

**THE GAZETTE OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

Part II of December 24, 2021

SUPPLEMENT

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PROHIBITION OF OBSCENE PUBLICATIONS

A

BILL

to prohibit the publication, distribution, sale, import and export of any matter, object or thing which is obscene; to repeal the Obscene Publications Ordinance (Chapter 30); and to provide for matters connected therewith or incidental thereto

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Prohibition of Obscene Publications

L.D.-O. 21/2007

AN ACT TO PROHIBIT THE PUBLICATION, DISTRIBUTION, SALE, IMPORT AND EXPORT OF ANY MATTER, OBJECT OR THING WHICH IS OBSCENE; TO REPEAL THE OBSCENE PUBLICATIONS ORDINANCE (CHAPTER 30); AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Prohibition of Obscene Publications Act, No. of 2021. Short title

5

PART I

APPLICATION OF THE ACT

2. The provisions of this Act shall apply where— Application of the Act

10 (a) any act which constitutes an offence under this Act takes place in Sri Lanka irrespective of whether the person who commits such offence is in Sri Lanka or not;

(b) a person commits an offence under this Act in Sri Lanka, while in Sri Lanka; or

15 (c) an offence under this Act, wherever committed, is committed by a person who is a citizen of Sri Lanka.

PART II

OBSCENE PUBLICATIONS

3. (1) A person shall not—

20 (a) publish, exhibit, let on hire, sell, offer for sale, distribute or in any manner introduce into Publishing &c. of obscene matter, object or thing, an offence

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circulation through any medium of communication
any matter, object or thing which is obscene;

5 (b) import, export, make, produce, print, transmit,
transport, possess or do any other act whatsoever
with regard to any matter, object or thing which is
obscene, for any purpose set out in paragraph (a);
or

10 (c) advertise, or authorize or permit the introduction
into any medium of communication or any
advertisement, or make known by any other means
whatsoever –

(i) that any matter, object or thing which is
obscene is available for procurement; or

15 (ii) that the services of any person is available or
is required for use in any act which constitutes
an offence under this Act.

(2) Any person who, without lawful excuse contravenes
the provisions of subsection (1) commits an offence and
shall, on conviction by the High Court be liable to
20 imprisonment of either description for a term not exceeding
ten years or to a fine not less than twenty five thousand
rupees or to both such imprisonment and fine and in the
event of a second or subsequent conviction, to imprisonment
25 for a term which may extend to twenty years or to a fine not
less than one hundred thousand rupees or to both such
imprisonment and fine.

PART III

OBSCENE PUBLICATIONS IN RELATION TO CHILDREN

30 4. (1) A person shall not –
(a) expose a child to, or make available to a child any
matter, object or thing which is obscene; or

Exposing
&c. children
to obscene
matter &c. an
offence

5 (b) import, export, make, produce, print, transmit,
transport or possess in any medium, or do any other
act whatsoever with regard to any matter, object or
thing which is obscene and which visually depicts
a child, a person appearing to be a child or realistic
images representing a child, for any purpose set out
in paragraph (a).

10 (2) Any person who, without lawful excuse contravenes
the provisions of subsection (1) commits an offence and
shall, on conviction by the High Court be liable to
imprisonment of either description for a term not less than
five years and not exceeding ten years or a fine not less than
two hundred thousand rupees or to both such imprisonment
and fine and in the event of a second or subsequent
15 conviction, to imprisonment for a term not less than six years
and not exceeding twenty years and to a fine not less than
five hundred thousand rupees.

5. (1) A person shall not –

20 (a) publish, exhibit, let on hire, sell, offer for sale,
distribute or in any manner introduce into
circulation through any medium of communication
any matter, object or thing which is obscene and
which visually depicts a child, a person appearing
to be a child or realistic images representing a child,
25 engaged in sexually explicit conduct; or

30 (b) import, export, make, produce, print, transmit,
transport or possess in any medium of
communication or do any other act whatsoever with
regard to any matter, object or thing which is
obscene and which visually depicts a child, a person
appearing to be a child or realistic images
representing a child, engaged in sexually explicit
conduct, for any purpose set out in paragraph (a).

