

Combating online child sexual exploitation and abuse in Sri Lanka: Towards a statutory response

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Abstract - *The pervasive nature of the internet has facilitated a significant increase in online child sexual exploitation and abuse worldwide. Since the transnational aspect of these crimes poses a challenge for law enforcement agencies, a global concern has arisen from the imperative to protect children from harmful experiences and support survivors. This concern is also relevant to Sri Lanka, prompting the need to assess the adequacy of the country's legal framework. This research aims to determine whether Sri Lanka possesses an adequate legal framework to combat online child sexual exploitation and abuse. This involves identifying the definition and scope of the offence, reviewing domestic and international legal standards, analysing lacunas in domestic law, and proposing recommendations to address those lacunas. A desk review of primary and secondary resources, including international legal instruments such as the Convention on the Rights of the Child, the Optional Protocol on the Sale of Children, Child Pornography, and Prostitution, the Lanzarote Convention, and the Budapest Convention, as well as domestic legal provisions in the Penal Code and the Computer Crimes Act, was conducted. The study revealed that Sri Lanka currently lacks an adequate legal framework to combat online child sexual exploitation and abuse effectively. There is no specific legislation directly addressing this offence. Hence, Sri Lanka should enhance its efforts to implement new legislation targeting online child sexual exploitation and abuse. Only then can Sri Lanka make significant progress in the fight against online child sexual exploitation and abuse, fulfilling its obligations to protect the rights of its children.*

Keywords: domestic laws, lacunas, online child sexual exploitation and abuse, international standards, Sri Lanka

I. INTRODUCTION

The advancement of modern technology has brought many benefits, from improved communication to access to information at our fingertips. However, this rapid advancement of technology has also negatively impacted people, particularly regarding their physical and mental health, social skills, and safety (Gottschalk, 2019).

Regrettably, children have become the primary group affected by these adverse consequences of technology (Know Violence in Childhood, 2017). As a consequence of the inherent vulnerability of children due to their age, lack of experience, limited understanding of the risks associated with using the internet, and the lack of supervision of adults concerning their usage of technology, online violence against children has become a contemporary global concern (Gottschalk, 2019).

Online violence against children refers to any form of harmful or threatening behaviour directed towards a child or young person, including but not limited to cyberbullying, harassment, cyberstalking, and online hate speech (European Institute for Gender Equality, 2022). Such behaviour can seriously affect the victim's mental health, social and emotional development, and overall well-being (Csepregi & Kovacs, 2022). This severe issue takes many forms, including cyberbullying, grooming, sextortion, violent or disturbing content exposure, cyberstalking, abuse, and sexual exploitation (Fernando et al., 2021). Out of such various forms, the fastest-growing form of violence against children is online child sexual exploitation and abuse (OCSEA).

Therefore, the research problem is 'whether Sri Lanka has an adequate legal framework to combat online child sexual exploitation and abuse'. To resolve this problem, this study aims to identify the definition and scope of OCSEA, review the international legal standards and domestic legal provisions on OCSEA, analyse the lacunas in domestic law in addressing OCSEA, and propose recommendations to address those lacunas.

II. RESEARCH METHODOLOGY

A desk review of primary and secondary resources, including international legal instruments such as the Convention on the Rights of the Child, the Optional Protocol on the Sale of Children, Child Pornography, and Prostitution, the Lanzarote Convention, and the Budapest Convention, as well as domestic legal provisions in the Penal Code and the Computer Crimes Act as well as textbooks, journal articles and web-based resources was conducted.

III. Results and Discussion

A. *Online Child Sexual Exploitation and Abuse: Scope and Definitions*

Ireland et al. (2015) define child sexual abuse (CSA) as the coercing or enticing of a child to engage in sexual activities, regardless of their awareness or understanding of the situation. It encompasses various forms of exploitation, including involving children in consuming or producing sexual imagery, exposing them to sexual acts, encouraging inappropriate sexual behaviour, or engaging in grooming behaviours as a prelude to abuse (Mason-Jones & Loggie, 2019).

Drejer et al. (2023) outline child sexual exploitation (CSE) as a manifestation of CSA that occurs when an individual or a group exploits an inherent power imbalance to coerce, manipulate, or deceive a child or young person under the age of eighteen into engaging in sexual activities. This exploitation may occur when the victim is compelled to participate in such activities in exchange for something they need or desire or when the perpetrator or facilitator gains financial advantages or increased social standing. (Ramiro et al., 2019).

