attorney General – 1<sup>st</sup> Respondent.

77. However, within a few days after the purported certification of document titled 'Online Safety Act No. 09 of 2024', it was highlighted in the mainstream media that the Minister of Public Security had envisaged bringing in amendments to the said document.



*A copy of an article which appeared on Ada Derana on 13/02/2024 marked P14 is annexed hereto and pleaded as part hereof.*

78. The above actions of the Minister of Public Security is a tacit admission that the Bill which was purported to be hurriedly certified as 'law' by the 2<sup>nd</sup> Respondent on 01/02/2024 was not fully compliant with the determination of Your Lordships' Court, and a belated attempt was being made to legitimize the illegal actions of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents.

79. The Cabinet of Ministers (comprising of and/or inclusive of the Members of Parliament above cited as the 3<sup>rd</sup> to 20<sup>th</sup> Respondents) have, at a meeting held on 12/02/2024, recognised that the 'Online Safety Act No. 09 of 2024' as certified by the 2<sup>nd</sup> Respondent Speaker is non-compliant with the requirements of the Determination of Your Lordships' Court in respect of the Online Safety Bill, requiring amendments for the same.

*A copy of the decisions of the Cabinet of Ministers on 12/02/2024 marked P15 is annexed hereto and pleaded as part and parcel hereof.*

80. The Petitioners state that the matters that have transpired evidence the risk of imminent future infringement of their fundamental rights and those of the People of Sri Lanka guaranteed under Chapter III of the Constitution in like manner in respect of Bills sought to be enacted into law in the future.

81. Accordingly, the Petitioners verily apprehend imminent future and/or further infringements of their fundamental rights and those of the People of Sri Lanka guaranteed under and in terms of Articles 10, 11, 12(1), 12(2), 12(3), 13(1), 13(2), 13(3), 13(4), 13(5), 13(6), 14(1), 14A and 17 of the Constitution.

82. The purported enactment of the document entitled 'Online Safety Act No.09 of 2024', being publicly accepted by the 2<sup>nd</sup> Respondent as being 'law' entails the continuous violations and/or infringement of the fundamental rights of the Petitioners and the People of Sri Lanka, rendering it imperative that the interim reliefs prayed herein for are granted forthwith pending the hearing and final determination of this application.

83. The Petitioners are concerned that the People of Sri Lanka face the prospect of imposition and/or enforcement of purported provisions of law which have not in fact been duly enacted into law in the manner required by the Constitution, unless the interim reliefs prayed for are granted forthwith pending the hearing and final determination of this application.

84. It is respectfully stated that this application is required to be gone into by Your Lordships' Court as a means of preserving the democratic, republican nature of the State of Sri Lanka as well as the Rule of Law.



85. Unless the reliefs sought herein are granted, it is not unreasonable to expect that persons in Sri Lanka will reject the need to comply with documents certified as being an enacted law, as the promulgation process for laws is undemocratic, dictatorial and bereft of Constitutional validity.
86. The Petitioners most respectfully reserve the right to tender additional and/or certified copies of documents in respect of matters pleaded herein and/or seek the addition of further parties and/or amend pleadings and/or extend the reliefs prayed for herein, based upon the disclosures made to Your Lordships Court by the Respondents.
87. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of matters set out hereinabove.

WHEREFORE THE PETITIONERS RESPECTFULLY PRAY THAT YOUR LORDSHIPS' COURT BE PLEASED TO:

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- a) Grant Leave to Proceed with this Application;
- b) Declare that the Fundamental Rights guaranteed to the Petitioners and the People of Sri Lanka under Article 12(1) of the Constitution have been infringed and/or are continuously being infringed and/or is in danger of being imminently infringed by reason of the act(s) and/or omission(s) of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents, by the Online Safety Bill and/or the document titled "Online Safety Act No. 09 of 2024" [Vide P11];
- c) Declare that the Fundamental Rights guaranteed to the Petitioners and the People of Sri Lanka under Article 14 of the Constitution have been infringed and/or is being continuously being infringed and/or is in danger of being imminently infringed by reason of the act(s)/omission(s) of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents, in relation to the Online Safety Bill and/or the document titled "Online Safety Act No. 09 of 2024" [Vide P11];
- d) Declare that there is an infringement and/or continuous and/or imminent infringement of the fundamental rights of the Petitioners and the People of Sri Lanka guaranteed under and in terms of Articles 10, 11, 12(1), 12(2), 12(3), 13(1), 13(2), 13(3), 13(4), 13(5), 13(6), 14(1), 14A and 17 of the Constitution by the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> Respondent;



- e) Declare that the said document titled "Online Safety Act No. 09 of 2024" [Vide P11] has not become 'law' within the meaning and contemplation of Articles 79 and/or 80(3) of the Constitution by reason of the Online Safety Bill and/or its contents not being passed into law as required in terms of the determination of the Supreme Court [Vide P5] as stipulated under Article 123(4) of the Constitution;
- f) Declare null and void any purported action taken in pursuance of the purported certificate of endorsement of the Bill by the 2<sup>nd</sup> Respondent, purporting to act under Articles 79 and/or 80(1) of the Constitution;
- g) Grant an **INTERIM ORDER** suspending the operation of the document ostensibly certified by the 2<sup>nd</sup> Respondent on 01/02/2024 entitled the 'Online Safety Act No. 09 of 2024' and/or any purported steps and/or measures taken or done thereunder, until the hearing and final determination of this application, subject to such terms and conditions as to Your Lordships' Court shall seem fit;
- h) Grant an **INTERIM ORDER** directing the 1<sup>st</sup> Respondent to inform all relevant executive and administrative authorities, including law enforcement agencies, that the provisions of the document called the 'Online Safety Act No. 09 of 2024' should not be resorted to as law and/or that no steps in any manner or form may be taken in terms of the provisions of the document called the 'Online Safety Act No. 09 of 2024' until the hearing and final determination of this application, subject to such terms and conditions as to Your Lordships' Court shall seem fit;
- i) In particular, grant an **INTERIM ORDER** preventing the 228<sup>th</sup> Respondent and/or his servants and agents from taking any steps, of any manner or form, in terms of the provisions of the document called the 'Online Safety Act No. 09 of 2024', and in particular, any arrests or detentions thereunder, until the hearing and final determination of this application, subject to such terms and conditions as to Your Lordships' Court shall seem fit;
- j) Make an **INTERIM DIRECTION** that the 2<sup>nd</sup> Respondent produce to Your Lordships' Court the dossier and/or all material which the 2<sup>nd</sup> Respondent had taken cognizance of in purporting to 'certify' the Bill in a manner contrary to the determination in respect of the Bill by Your Lordships' Court with copy to the Petitioners prior to the hearing and final determination of this application to enable court to be duly cognisant of same;



- k) Make such further and other just and equitable orders as to Your Lordships' Court shall seem fit, in the circumstances of this application, under and in terms of Article 126(4) of the Constitution of the Republic;
- l) Grant compensation in such sum deemed reasonable by Your Lordships' Court;
- m) Grant costs;
- n) Grant such further and other reliefs as Your Lordships' Court shall seem meet.

*[Signature]*  
ATTORNEY-AT-LAW FOR THE PETITIONERS

*[Signature]*  
G.D.L. Thushari Jayawardena  
Attorney-at-Law, Notary Public,  
Commissioner for Oaths & Company Secretary  
Supreme Court Regd. No. A 16750  
No. 115A, Hullsdrop, Colombo 12.  
Tel: +94 77 4076162  
Email: thusharijit@gmail.com