Publishing
&c. of any
matter &c.
which is
obscene and
visually
depicts a
child
engaged in
sexually
explicit
conduct, an
offence

(2) Any person who, without lawful excuse contravenes the provisions of subsection (1) commits an offence and shall, on conviction by the High Court-

- 5 (a) in the case of an offence under paragraph (a) of subsection (1), be liable to imprisonment of either description for a term not less than three years and not exceeding twenty years or to a fine not less than three hundred thousand rupees or to both such imprisonment and fine and in the event of a second or subsequent conviction, to imprisonment for a term not less than three years and not exceeding twenty years and to a fine not less than five hundred thousand rupees; and
- 10
- 15 (b) in the case of an offence under paragraph (b) of subsection (1), be liable to imprisonment of either description for a term not less than two years and not exceeding ten years or to a fine not less than two hundred thousand rupees or to both such imprisonment and fine and in the event of a second or subsequent conviction, to imprisonment for a term not less than two years and not exceeding twenty years and to a fine not less than five hundred thousand rupees.
- 20

PART IV

25 CHILD PORNOGRAPHY THROUGH THE USE OF COMPUTER SYSTEMS

6. (1) A person shall not –
- (a) produce, make available, offer in any manner, distribute, transmit or procure child pornography using a computer system, for oneself or for any other person;
- 30
- (b) possess or retain child pornography in a computer or on a computer data storage medium;
- Making available child pornography through a computer, an offence

(c) expose a child to any obscene and sexually explicit matter, object or thing by means of a computer; or

(d) obtain access through a computer system to child pornography.

5 (2) Any person who, without lawful excuse contravenes the provisions of subsection (1) commits an offence and shall, on conviction be liable to imprisonment of either description for a term not exceeding ten years and to a fine not exceeding five hundred thousand rupees.

10 (3) (a) Any person who provides a service by means of a computer shall ensure that a child shall not have access to obscene and sexually explicit matter, object or thing by the use of such service.

15 (b) Any person who, without lawful excuse contravenes the provisions of this subsection commits an offence and shall, on conviction be liable to imprisonment of either description for a term not exceeding ten years and to a fine not exceeding three hundred thousand rupees.

20 (c) It shall be a defence to a person charged with an offence under this subsection to prove that such person had taken all reasonable precautions to prevent any child using such service, from having access to sexually explicit matter, object or thing.

25 (4) (a) A person shall not propose, through information and communication technologies, to meet a child to engage in sexual activities or for the production of child pornography.

30 (b) Any person who, without lawful excuse contravenes the provisions of this subsection commits an offence and shall, on conviction be liable to imprisonment of either description for a term not exceeding ten years and to a fine not exceeding five hundred thousand rupees.

(5) For the purposes of this section –

5 “child pornography” means any matter, object or thing which is obscene and which visually depicts a child, a person appearing to be a child or realistic images representing a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes;

10 “computer system” means any device or a group of interconnected or related devices, one or more of which, performs, pursuant to a programme which is contained in such systems or device, the automatic processing of data;

15 “service” includes a service provided on a commercial basis or by an educational institution or by any public place where children may have access to a computer; and

20 “storage medium” means any electronic or similar device from which information is capable of being accessed and retrieved with or without the aid of any other article or device.

PART V

INVESTIGATION

25 7. Except as otherwise provided in this Act, all offences under this Act shall be investigated, tried or otherwise dealt with in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979. Investigation

30 8. (1) The Minister may by Order published in the *Gazette* appoint a person or body of persons having such qualifications and experience in the field of information technology as specified in subsection (2) (hereinafter referred to as the “expert”), to assist any police officer in any investigation into an offence under this Act. Experts and their powers and functions

(2) The qualifications and experience in the field of information technology, of an expert referred to in subsection (1) and the manner and mode of appointment and the conditions of appointment of such expert shall be as specified by the Minister by Order published in the *Gazette*.