Quayle (2020) defines OCSEA as using digital technologies and the internet to exploit and abuse children sexually. It represents a particular manifestation of CSE and CSA that has been facilitated and amplified by the internet and online platforms (Pettiffer et al., 2022).

B. *International Legal Standards on Online Child Sexual Exploitation and Abuse*

The Convention on the Rights of the Child (CRC) is the most comprehensive treaty on children's rights. The CRC inclusively refers to 'all forms of sexual exploitation and abuse' (Convention on the Rights of the Child, 1990, art.34). It obliges the State Parties to 'take all appropriate national, bilateral, and multilateral measures to prevent: the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other illegal sexual practices, the exploitative use of children in pornographic performances and materials' (Convention on the Rights of the Child, 1990, art.34).

CRC is supplemented by the Optional Protocol on the Sale of Children, Child Pornography, and Prostitution (OPSC), explicitly focusing on child pornography facilitated through information and communication technology. The OPSC obliges the States Parties to have a responsibility to enact

thorough legal measures within their penal laws in domestic and transnational offences. These measures specifically involve criminalising the act of offering, delivering, or accepting a child to exploit them sexually (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2001, art.3).

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) imposes obligations on signatory countries to establish and implement laws, policies, and measures to prevent, protect, and prosecute CSE and CSA. The convention broadly defines CSE and CSA as encompassing various forms of sexual violence against minors, such as sexual harassment, grooming, and child pornography. It specifies that Articles 18 to 23 of the convention outline the behaviours included in this definition. (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007, art 3).

The Council of Europe Convention on Cybercrime (Budapest Convention) is a comprehensive and coherent international agreement focusing on cybercrime and electronic evidence. It is a crucial guide for countries developing their domestic legislation on cybercrime. The convention aims to update and strengthen criminal law regulations, mainly to prevent the use of computer systems in facilitating the sexual abuse and exploitation of children. Article 9 of the convention explicitly addresses offences related to child pornography. Moreover, Article 13 criminalises various aspects associated with child pornography.

C. *Domestic Legislation on Online Child Sexual Exploitation and Abuse*

This research focuses on two primary substantive laws on OCSEA in Sri Lanka: the Penal Code and the Computer Crimes Act.

1) *The Penal Code Ordinance No. 02 of 1883*: The Penal Code serves as the primary penal legislation in Sri Lanka. Penal Code (Amendment) Act No. 22 of 1995 and Penal Code (Amendment) Act No. 12 of 2006 were enacted to safeguard women and children against sexual violence. The Penal Code (Amendment) Act No. 22 of 1995 introduced the offence of sexual exploitation of children. Both amendments introduced several other penal provisions that could be used to prosecute CSA and CSE.

Section 360B of the Penal Code outlines various acts that constitute the offence of CSE. These acts include knowingly allowing a child to be present

in a location for their sexual abuse or involvement in sexual activities or indecent exhibitions. It also covers acting as a procurer of a child for sexual activities, inducing others to engage in sexual activities with a child through advertising or other means, taking advantage of one's influence or relationship with a child to involve them in sexual activities, using threats or violence to coerce a child into sexual activities, and providing monetary or other benefits to a child or their parents to facilitate sexual activities (Penal Code Ordinance No. 02 of 1883, s.360B).

Regarding other sections of the Penal Code that address CSE and CSA, section 286A addresses several actions that constitute the offence of obscene publication and exhibition relating to children. These actions include hiring, employing, assisting, persuading, using, inducing, or coercing a child to participate in any obscene or indecent exhibition, show, photograph, or film. It also encompasses selling, distributing, publishing, or possessing such photographs or films. Furthermore, it covers parents, guardians, or custodians who cause or allow their child to be involved in obscene or indecent exhibitions, shows, photographs, or films (Penal Code Ordinance No. 02 of 1883, s.286A).

Section 360A provides for various actions that constitute the offence of procurement. These actions include procuring or attempting to procure a person, regardless of age or consent, to engage in prostitution within or outside the country. It also provides for procuring or attempting to procure a person under sixteen to leave Sri Lanka for illicit sexual activities or to become an inmate of a brothel bringing a person under sixteen years of age into Sri Lanka for illegal sexual intercourse, procuring individuals to become inmates of brothels, and detaining individuals in brothels for sexual intercourse or abuse (Penal Code Ordinance No. 02 of 1883, s.360A). Furthermore, section 288A of the Penal Code criminalises hiring or employing children to act as procurers.

