

The Price of Safety: A Jurisprudential Analysis of Censorship under the Online Safety Act

Nath Gunawardena

Department of Private and Comparative Law, Faculty of Law, University of Colombo, Sri Lanka

Humans have historically sacrificed a certain degree of individual liberty for the safety and security of society. The Online Safety Act No. 9 of 2024 (OSA), one of the most controversial statutes enacted by the Sri Lankan parliament in recent times, appears to require a similar compromise: It seeks to limit the freedom of expression in the interests of online safety. But what is the true nature and extent of the censorship it enables? In this article, I attempt to answer this question by exploring the philosophical foundations of the OSA in its approach to censorship. To this end, I will identify, classify, and evaluate the different forms of both direct and indirect censorship arising from the OSA, based on balancing four different interest groups: The state, the service providers, the public, and the individual. I will adopt a qualitative, hermeneutic methodology in interpreting the OSA within the broader socio-political context of censorship in Sri Lanka. My analysis will be grounded in Roscoe Pound's theory of interests, H.L.A. Hart's internal point of view, and J.S. Mill's defence of free speech. Based on the offences created under Part III of the OSA, I identify three main justifications for state censorship and the specific mechanisms through which it is perpetuated. I argue that the OSA creates an initial perimeter of *state censorship*, but that this perimeter expands exponentially due to *overzealous censorship* by service providers, *social censorship* by the public, and *self-censorship* by individuals. I conclude that this expansion of the perimeter of censorship at the expense of individual liberty is inevitable under the operation of the OSA. This has a chilling effect on the freedom of expression and poses a severe threat to a functioning democracy. Censorship is ultimately a choice between safety and liberty, and society must pick its poison.

Keywords: *Online Safety Act, Freedom of Expression, State Censorship, Social Censorship, Self-Censorship*