(3) For the purpose of an investigation under this Act, an expert called upon to assist any police officer in any investigation shall, under the authority of the police officer, have the power to –

- 10 (a) enter any premises along with a police officer not below the rank of a Sub-Inspector of Police;
- (b) access any information system, computer or computer system or any programme, data or information held in such computer and to cause
15 any computer to perform any function or to do any such other thing;
- (c) require any person to produce any document, information, device or other thing as is necessary for the purpose of such investigation;
- 20 (d) require any person to disclose any traffic data; and
- (e) orally examine any person.

(4) The expert shall be paid such remuneration as may be determined by the Minister in consultation with the Minister assigned the subject of Finance.

25 (5) An expert appointed under this section may be called upon to assist any police officer in the investigation of an offence under this Act and it shall be the duty of such expert to render all such assistance as may be required for the purposes of such investigation.

(6) Where any proceedings have been commenced consequent to the findings of an investigation of an offence under this Act, it shall be the duty of the expert -

- 5 (a) to give evidence in such proceedings, if called upon to do so; and
- (b) to make available any information, data, material or other matter that may be obtained by him in the course of such investigation for the purposes of such proceedings.

10 **9.** (1) Any person who is required by an expert or a police officer to make any disclosure in relation to an investigation under this Act or to co-operate in an investigation under this Act, shall comply with such requirement. Duty to assist investigation

15 (2) A person who obstructs the lawful exercise of the powers conferred on an expert or a police officer or fails to comply with such request made by such expert or police officer during an investigation commits an offence and shall, on conviction be liable to imprisonment of either description
 20 for a period not less than one year and not exceeding two years or to a fine not exceeding two hundred thousand rupees or both such imprisonment and fine.

10. (1) A certified copy of any entry relating to an offence committed in Sri Lanka or outside Sri Lanka which
 25 falls within the scope of this Act, shall be admissible in evidence in relation to a prosecution in respect of an offence under this Act, and shall be *prima facie* evidence of the facts stated therein. Evidence

30 (2) Every document, record, register or extract thereof, if duly signed and issued by an expert and duly authenticated by the person to whose interests such document, record or register or extract thereof relates, shall be *prima facie* proof of the facts stated therein.

(3) In any prosecution under this Act, any document duly signed and certified by the expert or a police officer, as the case may be, shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.

5 (4) Notwithstanding anything to the contrary in the Evidence Ordinance (Chapter 14) or any other written law, the provisions of this section shall have effect and apply to the prosecution of an offence under this Act.

(5) For the purposes of this section-

10 “a certified copy” means, a copy of the entry with a certificate written at the foot of such copy by the person to whose interests such document, certificate, record or register or extract thereof relates, certifying it as a true copy, and where such an entry is stored
15 by electronic, magnetic, optical or any other means in an information system or computer, a print out of such entry certified as a true copy by such person to whose interests such document, certificate, record or register or extract thereof relates; and

20 “document” includes a certificate, declaration, information, data, report or any other similar document.

PART VI

GENERAL

25 **11.** Where an offence under this Act is committed by a body of persons then – Offences by
bodies of
persons

(a) if that body of persons is a body corporate, every director and officer of that body corporate; or

- (b) if that body of persons is a firm, every partner of that firm,

shall be deemed to commit that offence:

5 Provided that a director or an officer of such body corporate or a partner of such firm shall not be deemed to commit such offence, if such director, officer or partner proves that such offence was committed without his knowledge or that he exercised all such diligence as is necessary to prevent the commission of such offence.