According to section 360C(2), individuals who recruit, transport, transfer, harbour, or receive a child to subject them to forced labour, slavery, servitude, organ removal, prostitution, sexual exploitation, or any other offence under the law commit the crime of trafficking. Those found guilty of trafficking children can be imprisoned for three to twenty years and may also face fines (Penal Code Ordinance No. 02 of 1883, s.360C(2)).

Section 360E provides that anyone, whether within or outside of Sri Lanka, who solicits a person under the age of eighteen or believes them

to be under eighteen to abuse a child sexually, is guilty of the offence of soliciting a child. Upon conviction, the individual can be imprisoned for up to ten years, fined, or both (Penal Code Ordinance No. 02 of 1883, s.360E).

2) *Computer Crimes Act No. 24 of 2007*: The Computer Crimes Act (CCA) is the principal legislation in Sri Lanka on prosecuting cybercrimes. This Act was modelled on the Budapest Convention, and most of its provisions are based on it. CCA does not include explicit provisions on CSA, CSE or OCSEA. Nevertheless, it can be argued that several provisions of CCA can be purposively interpreted to capture certain aspects of OCSEA.

Section 2 of the CCA grants extensive jurisdiction. It provides that CCA is applicable if an individual commits an offence within or outside of Sri Lanka, if the offence affects a computer, computer system, or information within or outside of Sri Lanka, if the offence involves the use of facilities or services including computer storage or data processing within or outside of Sri Lanka, and if the offence causes harm or damage to the State or individuals residing in Sri Lanka or outside of Sri Lanka (Computer Crimes Act No. 24 of 2007, s.2).

Section 3 of the CCA provides for the offence of illegal computer access. Furthermore, section 4 strengthens this provision by criminalising unauthorised access to a computer or its stored information when the perpetrator is aware or reasonably believes that they lack lawful authority. In addition, sections 7 and 8 of the CCA criminalise the handling of unlawfully obtained data and the illegal interception of data.

IV. CRITIQUE OF THE DOMESTIC LAW

The preceding section comprehensively examines the international and domestic legal standards on CSE, CSA, and OCSEA in Sri Lanka. This section's objective is to critically analyse the adequacy of those provisions for combating OCSEA in Sri Lanka.

A. International Legal Standards

Sri Lanka ratified the CRC on 12 July 1991 and acceded to the OPSC on 22 September 2006. Being a dualist country, Sri Lanka needs enabling legislation to execute those conventions domestically effectively. Enacting enabling legislation of an international convention is crucial for a dualist country as it effectively implements and enforces the rights and obligations established within the national jurisdiction. By doing so, dualist countries further ensure that their domestic legal system harmonises with the international standards and commitments outlined in the

convention. Nevertheless, Sri Lanka still needs to enact enabling legislation for either of those international instruments. As a follow-up to the CRC, Sri Lanka only formulated the Children's Charter in 1992. This lacuna highlights the need to enact specific legislation to bridge the disconnect between international standards and the domestic legal framework on OCSEA. Thus, enabling legislation for CRC and OPSC is recommended to ensure comprehensive legal coverage and effective implementation of child rights and protections.

The Lanzarote Convention provides comprehensive guidelines and measures to be incorporated into domestic legislation, ensuring that laws are up-to-date and effective in combating OCSEA. It addresses various aspects such as prevention, protection, prosecution, and international cooperation. Nevertheless, Sri Lanka has not ratified the Lanzarote Convention. Thus, ratifying the Lanzarote Convention to strengthen the Sri Lankan legal framework in addressing OCSEA is recommended. Ratifying it would further encourage Sri Lanka to invest in initiatives that promote digital literacy, educate children and parents about online risks, and empower individuals to recognise and respond to these crimes effectively.

Sri Lanka is the first country in South Asia to sign and ratify the Budapest Convention. Nevertheless, Sri Lanka has made four reservations under Article 9 on child pornography. Article 9 defines child pornography as both real and images that appear to be minor and realistic images representing minors (Council of Europe Convention on Cybercrime, 2009, art.9). Due to its reservations, Sri Lanka does not need to criminalise images that appear to be minors and realistic images representing minors (Council of Europe Treaty Office, 2023). With technological advancements such as AI, child pornography might include creating simulated images of non-existent children. Therefore, the definition of child pornography must have both real and virtual representations. Criminalising the possession and dissemination of such images remains crucial, even as the depicted child grows into adulthood while the harmful image remains accessible online. The Budapest Convention emphasises the criminalisation of the image or recording itself, regardless of the depicted individual's current age during prosecution. Considering this, it is recommended that Sri Lanka should reconsider and withdraw its reservations to enact legislation that enables the prosecution of such conduct.

