

***SEXUAL DIVERSITY AND GENDER
IDENTITY IN SRI LANKAN
PERSPECTIVE ; WITH REFERENCE
TO RIGHTS AND POSITION OF
SEXUAL MINORITIES IN CRIMINAL
JUSTICE SYSTEM OF SRI LANKA***

**Aruni Wijayath (Attorney-at-Law),LL.B
LL.M in Criminal Justice Administration
(Open University of Sri Lanka)**

Introduction

▼ **Mainly focused on the sexual minorities such as Lesbian, Gay, Bisexual and Trans gender (LGBT) community in Sri Lanka.**

☯ Sexual minorities are treated as deviants or perverts by the hetero-normative value oriented Sri Lankan society.

Homo sexuality is a forbidden norm and majority is reluctant to discuss about LGBT community and their rights.

▼ Consolidated Rights of sexual minorities and their position in Sri Lankan society

λ Constitution of Sri Lanka (Fundamental Rights)

☯ Article 12(1)- All persons are equal before the law and are entitled to the equal protection of the law

☯ Article 12(2) -No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds

▼ Impact of sexual minorities in Sri Lankan Criminal Justice System through Penal Laws

☯ **Penal Code Sec 365**:-Carnal intercourse against the order of nature with any person shall be an offence

☯ **365A**-Person acts of gross indecency with another person, shall be an offence

☯ **339**- “cheating by personation”

Transgender community is targeted by the Police due to “misrepresentation” under this offence

☯ **Vagrancy Ordinance**

Police detain LGBT community by means of offences prescribes in this act(soliciting, act of indecency, vagabondise)

Background /Literature Review

▼MAN Chandrathilake and P Mahanamahewa in their scholarly work* stated that “**Sri Lanka is in the backwater of the global gay rights village**. The law should not and cannot seek to penalize persons for their sexual preferences.”

▼In “Toronto Star Article” dated on 14.06.2007 , Rosanna Flamer-Caldera(founder of gay rights group Equal Ground and co-secretary-general of the International Lesbian and Gay Association) stated that “**the rights of lesbians, are at risk in Sri Lanka.**”

Main Objectives

- ▼ To analyze existing Fundamental Rights provisions enacted in Constitution of Sri Lanka with regard to sexual minorities
- ▼ Identify the existing penal laws that criminalize the Homo Sexual behaviours those affect to sexual minority community
- ▼ To perform a qualitative study with regard to position of Sexual minorities in Criminal Justice System of Sri Lanka
- ▼ To suggest possible recommendations to ameliorate the position of sexual minorities and protect their rights in Sri Lankan context

Research Statement

- ▼ The Criminal Justice System of Sri Lanka is reluctant to procure the rights of sexual minorities and procedural laws such as Penal Code create a interminable nuisance towards sexual minorities through it's provisions .

Research Methodology

▼ This work is literary research and mainly based on internet.

Primary Sources

Scholarly articles searched through internet

News paper articles at the time

Research data gathered through the internet

Secondary Sources

Articles from Magazines and Journals

Scholarly Books

Official reports of organizations

Findings

- ▼ Sri Lankan Criminal Justice system *does not willfully discriminate* the LGBT community even though and *ambiguity legal provisions* resulted to marginalize and limit the scope of rights of them.
- ▼ Sri Lankan law *does not directly address the rights of sexual minorities* or *no any special clause to protect the rights of sexual minorities* although the fundamental rights provisions of the Constitution could be applied as a shield against discrimination.

Findings contd

- ▼ Trans gender population has a threat of detention under the offence “*cheating by personation in penal code*” by Police due to identity confusion of the information displayed in National Identity Card and figure of the person. Cross-Dressers also ceaselessly insulting by Vagrancy Ordinance.
- ▼ Under *Domestic Violence Act* , aggrieved LGBT partners cannot seek it's legal protection because they are incompetence to lodge a complaint in Police as homo sexuality is criminalized in Sri Lankan context.

Conclusion

▼ The penal code of Sri Lanka criminalize the homo sexual activities. These provisions legally and sociologically oppress the sexual minorities. Penal laws such as “personation” limited their demeanour in an oppressive manner.

▼ Under fundamental rights sex is not a discriminatory ground of persons. But sexual minorities are marginalized in society due to their sexual behaviours or their outer appearance. Therefore the main objective of indiscrimination cannot be fulfilled.

Recommendations

- ▼ **Amend the constitution** to safeguard the rights of LGBT especially concerning with non discrimination based on sexual orientation and gender identity.
- ▼ **De- criminalize homo sexuality**. Amend the Vagrancy Ordinance compatible with the present society.
- ▼ **Introduce Yogyakartaata principles** on sexual orientation and gender identity to Sri Lankan context to ameliorate the position of sexual minorities.
- ▼ **Awareness programmes** introduce to police officers, health sector and civil organization about the rights and needs of sexual minorities.

Q & A

THANK YOU!