10 **12.** Where any person is convicted of an offence under this Act and the obscene matter, object or thing in respect of which the person was convicted visually depicts a child, the court shall, where the identity of such child could be ascertained, make order for the payment of compensation to
15 such child in addition to any compensation paid under any other written law and any other punishment that may be imposed under this Act. Compensation

13. Any person who has the possession, control or custody of – Presumptions

- 20 (a) a document, certificate, record or register or extract thereof, whether in electronic format or not, relating to an offence committed under this Act;
- (b) all property including pictorials seized by the police officer during the course of investigations;
25 or
- (c) any equipment used in the commission of the offences specified above,

shall be presumed until the contrary is proved, to have used such document, certificate, record, register or extract thereof
30 or property or equipment, in connection with, or for the purpose of committing an offence under this Act.

14. Unless the Court otherwise directs, all property including monies seized by the police officer during the course of investigations shall be returned to the person who establishes his lawful right to such property.

Property

5 **15.** Notwithstanding anything contained in the Extradition Law, No. 8 of 1977, an offence in terms of this Act shall, for the purpose only of extradition under that law, be deemed not to be a fiscal offence or an offence of a political character or an offence connected with a political
10 offence or an offence inspired by political motives.

Interpretation
in relation to
the
Extradition
Law

16. Where a request is made to the Government of Sri Lanka by or on behalf of the Government of another country for the extradition of any person accused or convicted of an offence under this Act, the Minister assigned
15 the subject of Foreign Affairs shall, on behalf of the Government of Sri Lanka forthwith notify the Government of the requesting State of the measures which the Government of Sri Lanka has taken or proposes to take for the prosecution or extradition of that person for that offence.

Duty of
Minister to
notify the
requesting
State

20 **17.** The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under this Act, be applicable in respect of providing assistance between the Government of Sri Lanka and any specified
25 country or specified organization declared by an Order made by the Minister under section 2 of the aforesaid Act.

Assistance to
countries and
organizations

18. (1) Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled—

Rights of
persons
arrested
under this
Act

30 (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or if he is a stateless person, with the nearest appropriate representative of the State in
35 the territory where he was habitually resident; and

(b) to be visited by a representative of that State.

(2) A request under section 16 shall be deemed not to be invalidated for the purposes of any legal proceedings by reason of any failure to comply with the provisions of section 17, provided that there is sufficient compliance with those provisions to enable such request to be properly executed.

19. (1) Where a person is arrested for an offence under this Act, the Minister to whom the administration of this Act is assigned shall inform the Minister assigned the subject of Foreign Affairs to inform the relevant authorities in any other State which has made a request under section 16 in respect of such person, of the measures which the Government of Sri Lanka has taken or proposes to take for the prosecution or extradition of that person.

Duty of Minister to inform other States having jurisdiction over an offence

(2) Where it is decided that no order shall be made under the Extradition Law, No. 8 of 1977, for the extradition of any person accused or convicted of an offence corresponding to an offence under this Act, pursuant to a request for his extradition made under that Law, by the Government of any State, the case shall be submitted to the law enforcement authorities, so that prosecution for the offence under the law of Sri Lanka or any other appropriate action may be considered.

20. Where there is an extradition arrangement in force between the Government of Sri Lanka and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Law, No. 8 of 1977, to include provision for extradition in respect of an offence under this Act and of attempting or conspiring to commit or aiding and abetting the commission of such offence.

Provision regarding extradition arrangement

21. The Government of Sri Lanka shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any foreign State as may be necessary in connection with criminal proceedings

Duty of Government to afford assistance to other States

instituted in that State against any person, in respect of an offence under the law of that State corresponding to an offence under this Act.

5 **22.** Notwithstanding anything to the contrary in the High Court
Judicature Act, No. 2 of 1978, every offence under this Act to have the
shall be triable by the High Court of the Western Province jurisdiction
established under Article 154P of the Constitution, holden
in Colombo.

10 **23.** (1) Any expert or police officer shall not be liable Protection
in any suit or other legal proceedings for any act done or from law
purporting to be done, in good faith in pursuance of the suits
powers conferred by or under this Act or for the purpose of
carrying out the provisions of this Act.