B. Domestic Legislation

1) The Penal Code Ordinance No. 02 of 1883: One critical aspect of CSE is the concept of an 'exchange' between a perpetrator and a child involving engagement in sexual activities (Convention on the Rights of the Child, 1990, art.34). Regrettably, the Penal Code does not explicitly address or codify this concept of exchange, which represents a discrepancy with Sri Lanka's obligations under the CRC. Furthermore, Section 360B of the Penal Code does not provide comprehensive coverage of the various forms of OCSEA, including practices such as online grooming, live streaming abuse, and online child exploitative relationships (Drejer et al.,2023). Therefore, the online aspect of CSE is not explicitly incorporated into this section. Consequently, a significant lacuna exists within the domestic legal framework. To rectify this deficiency comprehensively, it is recommended to align with the terminology outlined in the CRC and amend this section to reflect the recommended changes and ensure a more effective legal response.

Section 286A of the Penal Code does not explicitly cover child sexual abuse material or child pornography, lacking clear definitions of 'obscene' or 'indecent'. Consequently, judges are left to determine the standards for obscenity (ECPAT International, 2021). Furthermore, this section fails to address simulated representations or realistic images depicting children, which is crucial given advancements in AI technology (Westerlund, 2019). Sri Lanka's failure to criminalise these materials further violates its obligations under the OPSC. To address these shortcomings, it is recommended to adopt the OPSC's definition of child pornography and enact legislation penalising actual or simulated explicit sexual activities involving children or representations of their sexual parts for primarily sexual purposes.

Section 360A of the Penal Code criminalises procurement to engage in prostitution within or outside Sri Lanka. This provision establishes the extraterritorial jurisdiction of Sri Lanka to prosecute individuals who procure adults or children for prostitution. Furthermore, it explicitly criminalises the procurement or attempted procurement of individuals under sixteen, irrespective of their consent, for prostitution, whether within or outside Sri Lanka. Given that the exploitation of children for prostitution falls under the umbrella of OCSEA (Drejer et al.,2023), this legal development represents a significant step forward.

However, concerning the procurement of children outlined in section 288A, the section fails to

criminalise sexual abuse and only focuses on criminalising sexual intercourse. In light of this, it is crucial to note that the CRC urges state parties to enact appropriate legislation to safeguard children from all forms of sexual exploitation (Convention on the Rights of the Child, 1990, art.34). The CRC mandates that states implement legislative measures prohibiting the inducement or coercion of a child to engage in any unlawful sexual activity (Convention on the Rights of the Child, 1990, art.34). Therefore, it is recommended to amend section 288A to incorporate a precise definition of sexual abuse and prohibit any sexual activity involving children. This amendment would align the law with international standards and further enhance the protection of children from sexual exploitation.'

The proliferation of online platforms and advancing technologies presents significant challenges in combating human trafficking and OCSEA. These platforms have become crucial tools for traffickers, offering them avenues to connect with potential victims, promote their illegal services, and coordinate illicit activities (Campana, 2022). The internet's anonymous nature and pervasive accessibility have facilitated the operations of traffickers, allowing them to operate covertly (Campana, 2022). The utilisation of encryption, anonymisation techniques, and the dark web by traffickers and offenders further compound the issue, as it poses formidable obstacles for law enforcement agencies in their efforts to identify and apprehend perpetrators (Cole et al., 2021).

Despite the comprehensive coverage provided by section 360C, including various aspects of human trafficking, Sri Lanka's record of convictions in trafficking cases remains remarkably inadequate. This deficiency is evident because, as of December 2022, only one conviction for trafficking has been reported in Sri Lanka (United States Department of State, 2022). This lack of successful prosecutions highlights a significant gap in implementing and enforcing anti-trafficking measures within the country. Therefore, it is recommended that Sri Lanka improve its efforts to investigate, prosecute, and prevent human trafficking by strengthening the procedural legal framework and enhancing the capacity of law enforcement agencies.

Online grooming is a manipulative practice used by adults to exploit children's trust for sexual purposes. Perpetrators take advantage of the internet's availability and the accessibility of digital devices to target vulnerable children (The Koons Family Institute on International Law & Policy, 2017). Although section 360E of the law

does not explicitly mention the internet as a means and method of soliciting children for sexual abuse, it can be contended that the language used in the provision is broad enough to cover the online aspects of this offence implicitly. The judiciary must adopt a purposive interpretation of this section to ensure the effective prosecution of individuals involved in online grooming. Moreover, it should be noted that while section 360E of the law criminalises solicitation, the definition of what constitutes solicitation is not explicitly provided. As a result, solicitation is not penalised unless it is overtly expressed in the presence of witnesses, documented in writing, or followed by subsequent instances of actual in-contact sexual abuse.

2) *Computer Crimes Act No. 24 of 2007*: Given that most of the provisions in the CCA draw upon the principles and guidelines outlined in the Budapest Convention, the CCA reflects the progressive nature of the convention.

Section 2 of the CCA provides a broad jurisdictional scope that ensures individuals engaged in online child sexual exploitation and abuse can be held accountable regardless of their physical location. This provision grants authorities the power to investigate and prosecute offenders, safeguarding justice for victims within and beyond the country's borders. By including this aspect, the CCA recognises the significance of assessing the physical location of the digital infrastructure involved in cases of OCSEA. Section 2 further acknowledges the critical role played by various technological services in facilitating and enabling such crimes, ensuring that those who assist or provide the means for OCSEA can be held accountable.

Section 3 of the CCA is instrumental in combatting specific types of OCSEA, particularly cyberstalking and cyberbullying. It focuses on the deliberate act of obtaining unauthorised access to a computer or its stored information. Accordingly, section 3 of the CCA can be invoked to prosecute offenders who illegally access a child's computer or information for engaging in cyber stalking or cyberbullying.

Section 4 of the CCA plays a crucial role in prosecuting individuals engaged in child pornography or sextortion, where a child's intimate materials or personal information are acquired for sexual harassment, intimidation, or extortion. It includes the unlawful acquisition, possession, distribution, or production of child pornography, providing a legal framework to hold offenders accountable for exploiting children for sexual purposes. By interpreting Section 4

effectively, perpetrators of these heinous acts can be prosecuted, ensuring the protection of children and the enforcement of appropriate legal consequences.

Sections 7 and 8 of the CCA are crucial in combating the creation, operation, distribution, and commercialisation of child pornography. Section 7 targets explicitly creating, operating, or maintaining websites or online platforms designed or utilised to promote or facilitate child pornography. This provision aims to hold accountable those individuals who provide the means and infrastructure for the commercial distribution of explicit materials involving children, thereby enabling the exploitation and abuse of minors for financial gain.

Similarly, Section 8 of the CCA focuses on the possession, distribution, or transmission of child pornography for commercial purposes. It aims to prosecute individuals in the retail trade of explicit content featuring children. This includes selling, trading, or distributing child pornography through websites, databases, or other digital platforms. By targeting those who commercialise explicit materials involving children, Section 8 aims to curtail such activities and prevent the proliferation of child pornography.

Accordingly, it can be contended that CCA comprises various provisions that can be advantageous in prosecuting OCSEA if interpreted purposively. However, a notable lacuna in the Act lies in the absence of a precise definition, specific penalties, and a dedicated focus on OCSEA. This lacuna hinders the effectiveness of the CCA in effectively combating OCSEA in Sri Lanka.

The lack of a precise definition of OCSEA within the CCA raises concerns about the clarity and scope of the offences it aims to address. Without a clear and comprehensive definition, the Act may fail to cover the full range of activities related to online child sexual exploitation and abuse, making it challenging to prosecute offenders appropriately.

Furthermore, the absence of specific penalties for OCSEA offences leaves room for ambiguity and inconsistency in punishing perpetrators. Clear and proportionate penalties are essential for deterring potential offenders and ensuring justice is served for victims of OCSEA. The lack of specific penalties within the Act may undermine the gravity and seriousness with which OCSEA offences should be treated.

V. CONCLUSION

OCSEA represents a grave violation of human rights occurring globally, necessitating a coordinated response at both national and international levels. The CRC, OPSC, Lanzarote Convention and Budapest Convention are the primary international legal frameworks for combating this crime. Sri Lanka has ratified and implemented the Budapest Convention but has yet to implement the CRC and OPSC. While existing legislation in Sri Lanka: the Penal Code and the CCA, addresses certain aspects of OCSEA, they need to be more comprehensive in comprehensively defining or addressing the multifaceted nature of this issue. Therefore, it is imperative to establish specific legislation that adequately addresses the evolving, transformative, and dynamic nature of OCSEA. By doing so, Sri Lanka can effectively combat this crime to safeguard the children and ensure their protection comprehensively.

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