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

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Introduction

Mainly focused on the sexual minorities such as Lesbian, Gay, Bisexual and Transgender (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

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)
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
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
- Newspaper 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

Transgender 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 its 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 homosexual 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 Yogyakarata 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!