15 (2) Any expenses incurred by the expert or police officer
in any suit or other legal proceedings brought against him in
court in respect of any act which is done or purported to be
done by him under this Act, shall, if the court holds that the
act was done in good faith, be paid by the person who alleges
any wrongful conduct against such expert or police officer,
20 unless such expense is recovered by him in such suit or
other legal proceedings.

25 **24.** Any person who uses a child for the commission of Punishment
an offence under section 3 of this Act commits an offence for offence
and shall, upon conviction be liable to imprisonment of involving
either description for a term not less than two years and not children
exceeding ten years or to a fine not less than two hundred
thousand rupees and not exceeding one million rupees or to
both such imprisonment and fine and in the event of a second
or subsequent conviction, to imprisonment for a term not
30 less than two years and to a fine not less than three hundred
thousand rupees and not exceeding five million rupees.

25. Where a child is found guilty of an offence under Lesser
this Act, the Court may, impose a lesser punishment than punishment
provided for herein. for child
offenders

26. Any person who attempts to commit an offence under this Act commits an offence and shall, on conviction by the High Court be liable to imprisonment of either description for a term not exceeding one half of the maximum term provided for each such offence or to a fine not less than one half of the minimum fine provided for such offence or to both such imprisonment and fine.

Attempt to
commit an
offence

27. (1) Any person who abets the commission of an offence under this Act commits the offence of abetment and shall, on conviction by the High Court –

Abetment of
offence, an
offence

(a) if the offence abetted is committed in consequence of the abetment, be liable to the same punishment as is provided for the offence; and

(b) if the offence is not committed in consequence of the abetment, be liable to imprisonment of either description for a term not exceeding one fourth of the maximum term provided for the offence or to a fine not less than one fourth of the minimum fine provided for the offence or to both such imprisonment and fine.

(2) The term “abet” shall have the same meaning as in sections 100 and 101 of the Penal Code (Chapter 19) and the provisions of section 101A, 103, 104, 105, 106 and 107 of the Penal Code shall *mutatis mutandis* apply in relation to the abetment of any offence under this Act.

28. (1) Any person who conspires to commit an offence under this Act commits an offence and shall, on conviction by the High Court be liable to be punished with the punishment prescribed for abetting the commission of that offence.

Conspiring to
commit an
offence

(2) The term “conspire” shall have the same meaning as in subsection (2) of section 113A of the Penal Code (Chapter 19) and the provisions of that section shall *mutatis mutandis* apply in relation to conspiracy to commit any offence under this Act.

29. Every offence under this Act shall be –

Offences
under this
Act to be
cognizable
and non-
bailable

(a) a cognizable offence within the meaning of and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979; and

5 (b) a non-bailable offence within the meaning of the Bail Act, No. 30 of 1997.

30. (1) Upon the conclusion of the trial of any person for an offence under this Act and whether such person has been convicted or not, the court shall, if it is of opinion that
10 the matter, object or thing which constitutes the subject matter of the offence is obscene, make order for the destruction of such matter, object or thing in such manner as it considers fit.

Orders for
destruction
&c. of
obscene
matter

(2) Upon the conviction of any person for an offence
15 under this Act, the Court shall make order for the forfeiture to the State of any movable property used in the commission of such offence, subject to any claim of a person who may have a *bona fide* interest in such property.

31. The Obscene Publications Ordinance (Chapter 30)
20 is hereby repealed.

Repeal of
Obscene
Publications
Ordinance

32. In this Act –

Interpretation

“child” means, a person under eighteen years of age;

25 “matter, object or thing” includes any writing, drawing, print, painting, printed matter, picture, poster, emblem, photograph, cinematograph film, film or any data in any medium; and

“obscene” includes any matter, object or thing which, by itself or where it comprises more than one distinct

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5 component each such component taken by itself,
sufficient to deprave and corrupt the mind of a
reasonable person, but does not include any matter,
object or thing containing anything done in the
interest of science, literature, art, education or
learning.

33. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency

