

Disrupting the Binary Code:

Experiences of LGBT Sri Lankans Online

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Women and Media Collective
Association for Progressive Communications
AmplifyChange
and
EROTICS South Asia: exploratory research on Sexuality and the ICTs

Disrupting the Binary Code:

Experiences of LGBT Sri Lankans Online

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**Production Team,
Researchers and writers**

Paba Deshapriya, Michael Mendis,
Dr. Shermal Wijewardena,
Subha Wijesiriwardena,
Dr. Sepali Kottegoda and Sanchia Brown

Reviewers

Jayanthi Kuru-Utumpala and Zainab Ibrahim

Copy editor

APC

Layout and Design

Velayudan Jayachithra

Printing

Globe Printing Works

Research & publication support AmplifyChange



Women and Media Collective
Established 1984

Published by:

Women and Media Collective (WMC)

56/1, Sarasavi Lane, Castle Street, Colombo 08, Sri Lanka

Telephone: +94112690201 Fax: +94112690192

Email: wmcslanka@gmail.com Website: www.womenandmedia.org

Facebook: Women and Media Collective (WMC)

Twitter: @womenandmedia

You Tube: Women and Media Collective



Association for Progressive Communications (APC)

P.O. Box 29755, Melville, 2109, Johannesburg, South Africa

Telefax: +27 11 726 1692

Email: info@apc.org

Website: www.apc.org

Facebook: APCnews

Twitter: APC_news

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List of Abbreviations

- APC – Association for Progressive Communications
- CCA – Computer Crimes Act
- COJ – Companions on a journey
- CPC – Criminal Procedure Code
- EROTICS – Exploratory Research on ICTs and Sexuality
- FGD – Focus Group Discussion
- ISP – Internet Service Providers
- LGBTQ – Lesbian, Gay, Bisexual, Transgender and Questioning persons
- NCPA – National Child Protection Authority
- NGO – Non-Governmental Organisation
- NSACP – National STD/AIDS Control Programme
- PRC – Public Representation of Constitution Reform
- SOGI – Sexual Orientation and Gender Identities
- TRC – Telecommunications Regulatory Commission
- UNAIDS – The Joint United Nations Programme on HIV/AIDS
- WMC – Women and Media Collective

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Foreword

This book explores the relationship between internet rights and sexuality in Sri Lanka. The research for the book was supported by the Association for Progressive Communication as part of a wider inquiry that included India, Nepal and Sri Lanka. The core area of the research looks at areas of ICT policies or practices in Sri Lanka that impact sexuality and sexual rights. The research focused on two areas: Access to the internet (including affordability and geography) and how this affects Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Sri Lankans usage of the internet for activism and, Censorship (by the state or internet service providers or institutions) of sexual content, including critical information on sexuality.

The Sri Lanka study specifically looks at the ways in which the LGBTQ communities access the internet whether as a means of communicating with others or as a site of activism. Given the fact that non-heterosexual and non-cis persons who are identified as LGBTQ live in a context where homosexuality is criminalized, the internet provides a key source of communication for LGBTQ Sri Lankans. The study gives an overview of the regulatory framework on ICTs in the country and the ways in which social norms that herald heterosexuality and stigmatise non-heterosexual persons are navigated by LGBTQ Sri Lankans through social media platforms.

The study is presented in two chapters. The first chapter, ‘Virtually queer; Human Rights of LGBTQ Sri Lankans in the online space’ by P.M. Deshapriya and J.M. Mendis examines the landscape of ICT policy and sexual rights in the country. It provides a broad overview of the socio-political environment in which LGBTQ Sri Lankans live, the findings of the survey questionnaire, focus group discussion and individual interviews.

The second chapter, ‘Not Traditionally Technical: Lesbian women in Sri Lanka and Their Use of the Online Space’ by Shermal Wijewardena and Subha Wijesiriwardena is a dedicated analysis of lesbian women’s engagement with the online. Through one-to-one interviews and a focus group discussion, this section brings to light the gendered and sexualized experiences of lesbian women’s online engagements.

This pioneering study is a critical means for advocacy on ways in which freedom of sexual expression online can contribute to breaking taboos and amplifying the voices of sexual minorities in Sri Lanka.

Sepali Kottegoda

Women and Media Collective

December 2017

Chapter 1

Virtually Queer:
Human rights of LGBTQ
Sri Lankans in the online space

Paba Deshapriya and Michael Mendis

Section one

Introduction

The internet is hailed as a “vital communications medium”¹ that allows people to “seek, receive and impart information and ideas of all kinds.”² Its most remarkable contribution has been to make public discourse far more inclusive than ever before. The internet allows flows of information at much lower costs, over much longer distances, and with much less delay than any other communications medium in history, allowing more people to enjoy the benefits of communication, access to information, self-expression and social networking. Moreover, the internet has “multiplied and amplified *the capacity of the most diverse groups* to get information, engage in exchanges, politically mobilise and overcome the passive mode of reception that characterised the past logic of public sphere dynamics.”³

Indeed, the UN Special Rapporteur on the Freedom of Expression has reiterated that “the framework of international human rights law, in particular the provisions relating to the right to freedom of expression, continues to remain relevant and applicable to the internet. Indeed, by explicitly providing that everyone has the right to freedom of expression

1 **La Rue, F. (2011).** *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.* www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf

2 Ibid.

3 Corrêa, S. et al. (2011). Internet regulation and sexual politics in Brazil. In Jac sm Kee (Ed.), *Erotics: Sex, Rights and the Internet*. Johannesburg: APC, 27. www.apc.org/en/pubs/erotics-research

through any media of choice, regardless of frontiers, Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights were drafted with the foresight to include and accommodate future technological developments through which individuals may exercise this right.”⁴

Evidently the internet plays a vital role in improving the lives of all people. Yet, to LGBTQ Sri Lankans, the internet is especially important. For them, it facilitates friendships and relationships that are otherwise systematically obstructed in the offline world. In stark contrast to this offline world, the internet also provides these people with unprecedented opportunities to express themselves and build their identities, both individually and collectively. As a source of information, the internet disrupts and undermines the wilful exclusion of LGBTQ Sri Lankans from public discourse. LGBTQ people online are also able to access a global body of queer art, while other representations of non-heterosexual and non-cisgender people in the mainstream media in Sri Lanka continue to be flat and harmfully stereotypical. At the same time, many who are engaged in a “movement” for LGBTQ rights in Sri Lanka bemoan the individualism engendered by the internet, and the adverse impacts this exerts on community organising and community mobilising. Indeed, although it is widely said of the internet that, “The virtual and the ‘real’ cannot be separated [...] as discrete spheres of social activity,”⁵ and that, “online and offline interactions and experiences are seamless,”⁶ the findings of the present study on how the internet is significant in the lives of LGBTQ Sri Lankans throw those claims into some doubt.

The first part of the study is presented in three substantive sections. *Background* provides a collated overview of the socio-political environment in which LGBTQ Sri Lankans live. The second section, *Sexuality and the Online Space in Sri Lanka*, discusses the substantive findings of the survey questionnaire, focus-group discussion and individual interviews. The third, *Law and Policy*, deals with issues in the legal framework that contribute to and compound the issues discussed in the preceding section.

The second part of the study is a dedicated analysis looking at how lesbian women engage with the online space. As one-on-one

4 La Rue, F. (2011). *Op. cit.*, 14.

5 Corrêa, S. et al. (2011). *Op. cit.*, 23.

6 *Ibid.*

interviews and a focus group discussion showed, lesbian women's online engagements demanded to be treated as specifically gendered and sexualised experiences, while being classed, race-d and so on. Their approach to the online space was traced through with the awareness that they had to negotiate being hailed by a patriarchal and heterosexist social system.

The outline of the research objectives, methodology and key limitations follows:

Objectives

1. To explore how the online space and services are utilised by LGBTQ Sri Lankans to enjoy their human rights.
2. To explore the limitations and restrictions faced by LGBTQ Sri Lankans in their use and enjoyment of the online space in furtherance of their human rights.
3. To identify key policy reforms that could ameliorate the conditions of use and enjoyment of the online space by LGBTQ Sri Lankans.

Methodology

The study used a mix of research methodologies, both quantitative and qualitative, which included:

1. A desk review of internet policies, relevant legislative and license of internet service providers (ISPs) in order to understand the existing attitude to access, and a review of the legal framework relating to LGBTQ people in Sri Lanka.
2. Semi-structured interviews with a cross-cutting range of 10 stakeholders including the government sector (Law enforcement, National Child Protection Authority, Sri Lanka Computer Emergency Readiness Team), the private sector (ISPs), civil society, for example LGBTQ organisations, groups and individuals and human rights activists.
3. A focus group discussion with the members of the LGBTQ community and LGBTQ organisations in Sri Lanka. Venasa trans network, DAST group, Heart to Heart and Young Out Here were among the organisations at the discussion. Apart from those groups, members representing academia, advertising, modelling and LGBTQ activists also took part in the discussion.

Of 14 participants there were four trans people, six gay men, two lesbians and two bisexual men.

4. An online survey of 85 responses to better understand how LGBTQ people use and access the internet and what knowledge they have about online safety. The survey was designed in consultation with community members and LGBTQ organisations. A total of 32 female, 46 male, three trans and two gender non identifying people responded to the survey. Respondents were reached through LGBTQ organisations and groups. The survey was conducted online to maintain the anonymity of the participants.
5. The research was conducted by two (one male and one female) researchers. Both researchers have a positive rapport with the LGBTQ community in Sri Lanka and are recognised as advocates for the decriminalisation of homosexuality and upholding the human rights of sexual minority groups. Both researchers were present at all the interviews except for one semi-structured interview in which the respondent requested to be interviewed by the female researcher.

Social media platforms and non virtual forums held in Colombo – i.e. a cyber exploitation policy briefing by the United Nations and Sri Lanka, an online action group by the Child Protection authority – were also studied to gather information. The findings of the desk review were cross-checked during the focus group discussion and semi-structured interviews and were used to formulate the survey. Different sources of data were woven together for the purpose of this report therefore the different methodologies do not stand alone in the report but as a combination of all.

Constraints and limitations

1. Information on government surveillance was unavailable due to legal restrictions and there was no meeting with government representatives responsible for digital infrastructure and implementation. Requesting an interview on LGBTQ concerns was not appreciated and was mostly neglected by the government representatives.
2. Due to the uneven representation in the survey, cross-community comparisons were not feasible. Reaching out to the trans community proved difficult, possibly due to their lack of access to the internet. Some of the difficulties in reaching the relevant

demographic arose from the perceived criminality of homosexuality in Sri Lanka, which has driven most non-heterosexual and non-cisgender Sri Lankans into lives of secrecy and silence, insulated from the outer world.

3. Despite efforts made, the research team was unfortunately unable to interview Equal Ground – one of the leading LGBTQ groups in Sri Lanka. This created a gap in the report especially in terms of cyber violence incidents that this organisation records.
4. The research team was unable to incorporate the discussion and events which took place in January 2017 on decriminalising homosexuality due to time constraints.

Key findings

The survey covered 85 respondents.

Demographics

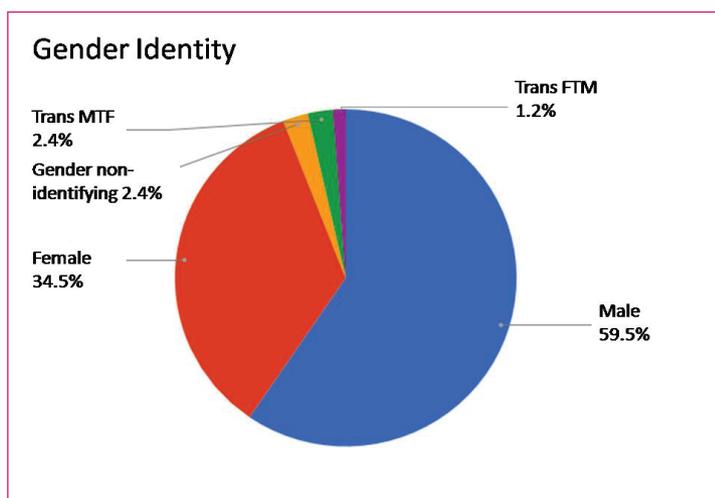


Figure 01: Gender Identity of survey respondents

The survey was dominated by men, at 59.5% while 34.5% were women. Only 3 trans persons participated in the survey.

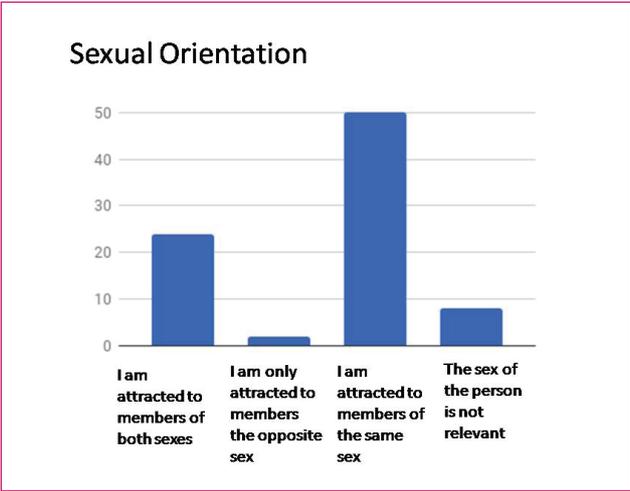


Figure 2 : Sexual Orientation of survey respondents

Responding to the question on sexual orientation, most of the respondents 59.5% stated that they are only attracted to members of the same sex. 28.6% stated that they are bisexual while 9.5% of the respondents said that the sex of a person is not relevant. Two trans respondents stated that they are heterosexual.

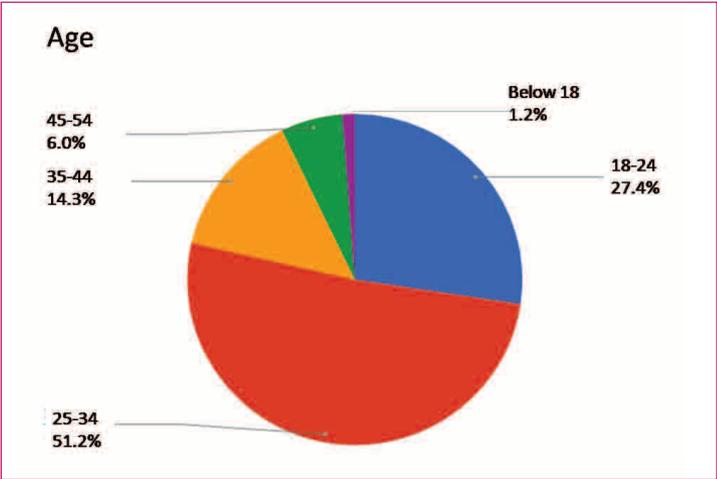


Figure 3: Age of survey respondents

More than half of the respondents are between the ages of 25 – 34. were aged.

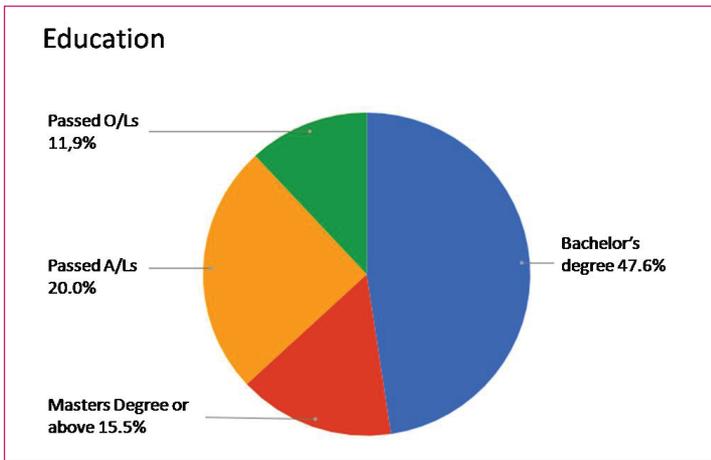


Figure 04: Education of survey respondents

Most respondents had higher education qualifications, with 47.8% with a bachelor's degree and 15.5% having a master's degree. Only 11.9% stated that they had only passed an ordinary level exam.

Section Two

Background

Sexuality in Sri Lanka

In Sri Lanka, non-heterosexual and non-cisgender people, identified as LGBTQ Sri Lankans in this paper, continue to live under a shroud of invisibility. Despite the continuous struggle for legal recognition and reforms since the early 1990s, many people with these alternate identities continue to live their lives in secrecy, away from government contact, beyond the reach of community organisations and most importantly apart from each other.

This state of invisibility and isolation is broadly a result of Sri Lankan “conservatism”, in which attitudes towards and discourses on sexuality and sexual relationships are heavily controlled by societal and cultural forces opposed to sexual and gender diversity.

Sexual conservatism in Sri Lanka regulates individuals through gender roles based on a rigid, male/female binary construct; sex is restricted by a “logic of reproduction”⁷. Sexuality is restricted to marriage, and those who pursue sexual activity outside the confines of a marriage, especially women, are vilified. Sexual issues are “privatised” to such

7 Groundviews. (2016, 25 August). Submission on LGBTIQ Persons and Transitional Justice Mechanisms. groundviews.org/2016/08/25/submission-on-lgbtiq-persons-and-transitional-justice-mechanisms/

an extent that discussion in the public sphere is discouraged. Sex education in public schools is virtually non-existent and only exists in a few private schools.⁸

This conservatism exerts a significant influence on many aspects of public life, especially in areas of legal and policy reform. However, behind this conservatism the private lives of many Sri Lankans who do not seem to conform to such values continues. According to the Family Health Bureau, Sri Lanka records the best family planning performance in the region, with the contraceptive (all methods) prevalence rate among “eligible families”⁹ registered with public health midwives at 64.9%.¹⁰ For our discussion, the high contraceptive prevalence rate indicates that sexual activity among couples (married or living together) clearly takes place outside the expectation of reproduction.

In 2011, the Ministry of Transport reported that one in four women experienced sexual harassment while using public transport. Later that year, the Legal Aid Commission suggested that over 70% of women (between the ages of 15 and 45) were subject to sexual harassment while using public transport. In 2015, the United Nations Population Fund (UNFPA) Sri Lanka claimed that this number had increased to over 90%. Dr Sisira Liyanage, director of the National HIV Programme, stated that in 2015 23 students in schools became HIV positive through unprotected sex, with 22 students contracting HIV in 2014.¹¹ Mapping studies estimate that there are approximately 35,000 to 47,000 female sex workers and 24,000 to 37,000 men who have sex with men in Sri Lanka.

In this context, prevalent narratives on sexuality and gender in Sri Lanka are constructed around the false assumption that all people are either male or female, which is determined exclusively by their genitalia, and that attraction to members of the opposite gender is the “natural” sexual inclination of all people.

-
- 8 Women and Media Collective. (2015, 6 March). Country Profile on Universal Access to Sexual and Reproductive Health: Sri Lanka. *Women and Media Collective*. womenandmedia.org/country-profile-on-universal-access-to-sexual-and-reproductive-health-sri-lanka/
 - 9 Eligible Family is defined as a family either legally married or living together where the woman is between 15 to 49 years and / or has a child under 5 years. A family with a pregnant or cohabiting woman irrespective of marital status and age and single women (widow, divorced, separated) are also considered under eligible family.
 - 10 Family Health Bureau, Ministry of Health Sri Lanka. (2013). *Annual Report on Family Health 2013*. Colombo. http://medicine.kln.ac.lk/depts/publichealth/Fixed_Learning/annual_report_2013.pdf
 - 11 Bakamoono. How does accurate and comprehensive sexuality and relationship education help prevent HIV? *bakamoono*. www.bakamoono.lk/en/hiv/30/how-does-accurate-and-comprehensive-sexuality-education-help-prevent-hiv

These assumptions have enabled widespread stigma and discrimination against non-heterosexual and non-cisgender people, succeeding in driving many of them underground, stifling their sexual expression and relationships, marginalising them from accessing essential services like healthcare, access to justice, education, etc., and condemning the most vulnerable of them to lives of socio-economic and personal insecurity.

Homosexuality and the law

The key indicator of this stigma and discrimination lies in the Penal Code provisions, Sections 365 and 365A.

The first section criminalises “carnal intercourse against the order of nature”, and the second criminalises “acts of gross indecency” between persons. These laws have been criticised for decades, and there have been repeated calls for their repeal since the mid/1990s.¹² Although the provisions remain formally unenforced since independence in 1948,¹³ the necessity of their standing to preserve “public order and morality” has been touted by the government before the Human Rights Committee in Geneva as recently as 2014,¹⁴ Even by the end of 2016, the Police continued to question and apprehend individuals under the provisions to the extent that these are “valid” laws of the land.¹⁵

A situation analysis by Equal Ground highlights Sections 365 and 365A as a “tool to target and harass the LGBTQ community”.¹⁶ However, the analysis also stresses that, “parental, communal, and cultural surveillance ... entangle with the law to maintain gender stereotypes and suppress expressions of alternate sexuality”.¹⁷ The report provides a concrete example of such “surveillance” on Sri Lanka: police consider themselves authorised to arrest gender non-conforming people because the differences in their sexual and gender expressions indicate,

12 Baudh, S. (2013). Decriminalisation of consensual same-sex sexual acts in the South Asian Commonwealth: Struggles in Context. In C. Lennox & M. Waites (Eds.), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*. London: Institute of Commonwealth Studies, Human Rights Consortium.

13 Equal Ground et al. (2013, December). “There have been no convictions under 365 and 365A since Sri Lanka gained independence in 1948.” *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka*. [tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/SharedDocuments/LKA/INT_CCPR_ICO_LKA_15986_E.pdf)

14 OutRight International, (2014, 20 October). Sri Lanka Government says LGBT Rights are Constitutionally Protected. *OutRight Action International*. www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected

15 DIG Ajith Rohana, speaking at an event, *High-level Dialogue on Human Rights and Constitutional Reform*. organised by FPA Sri Lanka and others. Colombo, 16 December 2016.

16 Thangarajah, P. (2013). *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization*. Equal Ground GROUND. issuu.com/equalground/docs/situation_analysis

17 Ibid. text accompanying note 41. Emphasis added.

to them, the “likelihood” of engaging in either “carnal intercourse against the order of nature” under section 365,¹⁸ or “acts of gross indecency” under section 365A. However, due to the practice of not formally charging people suspected of committing the offences, the “enforcement” of Sections 365 and 365A enables the police to subject individuals to arbitrary arrests, extortion, forced sexual favours, and sometimes even rape.¹⁹ Further, the existence of these laws prevents survivors of such violence from reporting the crimes to the police or accessing other remedial mechanisms.

The law also enables many discriminatory acts *beyond* law enforcement, such as the refusal of accommodation by prospective landlords,²⁰ the refusal of job opportunities,²¹ and even, as one writer reports, the refusal of advertising space in mainstream newspapers for LGBTQ events.²² Thus, the impact of the law reaches speech and conduct well beyond the acts specifically prohibited in the law. In fact, due to the generally private contexts in which most sexual acts take place, Sections 365 and 365A are nearly ineffective against the criminalised acts themselves. Still, even without enforcement, the laws act to suppress the identities and relationships of people with alternative sexual orientation and/or gender identities.

Section 399 of the Penal Code makes it an offence to cheat by impersonation. A person is said to “cheat by impersonation” if he pretends to be someone else, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. The police have been said to arrest transgender people under this law.²³ It has been noted that “In some cases it appears that rape of [trans women and cross-dressing people] by police officers may be informally institutionalised.”²⁴ The Vagrants Ordinance of 1841 is also used in a similar manner to arbitrarily arrest or hassle LGBTQ Sri Lankans in public spaces.

18 Ibid.

19 Equal Ground et al. (2013, December). Op. cit., 4-6.

20 Equal Ground. (2012). *Towards a Lesbians, Gays, Bisexuals, Transexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*. Equal Ground. issuu.com/equalground/docs/the_lgbt_stigma_and_discrimination_

21 Ibid.

22 Baudh, S. (2013). Op.cit. 292.

23 Human Rights Watch. (2016). *All Five Fingers are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka*. Human Rights Watch. www.hrw.org/report/2016/08/15/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual

24 Nichols, A. (2010). *Dance Ponnaya, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka*. Sage, 5(2), 195, 214. grassrooted.net/wp-content/uploads/2010/08/Nichols-Dance-Ponnaya-Dance.pdf

Stigma and discrimination

The stigma and discrimination experienced by LGBTQ Sri Lankans is not limited to the unenforced, draconian Penal Code provisions. Quite independently of them, many LGBTQ Sri Lankans continue to face discrimination in areas such as housing, employment, education, and access to essential public services. More importantly, they also experience discrimination in their personal lives.

A Stigma Index²⁵ published by Equal Ground reports data collected in a survey of 119 LGBTQ respondents. Some of the findings are extracted below (figures reflect percentages of 119 respondents and refer to occurrences in the two years leading up to the survey):

- 11.76% were excluded from religious places/activities at least once
- 21.85% were excluded from family gatherings at least once
- 24.37% had to change residence or were unable to rent accommodation at least once
- 25.21% lost their jobs
- 28.57% were excluded from social gatherings/activities at least once
- 36.97% had been victims of physical abuse, harassment, threats, assaults, rape and/or battery
- 62.18% had been verbally insulted, harassed and/or threatened
- 62.18% had faced some form of psychological or emotional trauma or abuse
- 74.79% were aware of being the subject of gossip at least once.

Even where a majority of respondents said they had “never” experienced the type of discrimination or stigmatisation asked about, subsequent responses indicate that many respondents also live lives of near-absolute secrecy, choosing not to disclose their sexual orientation or gender identity to family members, employers or even healthcare professionals. Thus, there may be a relationship between the visibility of a person’s sexual orientation and/or gender identity (whether voluntary or not) and their vulnerability to stigma and discrimination in society.

At the same time, it must be stated that most studies undertaken by researchers, like the Stigma Index discussed here, avoid presenting their research findings as “statistical” data. Most studies conducted

²⁵ Equal Ground. (2012). *Towards a Lesbians, Gays, Bisexuals, Transexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*. Op. cit.

on LGBTQ issues in Sri Lanka face structural difficulties in reaching their subjects. The index published by Equal Ground had 119 respondents to their survey after quality control. The study *Not gonna take it lying down* by the Women's Support Group had interviewed 33 LGBTQI people. The *All Five Fingers Are Not the Same* publication by Human Rights Watch had involved 61 participants. The present study only saw the participation of 70 people in its quantitative survey.

“One of the main challenges associated with this research is sampling. LGBTQ related stigma is so prevalent that LGBTQ people do not want to be known as LGBTQ people within their wider communities. They fear being discriminated against and are convinced that the less people know about their sexual orientation and/or gender identity the less chance they have of facing any form of discrimination.”²⁶

While independent researchers face difficulties in studying LGBTQ issues from a sociological perspective, LGBTQ Sri Lankans also continue to be invisible in the eyes of the Sri Lankan government. The only official/government data publicly available on these Sri Lankans is in the references to “homosexuality” and “men who have sex with men” in the Ministry of Health’s report to UNAIDS. Although the Census and Statistics Department conducted a national survey on self-reported health for the first time in 2014, it did not incorporate any issues relevant to sexuality and reproductive health. The same department conducts a quarterly survey of the Sri Lankan labour force (since 1990), but despite several reports flagging issues of workplace discrimination experienced by non-heterosexual and non-cisgender Sri Lankans, it has also avoided issues relevant to sexual orientation and gender identity in their questionnaires.

Media

The media plays an important role in perpetuating stigmatisation of and discrimination against LGBTQ Sri Lankans.

In 1999, a mainstream English language daily and weekend newspaper, *The Island*, published an op-ed protesting against a lesbian conference that was to be held in Colombo.²⁷ At the end of the article, the writer called for the police to “let loose convicted rapists among the jubilant but jaded jezebels when their assembly is in full swing so that those

26 Equal Ground. (2012). *Towards a Lesbians, Gays, Bisexuals, Transexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*. Op. cit.

27 Alles, P. (1999, 20 August). Lesbian Conference in Colombo? *The Island*

who are misguided may get a taste of the real thing.”²⁸ A complaint against the newspaper was lodged with the Sri Lanka Press Council, averring that the publication of the letter amounted to the promotion of “sadism, violence or salacity”,²⁹ which is explicitly prohibited under Rule 9 of the Code of Ethics for Journalists enforced by the council. However, as Amnesty International reports, “the Press Council refused to condemn the newspaper and ruled that the author had the right to offer his point of view, and that his view was justified because lesbianism is an ‘act of sadism’ and was an offence under the country’s penal code. The Press Council also stated that lesbianism is ‘at least an act of gross indecency’ and ‘unnatural’ and that ‘misguided and erratic women should be corrected and allowed to understand the true sense and reality of life’.”³⁰ The Council dismissed the complaint and also ordered the complainant to pay costs on behalf of the respondent. A prominent gay rights organisation at the time, *Companions on a Journey* (COJ), had appeared as complainant.

In 2010, the *Daily Mirror*, a widely read English language daily in Sri Lanka, ran a scandalised editorial titled, *A tide against the natural...*³¹ describing a conspiracy by “undesirable elements” to “piggy back on the political dialogue on human rights”. The editorial highlighted that “controversial moves are being made by groups within the Colombo social circles along with a few diplomats and leading civil society figures to create an impression that heterosexuality is an out-dated, obsolete disposition. Most of these individuals one-time heterosexuals turn gays. [sic]” In 2011, the *Rivira* newspaper (a Sinhala language daily) ran a series of “scathing”³² exposés on the HIV prevention work of COJ, which had involved the distribution of condoms and lubricant sachets in specific public spaces pre-identified as “cruising spots”. Although COJ had been working under the auspices of a GFATM-funded³³ project implemented through the Ministry of Health, as a response to the pushback generated by the *Rivira* articles, the office of the president called for an investigation, intensifying “a sense of fear

28 Ibid.

29 PlanetOut. (2000, 5 June). Sri Lankan’s Media Complaint Backfires. *Glapn*. www.glapn.org/sodomylaws/world/sri_lanka/slnews006.htm

30 Amnesty International. (2008). *Love, Hate and the Law: Decriminalizing Homosexuality*. London: Amnesty International Publications, 17. d21zrvtkxttd6ae.cloudfront.net/public/uploads/2016/11/12125724/Love-hate-and-the-low.-Decriminalizing-homosexuality.pdf

31 Liyanaarachchi, C. (2010, 29 July). A tide against the natural... *Daily Mirror*. <https://thesakhicollaboration.wordpress.com/2010/08/11/bent-reasoning/>

32 Sarma, N., & Billimoria, H. (2013). *Strengthening the Role of Media Advocacy in Sri Lanka through a Critical Analysis of News Media Coverage*. Bangkok: UNDP, 13. www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/stigma-discrimination-and-key-affected-populations-strengtheni.html

33 funded by the Global Fund to fight AIDS, Tuberculosis and Malaria

and discrimination... and forcing both the closure and/or suspension of several NGOs,”³⁴ including, by some accounts, COJ itself.

As *Lakbima News*, a Sinhala language newspaper, reported, the *Rivira* journalist who wrote the series had “hoodwinked a counselling officer with a concocted personal tale. He befriended the counsellor, took pictures of [him] and then abused his trust by publishing the pictures without his consent.”³⁵ The article also reported that the victimised officer had lost his place of accommodation as a direct result of the *Rivira* episode: “I have been kicked out of my boarding place. My landlord saw my pictures which appeared along with the story in the newspaper. He showed me the newspaper and asked me to vacate my room.”³⁶

Post-war context

The climate of stigma and discrimination faced by non-heterosexual and non-cisgender people is also impacted by the militarisation seen in Sri Lankan society through three decades of war that ended in 2009.

In 2016, a group of people identifying themselves “as lesbian, gay, bisexual, transgender, intersex, and queer (LGBTQ), as family members and friends of LGBTQ people, and as individuals/communities coming forward in support of Sri Lankans who wish to acknowledge and break the silence surrounding a people whose rights have been denied through the mechanisms and institutional structures of a democratic state”, made a submission to the Zonal Task Force and the Consultation Task Force for Reconciliation Mechanisms,³⁷ in which they wrote:

“The war created a climate of insecurity which was attributable in part to decades of militarisation and the resulting breakdown of democratic norms and the rule of law. Militarisation creates and boosts very stark models of masculinity and femininity and forces people into adopting extreme binary gender-conforming roles. This is particularly limiting for people who do not conform to such gender roles. In addition, militarisation paves the way for these rigid gender norms to be connected to reproductive sexuality (where sexuality is confined to the logic of reproduction – within marriage and the

34 Ibid.

35 Jayasuriya, R. (2011, 6 November). Disgraceful media bigots hound a gay man. *Lakbima News*.

36 Ibid.

37 Women and Media Collective, (2016, 25 August). Submission on LGBTIQ persons and transitional justice mechanisms. *Groundviews*. groundviews.org/2016/08/25/submission-on-lgbtqi-persons-and-transitional-justice-mechanisms/

monogamous heteronormative family unit) and its role in the rhetoric of ethno-nationalism. The difficulty in asserting sexual and gender diversity and expression that differ from the prescribed norms was evident during the war and continues today.”³⁸

During wartime (and in the years following), LGBTQ Sri Lankans were made particularly vulnerable by heightened security in public spaces. Gender non-conforming people were exposed to risk at checkpoints, for instance, when their chosen attire or other gender expressions did not reflect the stated gender in their identification documents. Such encounters often resulted in harassment and intimidation.³⁹ Government scrutiny of LGBTQ groups and organisations, including requirements to submit “work plans to the government”,⁴⁰ was another way in which LGBTQ people were placed under surveillance by Sri Lanka’s state security.

38 Ibid.

39 Ibid.

40 Ibid.

Section Three

Sexuality and the online space in Sri Lanka

In this section, the findings of the study are organised along the three main framings of use, access and safety. While the authors analysed the data, a number of subthemes emerged and each is discussed in turn and related to one of the framings. The implications of the study's findings on Sri Lanka's legal and policy framework (including the human rights analysis) will be discussed in the next section. It must be noted that although the discussion deploys the framings of use, access and safety, there is significant overlap between those framings in terms of the issues highlighted.



Figure 05: devices used by survey respondents

The majority of the survey respondents stated that they use a combination of devices to access the internet. Over 50% selected “My own tablet/smart phone, work laptop/desktop” or “My own tablet/smart phone, My own laptop/desktop”. This may not indicate the socio economic status of the survey participants; however is an indication of increased levels of access.

Use: Access to information

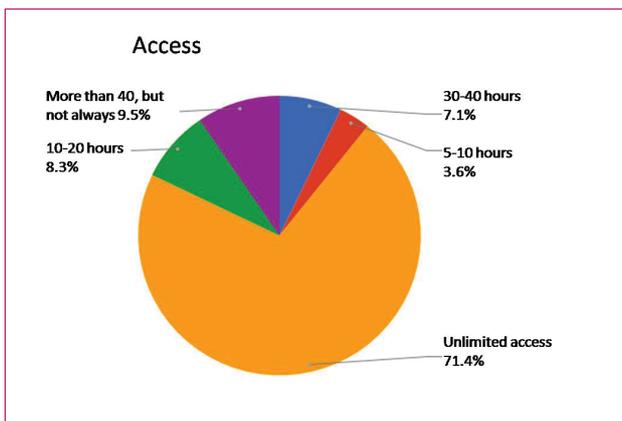


Figure 06: respondent's access to the internet in terms of hours

The internet has significantly improved the ability of LGBTQ Sri Lankans to access vital information. Previously, the demure silence surrounding topics of sexuality in Sri Lanka meant that LGBTQ people had few sources of information on their own sexual orientation or gender identity. They struggled to understand their place in a social narrative that assumes all people to be heterosexual and cisgender. Access to accurate information in such a context can greatly assist them in coming to terms with their sexuality and gender identity.

In interviews with LGBTQ individuals, it was recalled how either they themselves or others they knew had, having grown up in a time before the internet, been completely unaware of homosexuality as a “phenomenon” or a “concept”. Mahela,⁴¹ a gay man interviewed individually, recalled how he had believed for a long time that his same-sex sexual attraction was unique, and that he was the “only person in the world” to be going through the experience.⁴² It was only after

41 All names have been changed, unless context provides otherwise.

42 Interview with Mahela.

he stumbled across the entry for “homosexuality” in an encyclopedia at home, at the age of 20 in the year 1990, and proceeded to read further on the subject at the British Council’s library in Colombo, that he came to appreciate the “commonness” of his nature. He says the discovery of this information was the first step in a process of self-acceptance for him. It highlights, for our purposes, the importance of reliable information for people who struggle to understand their sexual orientation or gender identity. Mahela also recounts how the indexing system of the library he visited played a role in his discovery of further information on homosexuality, he could manually search for books under categories like “Gay”, “Gay Autobiographies”, etc.

In contrast, Mahela noted how younger LGBTQ Sri Lankans who had grown up with some access to the internet are less likely to be unaware of homosexuality or transgenerness. While this may be true, it must be emphasised that knowledge of the phenomena does not mean automatic self-acceptance; however, the broader accessibility of the knowledge that homosexuality and transgenerness is common all over the world, means that younger LGBTQ Sri Lankans are less likely to grow up believing they are alone. The internet pierces through powerful assertions of heteronormativity and cisnormativity in Sri Lanka, and provides LGBTQ Sri Lankans with various types of vital information, including scientific advances in understanding human sexuality, observations of sexual diversity in other species, as well as the social transformations taking place elsewhere in the world in terms of sexual orientation and gender identity. Moreover, access to information on the Internet is hugely simplified through the function of search engines, which index web-content and produce suggestions to a searched query, ranked according to relevance. In this sense, search engines are a parallel to Mahela’s experience with the library’s cataloguing system; younger LGBTQ people benefit from the ready accessibility of information about sexual orientation through search engines.

However, the arrival of the internet in Sri Lanka has not *normalised* alternative sexual orientations or gender identities in the country. Media reports and independent research show this is clearly not the case.⁴³ The internet is generally a ready source of information for those who seek it, but many who perceive alternative sexual orientations and gender identities as deviant or unacceptable do not ordinarily seek out information contradicting those views.

43 See previous *Media* section in this report.

Non-recognition of alternative orientations and identities creates obstacles to LGBTQ Sri Lankans’ ability to access information. For example, where a library does not include cataloguing based on topics related to these matters, individuals seeking information on such topics are unable to use that library conveniently. In this context the internet has transformed the information landscape available to LGBTQ Sri Lankans. A clear majority of the survey respondents indicated their use of the internet to access “LGBTQ related news from around the world”, “LGBTQ themed art (movies, TV shows, stories, etc.)”, “Legal and policy information related LGBTQ issues in Sri Lanka”, “LGBTQ organisations”, “Sexually transmitted infections”, and “Safe sex practices.”

“Have you ever accessed information relating to any of the following themes on the internet? Select all that apply.”		
LGBT related news from around the world	79	93%
LGBT themed art (movies, TV shows, stories, etc.)	67	79%
Legal and policy information related LGBT issues in Sri Lanka	68	80%
LGBT organisations	62	73%
Sexually transmitted infections	57	67%
Safe sex practices	55	65%

Table 01: Accessing information on the internet

However, despite bringing about an “information revolution”, the internet is seriously compromised by a large amount of unreliable, unverified or patently falsified information. This raises issues of information accuracy and media literacy observed at different levels even within the sample group surveyed for this study. For instance, asked to describe the steps they take to ensure that “the information [they] access on the internet is accurate”, the majority of respondents indicated they would either read multiple sources to compare information, or only accept information from “reputed sources”, with some relying on a combination of both. Worryingly, about 17% of respondents indicated that they took no steps at all. Some mentioned checking with friends and even directly contacting relevant persons to seek verification. While some respondents mentioned preferring “official” sources, at least one said they would prefer to use government resources as a source of accurate information.

Most platforms on the internet cater predominantly to an English-reading audience, with most sources of LGBTQ-related information being foreign to Sri Lanka. There is a clear need for more resources in Sinhala and Tamil (Sri Lanka’s two main vernacular languages), as well as resources that specifically cater to Sri Lankan audiences – at least in essential areas such as healthcare.

Despite the high preference for “official” sources of information, few such sources seem to exist, especially catering to a Sri Lankan LGBTQ audience. The National STD/AIDS Control Programme (NSACP), the national body in Sri Lanka “responsible for planning and implementing STI/HIV prevention and control activities”,⁴⁴ is the only online source this study could identify as a government source that explicitly recognised LGBTQ issues; however the quality of discussion and presentation in the website leaves much to be desired.

44 www.aidscontrol.gov.lk/web/index.php/en/about-us/overview-history

A review of the NSACP website

It is beyond the scope of this study to offer a comprehensive review of the publications available on the NSACP website; however, some preliminary issues are flagged from an access-to-information perspective.

The website provides many different types of resources – spanning a spectrum from informational to administrative – all under the same, first-level category, “Resources”. These resources are further organised under a second level of categorisation that focuses on the formats of the featured document, differentiating “Publications”, “Circulars”, “Slides”, “Public Q&A”, etc. Under the sub-category, “Publications”, annual reports, administrative reports, research publications etc. are presented side-by-side with guidelines for male-condom demonstrations and a “Hospital infection control manual”. A key document relevant to LGBTQ communities is found in this section, labelled, “No One Left Behind”,¹ which provides a useful and accessible overview of concepts relating to alternative sexual orientation and sexual identities (SOGIs). However, the document’s label lacks context at first glance and is indistinguishable from others featured in the same section.

Under the sub-category, “Slides”, a number of PowerPoint presentations and PDFs are available; the links are preceded by the note, “It is very important to customize [sic] and update your presentations according to the target audience. You can make use of these slides to create your own style of presentations,”² giving the strong impression that the target audience of the resources section is not the general public. Based on the labelling of the documents available, the documents most relevant to a SOGI topic are two identical

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- 1 Vidanapathirana, J. et al. (2016). *No One Left Behind – Understanding Key populations: Achieving Triple Zeros by 2030*. Nugegoda: National STD/AIDS Control Programme & United Nations Population Fund. www.aidsdatahub.org/no-one-left-behind-understanding-key-populations-achieving-triple-zeros-2030-vidanapathirana-jh
 - 2 www.aidscontrol.gov.lk/web/index.php/en/resources/slides

documents titled, “Men Sex with Men [sic]”,³ each offered in one of the two vernaculars. The sub-category “Public Q&A” focuses exclusively on issues surrounding STD awareness, and does not offer specific acknowledgement or reassurances to people with alternative SOGIs, despite the many social factors deterring their access to sexual health services.

It becomes clear, as one observes the structure and presentation of the entire “Resources” section, that even where some state-sanctioned information for LGBTQ Sri Lankans is available online, that information is not being disseminated to members of the community (or even the general public) in any deliberate manner. Documents relevant to SOGI issues are indistinguishable from those that are not: none of the documents are accompanied by explanatory notes, abstracts, preview images, or keywords. Even though some documents do exist on the website on LGBTQ issues, they are unreachable through the website’s own search engine. Not only should all documents be search-engine optimised, such optimisation should also ensure that documents in all three languages are accessible through in-site search functions, and in a way that is mindful of the difficulties in typing vernacular languages. The categorisation of resources would do well to abandon its focus on format to embrace a more substantive, thematic focus, organised and presented in a manner where those who need the information the most may access it with minimum effort. It would also be appropriate to ensure that the presentation of information does not perpetuate stigmatisation or discrimination (e.g. highlighting the sexual act in “Men Sex with Men”, for instance, instead of a more comprehensive focus on sexual orientation and gender identity).

3 Ibid.

It is no coincidence that the only official resource from the state recognising and discussing LGBTQ issues in Sri Lanka is the NSACP. The government has long viewed LGBTQ individuals from the limited perspectives of the public health framework, which has cemented layers of stigma and discrimination, especially through the close association of LGBTQ Sri Lankans with HIV and other sexually transmitted infections.

Besides the NSACP, a number of unofficial yet Sri Lanka-specific sources of information, such as (for example) the Sakhi Collaboration, “Accept – Sri Lanka”, and Equal Ground, are available online. While Sakhi and Accept operate on Facebook, Equal Ground maintains its own website in addition to its social media presence. Sakhi operates through a personal profile on Facebook, sharing informative posters on LGBTQ issues, circulating local and international news on the topic, critiquing mainstream media handling of LGBTQ-related news, as well as creating informational content, such as a condom-use demonstration through photos offered in all three⁴⁵ languages. Unlike Sakhi, Accept operates through a “page”, allowing any Facebook user to view its content without sharing their own profiles’ content with the platform. Its main project seems to be an outreach campaign, featuring LGBTQ-supportive quotes from well-known Sri Lankan personalities, such as actors, novelists and human rights activists. The page also features “memes” incorporating Sri Lankan current affairs, designed in a manner to promote LGBTQ rights and to challenge established notions of “cultural” values in the country. The page also circulates local and international news postings. Unlike Sakhi and Accept, which are both operated by voluntary “admins” working in their personal capacities, Equal Ground’s platforms are run by a non-governmental organisation by the same name, featuring a number of research publications, periodicals, and advocacy materials, most of it being available in all three languages. A key limitation of the website is that most documents may only be opened through a third-party platform (www.issuu.com), on which both navigation and downloading of documents are significantly restricted.

Use: Self-expression and identity building

The internet constitutes an unprecedented platform for self-expression and identity building. More people than ever before are afforded the ability to express themselves, to share ideas, opinions and narratives, and to do so through a mixture of mediums, including

45 i.e., English, Tamil & Sinhalese

words, sounds, images etc. Previous mediums of communication, such as television, are considered “vertical”, i.e. transmitting from one person to many others. By contrast, “the use of the internet ... is ... horizontal ... from *many to many*.”⁴⁶ Older communications are also “oppositional”, involving a “passive mode of reception”,⁴⁷ whereas internet communications depend on the will of each individual that participates in the conversation.

The qualities of the internet mentioned above benefit all people. Yet, to LGBTQ Sri Lankans they are especially empowering. In a context where LGBTQ Sri Lankans are silenced and excluded from public discourses, and where stigma and discrimination against them are perpetuated through freely circulated and harmful stereotypes, misconceptions and myths, the Internet affords them the ability to interrogate and counter prevailing narratives, and to work to expand the public’s understanding of Sri Lanka’s sexual and gender diversity.

When a group of LGBTQ Sri Lankans and their allies wrote to the Public Representations Committee on Constitutional Reforms (PRC), the full text of their submissions was subsequently published on *Groundviews*, an award winning and widely read citizens’ journalism platform operating online. In their submission, the signatories identified themselves as “a community of Sri Lankans who wish to *acknowledge and break the silence* surrounding a people whose rights have been denied through the mechanisms and institutional structures of a democratic state.”⁴⁸

In addition to disrupting this imposed silence, online self-expressions by LGBTQ Sri Lankans also have the ability, merely by existing, to broaden the space for (and participation of) LGBTQ voices in public discourses. As signatories to another, similar submission to the PRC asserted, “we come with the authority of our own lived realities as [LGBTQ] persons,

46 Tubella, I. (2005). Television and Internet in the construction of Identity. In M. Castells and G. Cardoso, G (Eds.), *The Network Society From Knowledge to Policy*. Washington DC: Johns Hopkins Centre for Transatlantic Relations.

La Rue, F. (2011). Op. cit., 13: “The Internet should ... be seen as a complementary medium to mass media that has been based on a one-way transmission of information.”

47 Ibid. text accompanying note 3.

48 Groundviews. (2016, 28 March). A Meaningful Right to Equality and Non-Discrimination: Recognising Sexual and Gender Identities. Groundviews. groundviews.org/2016/03/28/a-meaningful-right-to-equality-and-non-discrimination-recognising-sexual-and-gender-identities/. Emphasis added.

with the hope that speaking our truth to power will give way to the creation of a space where others like us can follow suit.”⁴⁹

Social media is a crucial development in this function of the Internet. Mitya, a trans woman participating in the focus group discussion, described how she uses her Instagram account to express what being a trans woman means to her. She uses images of herself to spread the idea that “#transisbeautiful”, noting that when more people see more images of her expressing her trans identity, this increases the impact she can have on normalising trans people in society and showcasing how they are beautiful, too. According to her, while there needs to be a balance between posting naked photos and ones of being fully clothed, she believes that “uncovering” her body and presenting her nudity is an important part of her message of de-stigmatising trans bodies, which she does not shy away from. With nearly five thousand followers on Instagram from all over the world, her message is not limited to changing Sri Lankan attitudes, but those of the whole world. On the other hand, Sachintha, a gay man participating in the FGD, also uses social media, especially Facebook, to publicly share LGBTQ-related content and engage in conversations on LGBTQ rights in Sri Lanka. However, he was careful not to overstate his expectations: “I don’t expect a huge revolution to happen from sharing such content; I don’t have some grand, conscious intention or motivation behind sharing publicly; I do it, and sometimes there could be some small benefit coming out of someone else seeing that post, or engaging in a conversation about it.”

However, though the Internet has great potential in empowering LGBTQ self-expression and social engagement, that potential is limited by how many LGBTQ Sri Lankans censor themselves online and on social media in various ways. Nearly 46% of those responding to the survey indicated they share LGBTQ-related content “publicly” on their social media profiles. Not all respondents are as forthright in their sexual or gender expressions on social media: 18% indicated they share LGBTQ-related content under limited visibility settings, limiting visibility to either “friends” or specific friend “circles” or “lists”; still another 13% of respondents indicated that, though they rarely share such content on their own profile feeds, they do share the same within specific groups; 22% said they would “never share LGBTQ-related content” on their own profiles.

49 Queerrightslka. (2016, 14 March). On the Constitutional Rights of LGBTQIA Individuals. queerrightslka.wordpress.com/2016/03/14/on-the-constitutional-rights-of-lgbtqiqa-individuals/

I share LGBT-related content publicly on my profile feed (e.g. wall, timeline).	39	46%
I share LGBT-related content on my profile feed, but I limit visibility to my “friends”, or specific “friend” circles/lists.	15	18%
I never share LGBT-related content on my own profile feed.	19	22%
I share LGBT-related content within specific groups, but rarely on my own profile feed.	11	13%

Table 02: Sharing information on social media

Posts on one’s own profile or on groups is not the only way a person may speak out about SOGI issues on social media. Another important site of social media engagement is the comments sections under individual posts. There, a user has much less control over who sees and reacts to what they share on social media.

Facebook, for example, allows users to control the privacy of their own posts, but the same level of control is not available for one’s comments and reactions under someone else’s post. Instead, Facebook actively broadcasts comments and reactions to an audience beyond those who are immediately engaged in the conversation, by pulling the comment or reaction out of its original context and featuring it as a snippet in others’ news-feeds. Since only the specific comment or reaction of a larger conversation is featured in such a manner, users coming across the comment on their news-feeds are required to click and expand the entire conversation to understand the full context. Twitter, on the other hand, does not incorporate a comments section at all; instead, those who wish to respond to an individual post (aka a “tweet”) must create their own post as a reply, causing an automatic link to the original post, and thus creating a “conversation” consisting of multiple, individual posts. Often, when a user makes a reply to a “trending” post, their followers are notified of this act in a “Digest” of trending activity. Instagram also features a similar, Digest-like page; however, a user must actively navigate to this page if they wish to view other users’ activity. By contrast, on Facebook, such updates appear on the main page of the platform, and on Twitter, the updates are “tailored” for individual users and delivered to them as generic notifications.

Thus, LGBTQ Sri Lankans are less likely to comment on and engage with others’ posts if they feel their words will be broadcast to more

people than they intend. Indeed, while 31% of respondents stated they would mention their sexual orientation or gender identity in posts and comments in any situation they felt like, an equal number of respondents said they would “never” mention their SOGI in posts and comments. Of the respondents, 38% would only mention their SOGI “in certain limited circumstances”, whereas 4% said they maintain a SOGI that is “different to what [they] privately identify with”. All responses were in relation to posts and comments made on “real” profiles (i.e. profiles featuring respondents’ “real”⁵⁰ names and/or images of themselves).

I would mention my sexual orientation and/or gender identity in my social media posts and/or comments...		
... in any situation that I feel like mentioning it in	26	31%
... in certain limited circumstances	32	38%
I would never mention my sexual orientation and/or gender identity in my social media posts and/or comments	24	28%
I maintain a sexual orientation and/or gender identity in my social media posts and comments that is different to what I privately identify with	3	4%

Table 03: mentioning of SOGI online

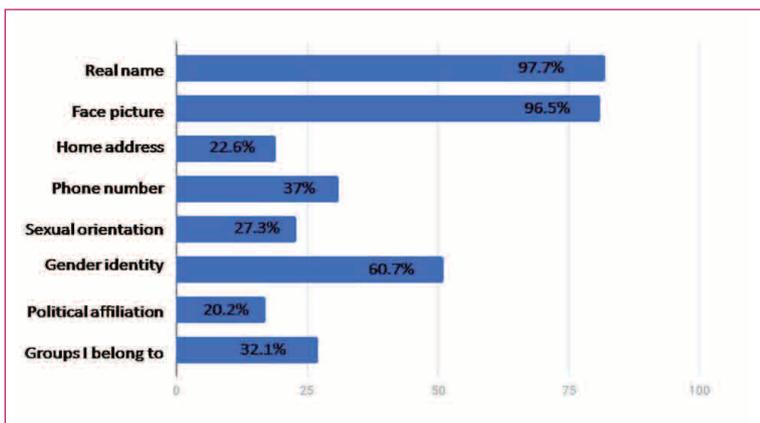


Figure 07: Personal details shared publicly on social media profile

50 In this study, “real name” was defined as “how you introduce yourself to most people” and distinguished from a legal name, which was defined as “your given name in the birth certificate and other documents”.

Similarly, the number of respondents who include their sexual orientation in their public profiles is relatively low; more respondents share their phone number publicly than share their sexual orientation. While a considerable number of respondents share their gender identity, the lack of sufficient participation of trans Sri Lankans in the survey makes it impossible to draw conclusions on gender expression based on the data.

Asked whether they limit their social media participation (posts and comments) fearing a number of specified factors, the respondents reported as follows:

In terms of the social media profiles that include your real name and/or images of yourself, do you limit your participation on social media (posts and comments) fearing any of the following factors? Please choose three most relevant choices.		
I am afraid of other people finding out about my sexual orientation or gender identity	22	26%
I am afraid of what other people’s comments would be	16	19%
I am not interested in displaying my sexual orientation or gender identity	29	34%
I am not sure whether it is legal to post such topics	5	6%
I am afraid it might result in violence against me in the physical world	15	18%
I am afraid the government might find out about my sexual orientation or gender identity	5	64%
I am afraid it might affect my job	15	18%
I don’t think anybody should talk about their sexuality and gender issues on social media platforms	5	6%

Table 04: including real name / images online

Eight of the respondents, however, felt that the question did not apply to them. Two others opted to provide their own answers, and stated, “I am worried about the stigma my family may face if I am open about my sexuality”, and “I’m worried about what my colleagues’, friends’, and relatives’ comments would be,” respectively. One respondent also stated, simply, that, “I participate where I feel okay to participate in ‘those’ discussions.”

Self-censorship extends to the creation and use of anonymous profiles. An important phenomenon among LGBTQ Sri Lankans is the widespread use of anonymous and pseudonymous profiles to navigate stigma and discrimination on social media.

TOTAL = 85	All of my profiles on the same platform feature my real name and/or images of my face.	I have many profiles; only one or some of my profiles feature my real name and/or images of my face.	I only have one profile per platform. It features my real name and/or images of my face.	I only have one profile per platform. But it does not include my real name and/or images of myself.	I don't have any profiles on any social media platform.
I have more than one profile, but not for any reason related to my SOGI	7	6	0	0	0
I have more than one profile, for reasons related to my sexual orientation or gender identity.	7	11	0	0	0
I don't have more than one profile on any social media platform.	0	0	54	0	0

Table 05: number of profiles per individual online

From an analysis of the survey data, it is clear that all respondents had at least one profile with their “real” name and images of themselves. If any of them had profiles without their real name or face pictures, such profiles were always in addition to a “real” profile. Nearly a quarter of the respondents indicated they have more than one profile on their preferred social media platform, for a reason related to their SOGI. This is 18 out of 85 eligible responses. Of them, 7 respondents said all

their profiles on the same platform featured either their real name or portrait, or both. The other 11 indicated that, “only one or some ... profiles feature my real name and/or images of my face”. Another 15% of the respondents said they have more than one profile, but not for any reason related to their sexual orientation or gender identity. The majority, 64% (54) of the respondents, only had one profile on their preferred social media platform, which included their real name and/or images of their face.

Because my sexual orientation is considered to be illegal.	16	19%
Because I am afraid of my family finding out about my sexual orientation or gender identity.	14	16%
Because I am afraid of my friends finding out about my sexual orientation or gender identity.	14	16%
Because I am afraid of my employer or work colleagues finding out about my sexual orientation or gender identity.	13	15%
I do not have any profiles that do not include my real name and images of myself.	47	55%

Table 06: use of profiles that don't feature their real name or image

Respondents could select more than one standard answer, as well as provide their unique answers. One such unique response asserted, “It is almost impossible to find people for sexual encounters in using real profile.” Another user-typed answer stated, “to be outspoken about things (e.g., to post content such as a very bad review on a restaurant, a service provider etc.)” Two respondents also stated, “for stalking purposes,” while one of them also added, “spying”

There were a number of difficulties in framing the questions on “fake” and “real” profiles, though those labels were frequently heard during the research interviews across a spectrum, from LGBTQ activists to law enforcement officials. The main difficulty was in how different individuals had different criteria for what amounted to a “fake profile”. The most common criterion was whether the profile was under the person’s real name or not, but this is clearly inadequate from the perspective of LGBTQ issues in Sri Lanka, where some LGBTQ people have adopted names for themselves that are different to what was given them at birth. To such individuals, the newer name was more

“real” than the older one. This is especially true of trans Sri Lankans. On the other hand, some discussants at the focus group discussion and individual interviews (all of them, incidentally, gay men) said they had multiple profiles under their given names and with images of their face, with one profile maintaining a heterosexual performance to friends and relatives who did not know the person’s true sexual orientation, while the other was to maintain existing friendships as well as find new friendships within the LGBTQ community. For such individuals, the “fake” profile was the heterosexual one. However, to those who maintained an anonymous, or pseudonymous profile without images of their face, their “straight” profile was the real profile, usually because it was the only profile with their name, their face picture, and their friends and relatives from the physical world.

For these reasons, in the section of the survey comparing “real” profiles with “fake” profiles, the first question was a statement to either agree with or disagree with: “My real name (how I introduce myself to most people) is the same as my legal name (the given name in the birth certificate, etc.),” with the implication that all other questions referring to the “real” name relied on this definition (how one introduces themselves to most people). All but five respondents said their real name was the same as their legal name. Since the concepts of “real name” and “legal name” were most relevant to the trans community, responses were also cross-tabulated with the gender identification of respondents: four of the five respondents who indicated that their real name was different from their legal name were “Male,” whereas one respondent was “Trans MTF.” The gender identifications of all other respondents (i.e. those who said their real name and legal name were the same) are disaggregated as follows: female (30), male (45), gender non-identifying (2), trans MTF (1), and trans FTM (1).

Rajesh is a gay man who participated in the focus group discussion. Being Tamil, he has a relatively longer and more formal given name that he does not use in his everyday dealings. He said, “On Facebook, I have two profiles. One is under my given name, which is where I add my family members and family friends; but all my friends from the community associate me through a second profile which is under the shorter name that everybody knows me by. If someone from my family sends me a request on the second profile, I quickly add them from the other profile where all the family members and family friends are.”

Similarly, Manju, a trans man participating in the focus group discussion, recounted how he has three profiles, each created for a specific purpose, and each of them featuring his face and the name he adopted after his physical transition. He explained the purpose of each as follows: “One profile is to engage and link up with members of the community; one profile is to network and remain in touch with different activists and organisers I have met through attending international conferences on LGBTQ issues. The reason I separate these two purposes is because I need to use English with my international colleagues, but I want to connect with my community through Sinhala. My third profile is for a completely different reason: I engage in some personal animal welfare work, and I promote animal welfare issues there, and the profile is very useful for that work. Because the animal welfare audience is different from the LGBTQ community, I don’t want posts I would make about LGBTQ issues to have an effect on my ability to talk about animal issues, or how what I say is received by that audience.”

It was observed during interviews as well as the focus group discussion, that many individuals regarded the notion of “fake profiles” with either disapproval or at least disdain. In an interview with an officer of the Cyber Crimes Unit, when asked about the kinds of situations in which the police carry out surveillance on social media profiles, the most immediate answer was “fake profiles”. This was explicitly qualified when he added that the police do not crack down on fake profiles in general, but only on those profiles regarding which complaints had been made for “harassment”, “extortion”, etc. Krishna, a gay man participating in the FGD argued at some length that, “Fake profiles are not progressive.” Similarly, in an individual interview with David, who is a gay man, reference was made to how fake profiles were usually a double-edged sword. According to him, anonymous profiles allow individuals to express themselves without any accountability, and sometimes this can have a negative reflection on the “movement” for LGBTQ rights in Sri Lanka. He also mentioned how he was part of an online LGBTQ community initiative that actively cracked down on “fake profiles” that posted nude content publicly on Facebook, especially when such profiles interacted with their initiative’s dedicated profile. The measures taken against such profiles included, first, engaging with them one-on-one through the Facebook profile to encourage them to stop posting such content and, second, to report their content and/or profiles to Facebook’s community standards mechanism.

Use: Forming and maintaining relationships

Meeting each other has always been difficult for Sri Lankan LGBTQ people, and continues to be so even today. Rampant stigma and discrimination, and the associated fears of exposure, exclusion, and harm, deter many LGBTQ Sri Lankans from publicly seeking out the company and friendship of others who think and feel like them. The lack of tolerant, safe spaces to meet and socialise with each other exacerbates this issue; public spaces are heavily policed for “decency” in Sri Lanka, even for heterosexual couples,⁵¹ but unlike for them, people perceived to be “homosexual” face the possibility of arrest, or at least extortion under threat of arrest. Such prohibitive realities force many LGBTQ people to navigate public spaces with extreme care, exerting an adverse effect on their willingness and ability to seek out friendships and relationships with other members of the LGBTQ community.

Before the Internet became accessible for general consumption in 1995, LGBTQ Sri Lankans arguably experienced these constraints more intensely than they do now.⁵² Through the focus group discussion, as well as individual interviews, it appeared that – beyond serendipity – there were not many ways LGBTQ people could meet each other, especially not in the way heterosexual Sri Lankans were able to.

Cruising is one way gay and bisexual men met each other,⁵³ but such encounters generally tended to be hurried, spontaneous, anonymous, with the main (if not the only) purpose of the encounter being the performance of a sexual act.⁵⁴ Drop-in centres and social gatherings organised by LGBTQ advocacy groups, including lesbian support groups,⁵⁵ were another way LGBTQ Sri Lankans met each other. Luke, a long-time member of the now-defunct *Companions on a Journey* (COJ), speaking at the focus group discussion, recounted how there were monthly community meetings, especially for newcomers, held every

51 See, for instance, Piyumi Fonseka, P. (2016, 06 March). Occupy the Square against removal of couple. *Daily Mirror*. www.dailymirror.lk/106449/-Occupy-the-Square-against-removal-of-couple and (2010, 10 June). Sri Lanka arrests kissing couples. *The Courier Mail*. www.couriermail.com.au/news/breaking-news/sri-lanka-arrests-kissing-couples/news-story/c6aec24aed22e6924834b02833d4469e

52 Interview with Mahela.

53 Interview with David. Cruising is the practice of loitering in public spaces, such as parks, shopping malls, or public toilets, for the purpose of meeting another cruiser or passerby who may be interested in a casual sexual encounter.

54 No negative value judgment of quick, anonymous sexual encounters is intended; the only intended implication is that such encounters were not conducive to the formation of long-lasting friendships and other relationships.

55 Interview with Maryanne.

Poya Day (a public holiday in Sri Lanka on account of a full moon). Even though the meetings were held for “newcomers”, older members were also “so excited” to meet them, and would attend the meetings, too – sometimes to the point of straining the organisation’s capacity to host the events. Both requests to be invited and the invitations themselves were communicated via the general post. Luke described the process in some detail: “Those days, it wasn’t like now, it wasn’t so easy to meet another gay man, so there was a kind of desperation. We used to promote our organisation, different members appeared a few times on TV and radio to talk about the organisation, and this would set off many letters, people secretly reaching out to us, asking if there are any events they could attend. We kept a list of addresses and always informed them of the next date and venue of the social gathering through letters. We didn’t use letter-heads or official envelopes, the letters were always plain, made to look like personal letters from friends, simply giving the details of a time and place to meet up, the way any letter from a friend could those days. There were so many who came to those social gatherings, more than a hundred at a time even, and we could hardly manage the space.”

The arrival of the Internet allowed members of the community to form and sustain relationships in ways that were not possible until then. According to the focus group discussion, general chat rooms saw their use by gay and bisexual men to meet each other as early as the mid 1990s. Spanning international brands such as *Yahoo!* as much as local brands like *kaputa.com*, these chat rooms allowed individuals to sign in anonymously with a username and engage in conversations carried out by all members of the room, or to initiate conversations between individual users privately. On *Kaputa*, users also had the option of creating a temporary, single-use username, which assured optimum anonymity. Around this time, a chat room service specifically designed for the Sri Lankan LGBTQ community was launched, known as *Sri Connect*. Though the service was considered successful and was well-received by members of the community, it appears the platform eventually ran into problems with the law and was discontinued. According to Deshan, a gay man participating in the FGD, another, more recent way to meet each other was “chain SMS meetups”, where one person would initiate an SMS specifying a location, usually a public space, with a time to meet up, and this SMS would be forwarded by recipients to other recipients.

The ability to *maintain* friendships and relationships is just as important as forming them, and “keeping in touch”⁵⁶ is an important part of that process. Before the internet, methods of communication in Sri Lanka presented many obstacles to maintaining a new friendship between two or more LGBTQ persons. Methods such as “snail mail”, fixed landlines, mobile phones, and even the rare email account, came with technical and economic limitations that added to the reality of stigma and discrimination to dissuade LGBTQ people from relying on them. Mobile phones were prohibitively expensive;⁵⁷ fixed landlines had months-long (if not years-long) waiting lists. Email addresses were available usually through one’s place of employment. The most commonly available means of communication, i.e. posted letters and phone calls to land lines, were almost always shared with family members or other housemates, since such services were provided at the level of the household, and not at the level of the individual. This meant that LGBTQ people, who generally fear exposure especially to family members, were deterred from relying on such methods of communication to maintain friendships and relationships with other LGBTQ people because of privacy concerns.

Today, online platforms that facilitate the formation and sustenance of relationships constitute a diverse landscape. From social media accounts to online personal ads, many people use the internet as a means to meeting new people, particularly for physical and emotional relationships. In Sri Lanka, and within the LGBTQ community, social media platforms such as Facebook loom large. The ability to share content and socialise online, the ability to carry on private conversations away from the wider online community, the ease with which new connections can be made, and the considerably large network of anonymous LGBTQ profiles that exist on Facebook, mean that such social media platforms provide a convenient and (mostly) safe alternative to the risks of socialising and seeking partners in the physical world, which is remarkably hostile to sexuality and gender minorities.

In addition to social media platforms, however, applications specifically designed for “dating” and “hooking up” have also emerged, combining geo-positioning technology with photo-sharing and instant messaging technologies, allowing individuals to meet each other based on a

56 Perhaps relevantly, “keep in touch” (KIT) was the brand slogan for what became the fastest-growing prepaid mobile phone service in the early 2000s.

57 Gunawardane, N., & Wattegama, C. (2001). Internet in Sri Lanka: The First Five Years. In S. Ramanathan & J. Becker (Eds.), *Internet in Asia*. Singapore: Asian Media Information and Communication Centre

combination of their preferences and their physical proximity to each other. While most such platforms exist for people of all sexual orientations and gender identities, platforms specifically targeting LGBTQ people also exist. These platforms, especially in a context where LGBTQ Sri Lankans do not have access to public spaces in the physical world as social and sexual beings, have proved to be useful in multiple ways.

Thinking about dating and hook-up platforms (Tinder etc.), please select all the statements relevant to you.	Male	Female	Trans M to F	Trans F to M	Non-identifying	Total
I have found friends on such platforms.	38	5	2	0	1	46
I have found partners for sexual encounters on such platforms.	36	4	0	0	1	40
I am in or have had a romantic relationship with someone I met on such a platform.	18	4	1	0	1	21
I left those platforms because I did not find them useful.	9	7	0	0	0	13
I have never been on such platforms.	4	11	0	1	1	13
I have attended events promoted/communicated on such platforms.	8	1	0	0	1	9
I promote events organised by me or someone I know through such platforms.	5	1	1	0	0	6
I find clients for commercial sex work on such platforms.	1	1	0	0	0	2

Table 07: online dating platforms

Use: Community organising

The internet also has great potential in serving community organising efforts, especially in a context where a movement exists for the repeal of persecutory laws and other policy reforms. Social media platforms and instant messaging services, for instance, have proved useful in community outreach efforts by LGBTQ activists. Many such activists participating in the FGD indicated the use of such platforms to spread awareness on various issues, as well as to provide vital information to members of the community.

Kavinga, a gay man who is active in the field of HIV prevention and awareness efforts, mentioned how his visibility on social media as an openly gay and HIV-positive activist attracts many personal messages requesting information on issues surrounding HIV, such as locations of gay friendly clinics and other services.

Similarly, Manju, a trans man active in the field of FTM trans issues related how individuals needing information on hormonal therapy or contacts of issue-sensitive doctors have reached out to him privately through Facebook, as a result of his visibility through his multiple Facebook accounts.

Rajesh, Luke and Krishna, all gay men participating in the FGD, mentioned the various ways in which they had used social media to reach and inform LGBTQ Sri Lankans of events organised by their groups and organisations.

Facebook also provides a platform for community discussions in the form of “groups”. A key benefit in this regard is the levels of privacy afforded to groups: whereas “open” groups are public with posts and discussions being broadcast in others’ news-feeds, “closed” groups are more limited, with posts and discussions only being visible to members, though the group itself and its membership is visible to anyone who searches for the group. “Secret” groups, on the other hand, are completely hidden, and their discussions are only visible to the members. Secret groups are also unsearchable, and new members can only be added by current administrators of the group. (Open and closed groups, on the other hand, allow anyone to either join or request to join, respectively.) These features are highly useful to the Sri Lankan LGBTQ community, allowing them to strategically use available online discussions spaces, to control the audiences of their various

discussions, as well as to encourage otherwise hesitant members of the community to join in conversations about various initiatives and incidents without censoring themselves. In this regard, however, a key concern is that, while secret groups are the most useful in the context of LGBTQ Sri Lankans, that category of groups also affords a significant amount of moderating powers to group admins, allowing them to choose new members, ban current members, and even delete posts. While these functions are essential, they have the potential to lead to arbitrary decisions, which can be, in the context of the nascence of the Sri Lankan LGBTQ movement, detrimental. Another concern is the fact that most Facebook groups are highly conducive to discussions in English, whereas discussions in Sinhala or Tamil require the taking of additional steps on the part of the discussants. This may have an impact on the participation levels and inclusiveness of many discussions that take place in such groups.

During the FGD, however, an intense debate emerged on the possibility of adverse impacts on the LGBTQ movement in Sri Lanka from the spread of Internet use in community organising efforts.

The crux of the proposition was that online participation in LGBTQ activism only encourages a certain superficial level of engagement. Mitya, a trans woman, framed this argument as follows: “There is a regression in community organising because of the internet. A majority are only heroes on social media. They are very forward on social media, whether it is to speak up or to have sex, but they don’t come out to speak up. The arrival of social media means that people no longer come together. Everybody only speaks from the outside, from their own comfort zones. This affects the involvement, there’s an emotional contact that is missing. They all sort out their own needs from within their own comfort zones, and talk about whatever issues from their social media profiles, but they don’t come out and get involved; only a few put their necks on the line and speak up and try to organise and make a change, but if something goes wrong, they would be on their own, and everybody else will remain hiding behind their social media profiles.”

Manju said, “Participation in community events is declining because, with the demands of peoples’ busy lives, they settle for social media interactions with the community as the adequate level of interconnection. This affects the movement; the movement has certain targets, a struggle for attaining ‘freedom’; this can’t be achieved when

everybody is at home posting on Facebook. Where's the strength in our demands, if we can't even show a photo of more than 10 or 15 people at an event? But, at the same time, there are some things that you can't talk about, face to face: private things, secret things, individual issues. For those, Facebook is ideal. Even in the trans FTM community, this happens. They reach out to us to ask about hormonal therapy, how to grow a beard, which doctor to meet, and that's all – then they disappear, and you never hear from them again. They make use of us for their personal needs, but they don't understand how their indifference and apathy to the community's needs affects them and everybody else."

Deshan provided an interesting perspective on how social media has undercut the relevance of LGBTQ organisations. "Social media is ideal for individual users. Individual needs can easily be served through Facebook, all the way up to a hook-up. But if you talk about the movement, there's a conflict between that benefit and the interests of the community. In the 1990s, gay organisations had more membership than today, and more participation in their events, even when those days the climate was more dangerous for the community. This is because social gatherings and other events by organisations were one of the few ways that we could meet each other. Now, membership in organisations and participation in their events has rapidly declined. Because the community can meet each other directly, online, through fake profiles etc. They don't need organisations any more. But the issue is making friends privately won't build a community, and building a community is important for securing the rights of everybody. But people don't realise this, because their individual needs are being met."

However, an alternative viewpoint came from Duminda, a gay man. He was of the view that, "Comparison with the past is futile; we can't get trapped in nostalgia; the reality is that the internet is here and has changed the environment. We need to figure out how to make use of the internet for the movement in the present." Similarly, Krishna, also a gay man, said, "We don't need to be pessimistic about the role social media can play in the movement; it is enough to simply say the role needs to be diversified. For example, in the most recent movie gathering we had, there were 50 people, and 30 of them were newcomers. There were also some that had known each for many years through social media without ever meeting in person, and the movie night was the first time they met. Social media [and the internet] provides useful tools. It is up to community leaders and organisations

to make use of them to strengthen the movement and bring people together. There needs to be a balance between what we do on social media and what we do in the physical world. If it is a purely 'virtual' or 'online' struggle for equality, it's not going to work out. Bringing the struggle to the physical world is a must. But that doesn't mean online spaces have no role to play."

Safety: Safety of content

A major stumbling block in the use and enjoyment of the internet is the lack of security for content stored and shared on the Internet. LGBTQ Sri Lankans, because of their general vulnerability to stigma and discrimination, suffer acutely from this insecurity.

During the FGD, a number of such experiences came to light. Deshan, a gay man who was involved in the production of a Youth LGBTQ video within the Asia-Pacific region with his partner, recounted how their private photos were used in political pages attacking the sitting prime minister, captioning the photos with questions like "Do you want your children to be like this?". Deshan said, "They used our pictures politically and it went around on Facebook. So I had to remove everyone except my close friends from my profile. Even now I don't put a picture of my partner and myself as the profile picture because it attracts unnecessary trouble. It doesn't matter to us personally, but it affects our family, nephews and nieces, it can affect their future, especially their married life, so I have to be careful." Luke, another gay man, recounted a similar experience: "Once someone used a picture of me and one of my colleagues celebrating the first day at office by the traditional ritual of boiling milk in a pot. The picture was widely circulated on social media with the caption, 'two homosexuals boil milk.' They said we were trying to be cultural while destroying the culture because we are gay." Mitya, a trans woman, recounted how someone had attempted to blackmail her with her Instagram posts: "Someone took screenshots of my Instagram photos and threatened to publish them as a porn star. I told them to go ahead and publish it because I had already put them on Instagram for everyone to see. They tried to blackmail me, but at the end it stopped. If we get scared, they try to push it more."

While the homophobic/transphobic slant in these incidents is clear, sometimes such incidents originate from within the Sri Lankan LGBTQ community, too. Rajesh, for instance, recounted the following incident: "Once a drag party I participated in was photographed and

put on Facebook. I received many calls from different people who had seen my drag pictures online. So I immediately called [a senior police official who was a friend of mine] and told him what had happened. He advised me to make a complaint to the Peliyagoda police station. But then, I don't know who specifically did it, but I knew it had to be someone from our own community. If we went to the police they will get into trouble. So I decided not to."

Mayantha, also a gay man, recounted how his phone was added to a Viber group (of gay and bi men) without his consent by an unknown person. "Then someone shared a picture I had shared privately with my ex-boyfriend and asked me if that was me. This was someone completely unknown to me. I have no idea how this random guy got that picture. For me it was a threat to my career, because I work in the media."

According to Deshan, such violations of privacy are not only carried out by members of the community, but even organisations that purport to work for LGBTQ rights in Sri Lanka: "Some organisations publish photos of their events with community members but they do not ask for consent. It happened to me personally also." He also indicated that such an organisation violated a non-disclosure agreement signed with him by publishing a video interview he participated in on YouTube.

Safety: Safety of devices

In addition to content shared through the internet, individuals also have negative experiences and/or fears of negative experiences in terms of content stored in devices (i.e. potential risks even where content is not shared with someone else, but is consumed privately).

At the focus group discussion, Mitya highlighted the risks of using electronic devices to store important content. "We save our passwords on mobile apps. If we lose the phone, whoever finds it can access everything that we were doing on the phone. We don't logout from phone apps. How many apps do we use? It's impossible to logout of all of them, one by one, every day. I have a pattern-lock on my touch-screen, but it is very easy to crack because the pattern is visible as a smear on the screen."

In Sri Lanka, a trend has emerged where many phone repairmen extract intimately private content on their customers' phones and distribute

it on the internet. The fear imposed by such incidents pervades the LGBTQ community as well. For instance, at the focus group discussion Deshan explained his fear of repairing a broken tablet: “I have a tab where the screen broke recently. But I can’t give it to be repaired, because it has all the pictures of my vows’ ceremony with my partner. I am scared that the pictures will go public if I gave it to someone to repair.”

Insecurity of devices is also related to arbitrary policing. Sayuri, a trans woman who also happens to be a commercial sex worker, indicated that the police checked her phone while she was standing on the road. “When the police jeep stopped in front of me, and asked to go through my phone, what else can I do? They wanted to look at my photos, so I said that they can only check my gallery. There were nude photos in the gallery, but they didn’t say anything. They went through everything and gave it back to me and drove off.”

A related issue in terms of devices is the location of the device. As will be discussed under the “Access” section below, various reasons compel individuals to use devices that do not personally belong to them. In such cases, LGBTQ Sri Lankans can be particularly vulnerable in terms of their privacy. As Mitya explained, “If we use Facebook at the office desk, anyone can fiddle with our account when we are not at the table. If we are trying to keep our identity secret, this becomes a huge problem; anyone who comes to our seat can see what we do. If I had a dating site open, they would see that also.”

Rajesh recounted similar concerns in terms of internet cafes: “Once at an internet cafe, as soon as my friend who was using the computer next to me finished up and left, the owner of the cafe came and checked the browsing history. When I looked at him, he said that my friend always looks at the same thing. I asked him what his problem was to look into someone else’s browsing history. Then he said sometimes the police comes and checks the history and questions him. So he checks the history and deletes it if there is anything unnecessary. I stopped going to that cafe after that experience.”

Krishna, a gay man who is also an academic in a public university, recounted how he censors his online communications, even on his own devices, if the device is connected to a university network. He explained, “When we access the internet from a shared network at the office there is a possibility of others seeing my chats. So I choose not

to say certain things via my office network, especially if it's related to my LGBTQ activism. You never know who the network administrator is, but you know that they are monitoring the content. So I have to be discreet when using my devices on their network.”

Safety: Adverse online experiences

As is evident, the online space, especially social media platforms, can be remarkably hostile to sexuality and gender minorities. These hostilities stifle the full use and enjoyment of the internet by LGBTQ Sri Lankans; many LGBTQ Sri Lankans either censor themselves or are forced to resort to pseudonymous profiles in their daily use of online platforms. Based on the above discussion on safety issues at the FGD, the questionnaire listed a number of adverse online experiences and asked respondents to indicate which of them they or someone they knew personally had experienced. (Note that the listed experiences were not exhaustive, and were representative of issues emerging from the FGD and, to some extent, the literature review.) The results were as follows:

Have you experienced or personally known someone who experienced any of the following. Please select all that apply.		
Online harassment (bullying, name-calling, condemnation, etc.)	49	58%
Pictures exposing your or someone else's sexual orientation/gender identity posted online or shared with a third party without consent	37	44%
Sexual orientation or gender identity being publicised online without consent	35	41%
Verbal threats to do any of the above	35	41%
Videos exposing your or someone else's sexual orientation/gender identity posted online or shared with a third party without consent	27	32%
The experience of violence in the physical world	17	20%
I have not experienced any of the above.	24	28%
Law enforcement officials checking a person's mobile phone, laptop, internet account etc. without their consent	11	13%
I don't know anyone who has experienced any of the above.	4	5%

Table o8: adverse online experiences

Only one of the participants had not heard of anyone who has experienced any form of online violence mentioned in the survey and only 24 participants said they have never experienced any form of violence online themselves. “Online harassment” is the most frequent form of violence experienced or witnessed by the respondents, while exposing one’s sexual orientation or gender identity by using pictures is the second highest response. Of the participants 20% have experienced or personally know someone who has experienced violence in the physical world based on online content related to their sexual orientation or gender identity, 41% have experienced or know someone who has experienced “outing” without their consent, while 13% have experienced or personally know someone who has experienced law enforcement officials checking their digital devices.

What are the platforms mostly impacted by the experiences you identified above.		
Facebook	67	79%
Dating apps specially designed for lesbian, gay, bisexual or trans People	15	18%
FB Messenger	14	16%
Whatsapp	11	13%
LGBT groups	7	8%
LGBT-themed blogs	5	6%
Viber	4	5%
Email	4	5%
Discussion forums	4	5%
This question is not applicable to me	9	11%
Instagram	3	4%
General dating apps, such as Tinder	3	4%
Imo	2	2%
Twitter	1	1%
Snapchat	1	1%

Table 09: online platforms associated with identified experiences

In response 79% of participants identified Facebook as the platform mostly impacted by the identified experiences. (Indeed, Facebook use has a high prevalence in Sri Lanka, with over 3.5 million Facebook

users and counting. All participants (100%) said they use Facebook frequently, with Whatsapp coming in at a close second (82.1%). Dating apps designed for LGBT people are the second most impacted platforms according to the data; however, at 20%, the gap of frequency between the most impacted and second-most impacted platforms is worthy of notice.

Thinking of the person or people responsible for the incident(s), how did they relate to the person affected?		
A stranger/someone unknown	31	36%
Friends	29	29%
Someone with a sexual involvement	15	18%
I don't know the real identity of the person or people	18	21%
An acquaintance	15	18%
Someone with a romantic involvement	12	14%
This question does not apply to me	15	18%
Immediate family member	5	6%
Relative	3	4%

Table 10: their relation to the person affected by the experience

While 36% of participants said “someone unknown” was responsible, 29% of participants reported that “friends” were responsible. Three people have faced or know someone who has faced adverse online experiences inflicted by a relative, whereas eight participants said that this question did not apply to them. Sexual partners were responsible, said 18% and 14% said that romantic partners were responsible for the violence.

How did you or the person affected respond to the experience? (Select all that apply.)		
Unfriended or blocked the person	38	45%
Deleted/deactivated the profile on that platform	27	32%
Reported the person responsible to the platform	25	29%
Did not respond	19	22%
Confronted the person either privately or in the comments	21	25%
Was forced to create a new profile on that platform	8	9%
Made a post publicising the wrongdoer and their actions	11	13%
This question does not apply to me	12	14%
Reported the problem to law enforcement	4	5%
Confronted the individuals concerned personally in the physical world	2	2%

Table 11: response to the experience

Unfriending and blocking appear to be the most common action taken by victims of adverse online experiences (45%), followed by deactivating or deleting the account (32%). Reporting to the relevant platform administrators is the third most common action against adverse online experiences, amounting to only 29%. This may be an indicator of the lack of knowledge on reporting tools of social media platforms. The data shows that reporting to law enforcement is not a choice of many victims, with only three participants reporting or knowing someone who reported such experiences to law enforcement. Interestingly, 22% have said they did not respond at all.

Did you/they receive a satisfactory resolution?		
No	51	60%
Yes	24	28%
I don't know the result yet	15	18%
Did not respond	7	8%
This question does not apply to me	12	14%

Table 12: resolution to the experience

A majority of participants said they did not receive a satisfactory resolution, whereas 24 participants said they did. This is an interesting finding yet not surprising due to the gaps in community standards of social media platforms.

Safety: Literacy in online safety

In an online landscape riddled with privacy and surveillance issues, measures individuals can take to protect themselves against such risks have an important role to play. However, this is only possible where such users are adequately educated and made aware of the existing threats and possible techniques against them. Indeed, the Special Rapporteur on the freedom of expression has underscored “the importance of educating individuals about internet safety and security, including fraud, potential consequences of revealing private information on the internet and the use of encryption or circumvention technologies to protect information from unwarranted interference.”⁵⁸

Significant gaps in this awareness were revealed in both the FGD as well as the survey. As Krishna noted at the FGD, “Whatever we do online is recorded somewhere. Some people cover their laptop’s camera (by sticking a plaster) because cameras can be turned on remotely by someone else. Sometimes Google accounts require telephone numbers to verify the account, but you can skip this step without giving the number. But those who don’t know that they can skip the step give their telephone numbers thinking it is mandatory.”

Another example is observed in how Sumith, a gay man who is also a sex worker, explained his reasons for using video calls. “Video calls are important for finding partners,” Sumith said. “It’s very convenient, because I can talk and present myself to the client on video apps like Imo before we meet up. The client only has to come to physically meet me if he is satisfied with my appearance as seen through the video call.” When asked if video calls are also important because they are safer than sending an image of himself that can be downloaded and saved in a potential client’s phone, he insisted that video calls are preferred only for their convenience, and that in any case photos are also sent as part of the initial invitation to meet.

Patterns of literacy in online safety were also demonstrated in their awareness of the survey participants on some common tools used in online contexts to protect privacy.

58 La Rue, F. (2011). Op. cit., 47.

Do you use any of the following tools and methods to increase your security online?		
Using strong passwords for your email or other internet accounts	69	81%
Using only platforms which provide encryption services	15	18%
Using anti-virus software	49	58%
Keeping your operating system updated with the latest security patches and updates	30	35%
Using IP disguisers/blockers	5	9%
Using anti-censorship software	1	1%
Using a VPN	1	5%
I have heard of some of these tools, but I don't know how to use them	12	14%

Table 13: methods used to increase security online

Another such indicator could be the practices surrounding the sharing of pictures on dating and hook-up platforms.

Thinking about dating and hook-up platforms (Tinder etc.), please select all the statements relevant to you.		
I share my face publicly	39	46%
I only share my face privately	23	27%
I have never been on such platforms.	20	24%
I never share my face	3	4%

Table 14: activity on dating and hook-up platforms

Thinking about dating and hook-up platforms (Tinder etc.), please select all the statements relevant to you.		
I share non-nude pictures publicly, but I also share nude pictures privately.	28	33%
I share only non-nude pictures, both publicly and privately.	25	29%
I have never been on such platforms.	22	26%
I share nude pictures both publicly and privately.	6	7%
I don't share any pictures on such platforms.	4	5%

Table 15: activity on dating and hook-up platforms

In addition to the photos they share, how and where individuals meet physically for the first time off a dating app is also crucial to their safety. The lack of public spaces for LGBTQ Sri Lankans to socialise has already been highlighted. As the following table indicates, the absence of such tolerant spaces also has the possibility of endangering the lives and physical safety of LGBTQ Sri Lankans, with more and more of them choosing to meet a relative stranger directly in a private space for the first time.

Fill in the blank with the statement most appropriate to you.		
When I meet someone new from such a platform for the first time,		
“ _____ ”		
I always meet them in a public space (a main road, a restaurant, a park).	22	26%
Sometimes I meet them in a public space, sometimes I meet them directly in my place, their place, or a friend’s place.	17	20%
I have never been on such platforms.	22	26%
I always video call them and see their face before I meet them.	12	14%
I don’t meet people from such platforms in person.	12	14%
I always invite them over directly, or I always go to their place, or we always meet at a friend’s place, directly.	7	8%
We sometimes meet directly in a hotel/rented room.	5	6%
I always meet them with someone else I know.	2	2%

Table 16: meeting someone from a dating platform

Considering the needs of the Sri Lankan LGBTQ community in literacy on online safety, targeted interventions within the community on the subject appear imperative. Indeed, although 22% (19) respondents to the survey indicated they had participated in some kind of “digital safety training courses, seminars or workshops,” 78% (66) of respondents indicated that they had not.

Access: Obtaining services

A key issue in terms of online rights is the availability, affordability and quality of access to the internet. This theme has a number of dimensions to it, namely, technological, economic and linguistic limitations to access. Indeed, these dimensions also overlap and intersect with each other.

While several such issues on access were flagged during the FGD, prime among them was how certain documentary requirements in purchasing new broadband or mobile connections indirectly discriminated against LGBTQ Sri Lankans. In 2009, the Telecommunications Regulatory Commission of Sri Lanka issued regulations requiring registration of all new connections to be linked to the subscriber's national identity card (NIC) number.⁵⁹ Accordingly, Sayuri, who is a trans woman, recounted how an agent of an ISP refused to sell her a SIM card, because her NIC reflected her assigned gender: "The agent looked at the NIC and at me, and said, 'This isn't you.' I said, 'No, it is me,' but he kept insisting that it wasn't. I didn't want to cause a scene, because his shop was on the sidewalk and there were so many people around, and all of them would have laughed at me if I had kept insisting that it was me. So I left the place. Since then, I had to use a friend's spare SIM, but that SIM is registered under his name, and if I need to access services, I need him physically or a letter from him. On top of it all, he's about to leave the country soon for employment in the Middle East, and I am not sure what I will do when he's gone. Maybe if I go to a principal service centre instead of a street agent, I won't have this problem."

Manju, a trans man, also recounted a similar encounter. He had owned a SIM card for ten years, one he had purchased and had been using since before his physical transition. All the documentation on the SIM reflected his previous identity, and he needed to update it to reflect his post-transition details, including his new name. He had approached a customer care point and lied, saying the SIM was officially under his twin sister's name and ID card, but that she was currently abroad. He had requested a "transfer" in ownership, saying that though his "sister" had purchased the SIM, it had always been him that had used it. The customer care representative had requested him to come back with a signed letter from the sister, which he had promised to do, but had not ultimately got around to doing. However, some time later, he had noticed that the connection had been updated to reflect his current

59 (2013, 3 July). Dialog Connect: A Case Study. GSMA. www.gsma.com/identity/dialog-connect-a-case-study.

details. He believes that although the customer care representative had requested an official letter, he had made the changes anyway.

In addition to the requirement of an NIC, customers purporting to purchase post-paid connections are also required to produce a recent utility bill as proof of billing address. Here, the general requirement is that the address on the utility bill is reflected in the address on the NIC. However, if the NIC's address is out-dated (NICs are first issued to citizens at the age of 16), a customer may simply ensure that the address on the application form for the connection is the same as that on the utility bill.⁶⁰ If an individual lives in rented housing, they are required to accompany the proof of billing with a letter from the landlord, as utility bills for rented houses reflect the landlord's identity. Deshan, a gay man, elaborated on how these rules impact on sexuality minorities. He said, "Many gay people, especially middle-aged and older gay people, live away from their families, but also live in rented homes. Most service providers, when you're trying to get wi-fi or a fixed line connection, require the homeowner to make the purchase under their name. Many gay people don't have their own, permanent place to live. I have had to buy such services through my mother and her home address."

Access: Owning devices

As mentioned in the section above on "Safety of devices", another issue in terms of access is how some individuals are required to access the internet on devices and/or networks that belong to others, such as their workplaces and or proprietors of internet cafes. While many individuals use devices and networks not belonging to them *in addition* to their own devices and networks, some have online access only through facilities owned by others. Considering the sensitive nature of internet consumption related to one's sexuality, especially where one's sexuality is stigmatised in society, the non-ownership of devices and networks directly hinders the individual's ability to enjoy their online human rights, including the ability to meet new people, maintain relationships, as well as engage various discussions and discourses related to their sexual orientation or gender identity.

60 This information is based on calls to customer care hotlines of prominent ISPs in Sri Lanka.

Access: Language

Language is another limiting factor affecting the accessibility of online content. As mentioned before, many sources of information cater to an English-reading audience. Moreover, most devices are designed, in terms of their “input” functions, for the English language by default. Although post-purchase modifications are possible to expand the devices’ functionality to either Sinhala or Tamil, these modifications are limited in scope and lack the same functionality of the English features. Although Sri Lanka features high literacy rates in the general population, English literacy is not reflected in such indicators. More importantly, individuals are entitled to the right to access information and engage in communications in the language of their choice.

Access: Quality of service

Finally, data speeds and quality of service is an important aspect of online accessibility.⁶¹ However, as Manju pointed out during the FGD, “Sometimes data is so slow and expensive that, when you’re trying to load a page, you run out of prepaid credit while the pinwheel simply turns without ever loading. You could reload the account and try again, and sometimes the credit runs out all over again. This is especially true if you own a low-feature phone instead of a fully-fledged smart phone.” Indeed, such constraints are compounded by the significant increase in taxes on data consumption in Sri Lanka since November 2016,⁶² which, according to a senior legal officer of an ISP interviewed confidentially for this study, amounts to approximately 35% to 49% of the raw user rate. Indeed, according to said interviewee, some ISPs also employ various tactics to counter the decrease in data consumption that corresponds to a significant hike in taxes, by lowering the speed of the connection at specific data consumption milestones of the consumer.

61 La Rue, F. (2011). Op. cit., 63.

62 (2016, 11 November). Sri Lanka budget 2017: tax and revenue proposals. *Lanka Business Online*. www.lankabusinessonline.com/sri-lanka-budget-2017-tax-and-revenue-proposals

Section Four

Law and policy

Many human rights are relevant when considering LGBTQ Sri Lankans in the online space. In the previous section, issues discussed were framed in terms of use, safety and access; as regards “law and policy”, we mainly look at the relation between those issues and the human rights of the freedom of expression, the right to information, the freedom of association, and the right to privacy.

LGBTQ Sri Lankans enjoy the *right to information* through their use of the internet. They access information of vital importance to their personal growth, health and well-being through the internet; the types of information accessed span across categories like news, art, health information, legal information, etc. At the same time, issues of media literacy, lack of recognition in official/government resources, as well as limitations to access in terms of linguistic, technological, financial issues were also touched upon.

LGBTQ Sri Lankans enjoy the *freedom of expression* through the internet. They use the internet to raise awareness, to engage with local discourses on sexuality, to break stereotypes, to advocate their rights, and even simply to exist. They also use the internet to engage in one-on-one and group conversations, to share ideas, and even for intimate expressions.

LGBTQ Sri Lankans enjoy the *freedom of association* through the internet. The internet has been positively instrumental in the formation of new relationships among members of the LGBTQ community, as well as sustaining both old and new relationships. These relationships could be emotional, romantic, casually sexual, platonic, amicable, acquaintances, etc. The internet has also facilitated the creation of networks of community members, which is crucial to advocacy efforts.

The internet also impacts *the right to privacy* of LGBTQ Sri Lankans. Anonymity and pseudonymous profiles feature in the lives of many LGBTQ people in the country. At the same time, the safety of their content and devices from illegal intrusions and state surveillance is a matter of concern to LGBTQ Sri Lankans.

These rights are generally considered “civil and political.”⁶³ This is not to say that socioeconomic rights related to the issues discussed in this study are negligible. In fact, the right to health, the right to education, the right to science and culture, etc., are also arguably relevant to a general discussion of LGBTQ Sri Lankans’ internet rights. However, given the limited recognition of socioeconomic rights in the Sri Lankan Constitution,⁶⁴ as well as a general tendency to focus on internet rights through the lens of civil and political rights even within the international human rights mechanisms, this study will also follow the same approach.

In Sri Lanka, it is widely believed that homosexuality is criminalised under the law. This belief, its accuracy aside, creates a remarkable interface between the criminal law of the country, the telecommunications regulatory framework and internet governance, which renders LGBTQ Sri Lankans vulnerable to both law and society in their use of the internet.

63 For instance, they all find expression in the International Covenant on Civil and Political Rights.

64 See, generally, Gunatilleke, G.D. (2010). Judicial Activism Revisited: Reflecting on the Role of Judges in enforcing Economic, Social and Cultural Rights. 1 Junior Bar Law Review 21, 28-30.

The human rights framework in the Constitution

Articles 3 and 4

Article 3 of the Constitution states, “In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of government, *fundamental rights* and the franchise.” (Emphasis added.) This provision is a foundational aspect of the Constitution, as it cannot be amended, and laws inconsistent with it cannot be passed by parliament, without resorting specially restricted procedures, including the requirement of a two thirds majority in parliament, as well as a simple majority in a referendum. In this way, the Constitution expressly ensures that fundamental rights issues are beyond the tyranny of the (simple) majority, and that laws affecting core fundamental rights guarantees are not possible without broad political consensus.

Article 4 requires “all organs of government” to observe both negative obligations (i.e. to *not* to do certain things) and positive obligations (to take steps, to *do* things) in relation to the fundamental rights declared in the Constitution.⁶⁵ The significance of this provision is that it envisages all organs of government to play a proactive role in guaranteeing citizens’ fundamental rights. Indeed, it could be argued that, the reference to positive obligations recognises that state *omissions* violate fundamental rights just as much as state *actions* do. However, this aspect of Article 4(d) has received little attention in domestic jurisprudence.

Articles 10 to 14

Of the specific fundamental rights recognised in the Constitution, the freedoms of thought and conscience,⁶⁶ and of expression⁶⁷ and association,⁶⁸ are particularly relevant to the present

65 Article 4(d), Constitution of Sri Lanka.

66 Article 10, Constitution of Sri Lanka.

67 Article 14(1)(a), Constitution of Sri Lanka.

68 Article 14(1)(c), Constitution of Sri Lanka.

discussion. In May 2015, the Constitution was also amended to declare and recognise the “right of access to information”.⁶⁹

However, neither the right to privacy,⁷⁰ nor the broader right to liberty⁷¹ (both of which have been instrumental in vindicating the sexuality rights in other parts of the world), is explicitly mentioned in Sri Lanka’s fundamental rights chapter. Nor does the Constitution include any explicit protections against arbitrary searches and seizures by law enforcement officials.

However, explicit mention in the Constitution per se is not always necessary to judicially enforce a right. For instance, in a landmark judgment,⁷² the Supreme Court once declared the right to life as implicit under Article 13(4), which reads, “No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law.” At the same time, Article 12(1), which guarantees “equality before law” and “equal protection of law” to all persons, is generally regarded as broad in scope,⁷³ guaranteeing against concepts such as unreasonableness, arbitrariness, etc., and has been instrumental in recognising “implied” rights in the Constitution.⁷⁴

The Constitution does not explicitly mention “sexual orientation” or “gender identity” as categories protected from

discrimination either, though other categories such as “race, religion, language, caste” etc. are mentioned. However, in October 2014, the Government of Sri Lanka took the position before the Human Rights Committee (HRC) in Geneva (HRC) that, “Article 12(2) of the Constitution ensures that no citizen shall be discriminated, inter alia, on ground of sex. In this context,

69 Article 14A, Constitution of Sri Lanka.

70 Toonen v. Australia. Communication No 488/1992. HRC., 31 March 1994); Dudgeon v. the United Kingdom. App. No. 7525/76. ECtHR., 22 October 1981); *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others* [1998]. ZACC 15. (9 October 1998)

71 *Lawrence v. Texas*. 539 U.S. 558 (2003) in the United States; *Naz Foundation v. Delhi and Others* [2009] 4 L.R.C. 838 in India.

72 *Sriyani Silva v. Iddamalgoda* (2003) 2 S.L.R. 63.

73 Udayanganie, U.A.T. (2013, October) Expanding the Scope of Judicial Review using Constitutional Interpretation in Sri Lanka: A Comparative Study of the Development of Judicial Review in UK. *GSTF International Journal of Law and Social Sciences (JLSS)* Vol.3 No.1, 51-54

74 See e.g., *VisalBhashithaKaviratne et al. v. Commissioner-General of Examinations et al. (The Z-Score Case)* S.C. (F.R.) Application No. 29/2012.

it [is] noted that laws discriminatory of a person on the grounds of sexual orientation would not be constitutional.”⁷⁵ Though this position comports with the jurisprudence of the HRC,⁷⁶ its domestic legal status remains in doubt. Firstly, because only the Supreme Court is vested with the jurisdiction to interpret the Constitution;⁷⁷ and secondly, because the Government of Sri Lanka has expressly contradicted its position in subsequent domestic forums.⁷⁸

Article 15

The Constitution allows reasonable restrictions of certain fundamental rights through Article 15. The *general* principle of this article has been noted by the Supreme Court for its resonance with Article 29(2) of the Universal Declaration of Human Rights,⁷⁹ which provides a three-pronged test to assess the permissibility of a restriction of a right by the State: to be permissible, any restriction of a human right must

- (a) be prescribed by law,
- (b) be in the pursuit of a legitimate state interest, and
- (c) be necessary in a democratic society.⁸⁰

In interpreting Article 15, the Court has followed the approach of the three-pronged test. In *Joseph Perera v. A.G.*,⁸¹ a full bench of the Supreme Court held that “it is competent to the Court to question ... *whether there is a proximate or rational nexus*

75 (2014, 7 October). Consideration of the Fifth Periodic Report of Sri Lanka on the Implementation of the Provisions of the International Covenant on Civil and Political Rights (Transcript of relevant part). www.youtube.com/watch?v=iHcREEWl6G8&feature=youtu.be&t=6232

76 See *Toonen v. Australia*. Communication No 488/1992 (HRC, 31 March 1994)

77 Article 125(1), Constitution of Sri Lanka, which reads, “The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution...”

78 Samarakoon, S. (2017, 26 January). Homosexuality | “Threw out” – Can the President control a person’s sexual orientation?. *Vikalpa*. www.vikalpa.org/?p=29311

79 Universal Declaration of Human Rights, art. 29(2): “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

80 *Sunila Abeysekera v. Ariya Rubasinghe* (2000) 1 SLR 314.

81 *Joseph Perera v. A.G.* (1987) 1 S.L.R. 199.

between the restriction imposed [...] and the object sought to be achieved by [it].”⁸²

Much later, in *Sunila Abeysekera v. Ariya Rubasinghe*,⁸³ counselling against “looking at one’s own Constitution wearing blinkers,”⁸⁴ the Court explicitly adopted the three-pronged test of international human rights law as the suitable yardstick to assess rights-restrictions under the Constitution.⁸⁵

The “prescribed by law” prong ensures, as a baseline, that all restrictions of rights (except those enforced during declared states of emergency) will always be implemented through legislation only. However, the requirement also imposes certain qualitative criteria on the law imposing the restriction. For example, the European Court of Human Rights (ECHR) has held that under “prescribed by law”, a restriction of a human right must satisfy two “substantive” qualities: “Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the [legal] consequences which a given action may entail.”⁸⁶ In the United States, the

Supreme Court follows a similar approach known as the “void-for-vagueness doctrine” under the Due Process Clause: “[G]enerally stated, the void-for-vagueness doctrine requires that

82 Ibid., 216-17. Emphasis added. Edited. Although the cited passage refers to Emergency Regulations, the present submission will justify the extension of its meaning to cover ordinary legislation as well.

83 *Sunila Abeysekera v. Ariya Rubasinghe* (2000) 1 SLR 314.

84 Ibid., 351.

85 Ibid., 356-85.

86 *Sunday Times v. The United Kingdom* (No. 1) App. No. 6538/74 (ECtHR, 26 April 1979), Emphasis added. However, the ECtHR, went on to state, *ibid.*, that, “Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.” See, also, *Ontario Film and Video Appreciation Society v. Ontario Board of Censors* (1983) 31 O.R. (2d) 583 (Ont. H.C.), p. 592: “It is accepted that law cannot be vague, undefined, and totally discretionary; it must be ascertainable and understandable. Any limits placed on the freedom of expression cannot be left to the whim of an official; such limits must be articulated with some precision or they cannot be considered to be law.”

a penal statute define the criminal offence with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”⁸⁷

The other two limbs of the three-pronged test ensure the principle of proportionality, which requires the state to balance any legitimate aims it pursues through rights-restrictions with the burdens they impose on individuals. Under this approach, known as the proportionality test, the state is to consider such aspects of a given restriction as: the availability of relevant and sufficient reasons justifying the measure; the availability of less intrusive measures; the incorporation of adequate safeguards against abuse, etc. If a restriction fails to satisfy any limb of the three-pronged test, it is held to be impermissible under human rights law.

Thus, the significance of this provision is that, even where fundamental rights protect the words, conduct, etc. of a person, the government may still restrict them, through criminal law, civil law, or even administrative action. However, in order to be considered legal, such restrictions need to satisfy the three criteria outlined above.

Article 16

A major limitation in the Constitution’s human rights framework is that it precludes “judicial invalidation” of rights-violating legislation through Articles 16(1) and 80(3). In other words, courts are precluded from “striking down” laws found to be inconsistent with fundamental rights.

However, the Supreme Court has made significant inroads to this limitation, for example when it declared a statutory provision unconstitutional and, without invalidating it, refused to give effect to it.⁸⁸ Incidentally, the impugned statutory provision in that case is part of the same 1995 legislation that amended the provisions of the Penal Code relevant to LGBTQ Sri Lankans: Sections 365 and 365A.

87 Kolender v. Lawson. 461 U.S. 352, 357 (1983).

88 Supreme Court Reference No. 03 of 2008, decided on 15 October 2008. See below, cases discussed in text accompanying note 93.

Substantive law framework

Sections 365/365A of the Penal Code are at the top of a pyramid of laws directly infringing LGBTQ Sri Lankans' human rights. Criminalising “carnal intercourse against the order of nature” and “acts of gross indecency”, respectively, these provisions are abjectly vague, and appear to capture many sexual acts committed between persons, irrespective of their age, their genders, or the existence of consent between them. Section 365A is particularly broad, covering not only the commission of an act, but also the procurement and the attempt to procure the commission of such acts. By criminally sanctioning certain sexual acts, the provisions directly interfere with how individuals express their identity, how they express themselves sexually, and who they form intimate relationships with.

They also exert an undue influence on other laws. This was seen in 1999, when the Sri Lanka Press Council arbitrarily conflated “gross indecency” under Section 365A with “sadism” under Rule 9 of the Code of Ethics for Journalists.⁸⁹ It was also seen in how, under the Penal Code, perpetrators of the non-consensual, predatory sexual offences are treated differently based on the sex of the victim, with the mandatory minimum sentence being relaxed where the victim is female, and enforced strictly where the victim is male.⁹⁰ Here, again,

the court deploys vague references to Sections 365 and 365A as justifying their differential treatment, and here again, the decision-making body's interpretations of the provisions were arbitrary and had no authority in law.⁹¹ For one, sentencing disparities in child abuse law enforcement to this extent discriminates against *both* girls and boys.

In addition to Sections 365 and 365A, obscenity, profanity and public performance laws are the other laws that impact sexuality and sexual expressions in Sri Lanka. A key characteristic of these laws is that

they either do not define the scope of the offence, or when they do, they often couch the offence in broad, vacant language. The Obscene Publications Ordinance No. 4 of 1927 makes it an offence to produce, possess, import, export, carry on, take part in a business or advertise

89 See above, texts accompanying notes 27 to 30.

90 Supreme Court Appeal No. 17 of 2013, decided on 12 March 2013 and Court of Appeal No. 150 of 2010, decided on 16 July 2014.

91 “Section 365 and 365A [were made] wide enough with amendments to include ‘unnatural offences and grave sexual abuse ... This court cannot show any leniency on any account, in view of the serious nature of the offence..., mainly to protect the society from such mentally disordered offences.” (S.C. Appeal 17/2013, note 93, above.)

the availability of obscene publications. However, the act does not define the term “obscenity”. The Profane Publications Act No 41 of 1958 makes it an offence for any writer, publisher, printer or distributor to write, produce, print, publish, sell, distribute or exhibit any profane publication. A profane publication is defined to mean any newspaper, book, picture, film or other visible representation containing an insult to the founder of any religion, any deity, saint or person venerated by the followers of any religion, or any religious belief or any representation that ridicules any figure, picture, emblem, device or other thing associated with or sacred to the following of any religion.⁹² But, again, profanity itself is left undefined.

Though none of the laws have been enforced in connection with the internet (or even in general, in some cases), “their mere existence warrants concern.”⁹³ Laws restricting human rights must be, among other things, accessible and foreseeable, so that those affected by the law may know the extent of their legal obligations. However, in terms of the network of vague legal provisions discussed above, most LGBTQ Sri Lankans remain unaware of the exact scope of the prohibition of “homosexuality”. Moreover, the laws are also vague in their potential applications on the internet: almost all the provisions mentioned include words such as “engage”, “procure”, “publish,” and it is unclear how this language could be applied to expressions and encounters taking place in the online space.

Vagueness also confers broad discretionary powers to law enforcement officials, enabling them to abuse laws and enforce them selectively. As mentioned before, a requirement under the three-pronged test is that there are adequate safeguards against abuse of a particular restriction. Together, non-vagueness and procedural safeguards ensure that citizens know their legal obligations and that those obligations will be fairly and equally enforced to all citizens. However, the fact that the impugned laws operate under a procedural framework with barely any safeguards against abuse compounds the adverse effects of their vagueness. Not only do LGBTQ Sri Lankans not know the extent of their obligations, they are also constantly under the threat of legal surveillance with little possibility of prior notice or judicial oversight.

92 See, in general, (2011, November). *Freedom of Expression on the Internet in Sri Lanka*. Colombo: Centre for Policy Alternatives, 25-26. www.cpalanka.org/freedom-of-expression-on-the-internet-in-sri-lanka/

93 Ibid.

Procedural law framework

A significant aspect of online rights, particularly in terms of the right to privacy in the digital age, is the powers of the state to carry out investigations and surveillance on individuals' activities on the internet. In Sri Lanka, no consolidated law exists governing this aspect of the state's powers. In interviews with key informants, such as an officer of the Cyber Crimes Division of the Criminal Investigations Department, as well as a senior official of the National Child Protection Authority, the Computer Crimes Act No 24 of 2007 and the Code of Criminal Procedure were mentioned as the main laws governing the police's procedural powers in online criminal investigations. Both interviewees also averred that the Computer Crimes Act provided the necessary powers to investigate crimes committed on the internet and that it was fully compliant with the Convention on Cybercrime (to which Sri Lanka is a State party).

The Code of Criminal Procedure (CPC) provides the general procedure applicable in criminal matters, and was first enacted in Sri Lanka in 1889. While the code provides for various investigatory powers, the provisions pertaining to searches of "documents and other things" are the most relevant to the present discussion: firstly, under Section 66(1), a relevant court may require any person to produce "any document or other thing [that] is necessary or desirable for the purpose of any proceeding under [the CPC]." Secondly, under Section 67(1), any court can require the Department of Posts and Telecommunications to deliver "any book, letter, post card, telegram or other document" in their custody if the court wants it "for the purpose of any investigation or proceeding under [the CPC]."

This latter power is not limited to the exclusive jurisdiction of courts: under Section 67(2), the attorney general (AG) or any police officer of/ above the rank of superintendent may also require telecommunications authorities to deliver "documents" in that manner. Sections 66 and 67 represent the means by which a court or other investigating official may require entities to make documentary disclosures for the purpose of an investigation. It is only if these measures are not complied with that a search warrant issued by a court is necessary to compel the search or seizure of the documentary evidence sought.

The Computer Crimes Act No 24 of 2007 (CCA) provides a specific scheme of offences, such as crimes related to hacking, infecting computers with viruses, unauthorized interception of data, etc. Section 2 of the act specifically states that it applies only in relation to the offences specified in the act, and subsequent provisions specify a number of investigatory powers. Key examples of such powers are the ability to “obtain any information including subscriber information and traffic data in the possession of any service provider”⁹⁴ and “to intercept any wire or electronic communication including subscriber information and traffic data, at any stage of such communication.”⁹⁵ Though the general rule is that an investigator may only access such information under a warrant issued by a magistrate, this requirement may be unilaterally bypassed if an investigator believes, for instance, that “the investigation needs to be conducted urgently”⁹⁶ or that “there is a need to maintain confidentiality”⁹⁷ (hereinafter referred to as “extenuating circumstances”). Section 21(1) provides that, “Any police officer may, in the course of an investigation under this act, exercise powers of arrest, search, or seizure of *any information* accessible within *any premises*.” The only qualifying requirement is that such an officer is certified by the inspector-general of police as “[possessing] adequate knowledge and skill in the field of information communication technology and is thereby possessed of the required expertise to perform such a function.”⁹⁸ Section 24(1) requires all officers engaged in investigations under the act to “maintain strict confidentiality with regard to all information” that comes to their knowledge during the investigation.

In order to respect the right to privacy, all surveillance powers of the state must satisfy minimum criteria, whether under the CPC or CCA. One such criterion is the requirement of the state to be proportionate in restricting individual human rights. However, both the CPC and CCA only require the information sought to be necessary for the purposes of the investigation. Considerations such as whether the person being searched is suspected of an offence, the availability of alternative methods of investigation, the scope of the surveillance measure and whether it accesses more information than is necessary for the investigation, are not expressly required under the statutes.

94 Section 18(1)(i), CCA.

95 Section 18(1)(ii), CCA.

96 Section 18(2)(a), CCA.

97 Section 18(2)(c), CCA.

98 Section 21(2), CCA.

Another criterion is the availability of judicial oversight over any determinations related to surveillance measures. As seen above, under the CPC, judicial oversight in issuing an order to disclose is only mandatory when the order is directed to a “person”. The AG or an adequately senior police officer may issue an order directly to the Departments of Posts and Telecommunications to deliver documents in their custody without judicial oversight. In either case, a “warrant” to compel search or seizure is only necessary if the person or the department refuses to comply with the initial order made by a court, a police officer or the AG (as the case may be). Even where a court issues an order, the CPC only mandates courts to evaluate the necessity of the measure for *the purpose of an investigation*. Broader considerations, including the human rights of those affected by the measure, are not expressly required under the law. By contrast, under the CCA, an investigator may bypass judicial oversight altogether, even as regards “persons”, by adducing reasons for extenuating circumstances. Moreover, though the CCA does not mention the Department of Posts and Telecommunications, it does explicitly recognise “service providers.” This allows police officers a wider power than under the CPC to directly order disclosures by Internet service providers (ISPs), without judicial oversight or departmental intervention, provided there are extenuating circumstances to do so. The only avenue of judicial redress in such instances seems to be to challenge the police officers’ assessment of the existence of extenuating circumstances.

The recognition of “service providers” under the CCA is a crucial development, as it specifically addresses the issue of internet intermediaries. Under the CPC, ISPs may be considered as falling under the general term “persons,” allowing only a court to require production of “documents” by them; the AG or a senior police officer may not directly order disclosures of ISPs under this interpretation. On the other hand, an ISP’s subscriber data could be considered to be “documents” in the “custody” of the “Department of Posts and Telecommunications,” in which case, the AG or a senior police officer may require the Telecommunications Regulatory Commission (TRC) to compel productions by an ISP without judicial oversight in the first instance.

However, under either approach, an ISP may refuse to comply with such a request, insisting on a warrant to submit to a search or seizure by the police. ISPs may also choose to cooperate with law enforcement officials, volunteering the requested information without insisting

on any further judicial review. ISPs are not precluded from notifying customers affected by an order made under the CPC, but such notification is not mandatory either. Under the CCA, in cases where the police have unilaterally overridden judicial oversight by adducing extenuating circumstances, ISPs come directly under the power of the police, and are not only bound to comply with police orders to disclose, but are also bound to maintain the confidentiality of ongoing investigations. They may not notify their customers of any measures being taken against them. Section 24(3) of the CCA exempts service providers from liability for any disclosures they make under the law for the purpose of an investigation.

By comparison, the CCA provides far more extensive investigatory powers to police officers in investigations than does the CPC, and, perhaps for this reason, explicitly provides that the specific powers apply only to offences defined under that act. In the interviews with the CID and NCPA officials, however, it appeared that the powers recognised under the CCA were considered as indivisible from the powers under the CPC, rather than as the CCA establishing a special investigatory framework for a special area of criminal law. Neither of the officials could recall the contents of Sections 66 or 67 of the CPC, or Section 18 of the CCA during their interviews.

Telecommunications regulatory framework

Despite the subtle distinctions in how the different statutes govern the Department of Posts and Telecommunications, both interviewees as well as a senior legal officer interviewed from an ISP could not clearly identify the scope of the TRC's regulatory power over ISPs in practice. The Department of Posts and Telecommunications mentioned under the CPC was first established in 1896, and continued in that form until, in 1980, its focal areas of posts and telecommunications were separated. In 1991, the Department of Telecommunications was further "transformed into a government owned corporation called Sri Lanka Telecom"⁹⁹, while an "office of the Director General of Telecommunications was established at the same time to serve as the regulatory body."¹⁰⁰In 1996, the director general's office was restructured as the Telecommunications Regulatory Commission (TRC) of Sri Lanka.

99 Gunawardane, N., & Wattagama, C. (2001). Op. Cit, 6.

100 Ibid.

Both interviewees as well as the senior legal officer of an ISP noted that subscriber data may be acquired either through an order addressed directly to the ISP or through a request communicated to the ISP through the TRC. The approach followed depends on the circumstances of the case, though no clear framework exists to guide that choice of approach.

None of the interviewees were able to specify the legal provisions under which these powers were being exercised. The Sri Lanka Telecommunications Act, no 25 of 1991, which establishes the TRC, specifies the powers and duties of the TRC in section 5. Section 5(f) allows the commission to “take such measures ... to comply with any general or special directions that may be given to it from time to time by the government of Sri Lanka in the interest of national security, public order and the defence of the country.” Also, Section 5(x) authorises the commission “to do all ... acts which may be incidental or conducive to, the attainment of the objects of the commission or the exercise or discharge of its powers and duties under this act.” The commission may, under Section 7(b), also require any “person” to “furnish to the commission ... any document ... which is in [that person’s] custody or control [which is needed by the commission] for the purpose of exercising, performing and discharging its powers, functions or duties under the act.” None of these provisions (or any other provisions of the act) specifically state that the disclosure of an ISP’s subscriber data can be compelled through the TRC. However, the existence of such a practice was clearly stated during interviews.

A key function of the TRC is to issue licenses to ISPs to operate in Sri Lanka. As such, most ISPs are dependent on their relationship with the TRC for the stability of their legal environment, and the senior legal officer interviewed from an ISP acknowledged the TRC’s “broad discretionary powers” in the area. Challenging orders to disclose subscriber data requires case-by-case litigation, which ISPs consider odious, especially in the highly competitive market environment of telecoms services in Sri Lanka. This fact, coupled with the absolute lack of a legal requirement to notify customers of surveillance measures they are being subjected to, ensures that ISPs simply comply with requests.

The need for positive reforms for protection

As seen above, in Sri Lanka, the online space is significantly vulnerable to arbitrary policing, based on the many levels of weaknesses that exist in the procedural and regulatory framework for surveillance in the country. These weaknesses impact the online rights of *all* Sri Lankans. However, Sections 365 and 365A of the Penal Code (and the arbitrary interpretations of those laws) interact with various other laws and institutions to make LGBTQ Sri Lankans vulnerable in many aspects of their socio-political life in Sri Lanka, and the internet proves to be another such aspect. The existence of many vague laws affecting sexuality and sexual expression compounds this vulnerability, especially in terms of obscenity and profanity laws. That these laws have not been positively enforced remains immaterial, as they instil fear and uncertainty in the minds of LGBTQ Sri Lankans who wish to exercise their rights (such as the freedom of expression), and leads to self-censorship and non-participation by them in many online contexts.

However, the critique of the legal framework in Sri Lanka does not end with a discussion of already existing laws that violate human rights. It must include a note on the laws that *do not exist* to protect human rights, as well. Though the internet provides an excellent platform for self-expression, access to information, and relationship-building, those uses are dependent on the freedom of users to participate in and engage with the platform. This unquestionably requires the elimination of laws that unduly restrict human rights, such as those laws mentioned in the preceding sections. But it also requires the *promulgation of new laws and policies* to facilitate participation and engagement by marginalised groups such as LGBTQ Sri Lankans.

For instance, a significant barrier to open participation in online discussions is the fear of abuse and hate speech that might be levelled against an LGBTQ person. In such cases, laws that positively identify hate speech based on sexual or gender identity as an offence, and which are used to prosecute the most egregious instances of such hate speech, will signal a policy of no-tolerance by the government that will serve to encourage more participation and engagement by LGBTQ Sri Lankans in online spaces, as well as the reportability of such incidents. On the other hand, the lack of comprehensive laws on hate speech on diverse communities, as well as the continued existence of laws that purport to “criminalise” homosexuality not only instil fear in LGBTQ

Sri Lankans of abuse and hate speech, they also work to legitimise the words and actions of the abusers.

Another barrier to participation in the online space is the lack of safeguards for content shared or stored by LGBTQ Sri Lankans. For example, according to the senior official of the National Child Protection Authority (NCPA), a significant lacuna is the absence of laws adequately addressing the unauthorised distribution of private content. For the NCPA, the phenomenon is seen in the context of how adolescent girls share pictures of themselves in varying degrees of nudity with their “boyfriends,” only to have that trust violated by said boyfriends, who share those pictures with their friends or even submit them to various porn sites.¹⁰¹ The NCPA official interviewed for this study bemoaned the fact that the only avenue of redress is under the Obscene Publications Act (discussed above), which focuses exclusively on the “obscenity” aspect of such incidents and not on the aspects of abuse, exploitation and breach of trust that victims experience. While the NCPA has taken an initiative to reform the law to target non-consensual distributions and breaches of confidence in relation to intimate images,¹⁰² the authority is significantly restricted by its statutory mandate of child protection.

It is imperative, especially given the findings of this study, that the relevant reforms are not limited to the context of children, but apply broadly and equally to all people who perpetrate unauthorised disclosures or distributions of intimate content created by a third party.

101 For an overview of the phenomenon, see, Billimoria, H. (2017, 27 January). Investigating Sri Lanka’s nude culture. *openDemocracy 50/50* available at: www.opendemocracy.net/5050/hans-billimoria/investigating-sri-lanka-s-nude-culture

102 NCPA. (2015, 18 June). Task Force to combat the growing threat to children. NCPA. www.news.lk/news/political-current-affairs/item/8260-task-force-appointed-to-combat-threat-to-children-via-social-media-sites

Chapter 2

Not Traditionally Technical :
Lesbian women in Sri Lanka and
their use of the online space

Shermal Wijewardene and Subha Wijesiriwardena

Introduction

The objective of this section of the study is to offer a ‘thick’ account of how lesbian women engage with the online space. The rationale for devoting a separate section to this arose from the data. As one-on-one interviews and a focus group discussion showed, lesbian women’s online engagements demanded to be treated as specifically gendered and sexualised experiences, while being classed, race-d and so on. Their approach to the online space was traced through with the awareness that they had to negotiate being hailed by a patriarchal and heterosexist social system. This understanding, we felt, called for a dedicated analysis.

Lesbian women’s responses are discussed under three framings, **use, safety** and **access**, as in the broader framework of the study. In addition, the analysis also highlights something which the data yielded, which is the emphasis that many women placed on **surveillance**. If not a separate frame, this was a prominent cross-cutting theme that many participants spoke to when they discussed use and safety, and it nuanced those two framings.

Surveillance is a historic tool of control and is experienced uniquely by women. Dr Anja Kovacs of the Internet Democracy Project (INDIA), writes,

‘Indeed, surveillance of women is a long-standing practice in our society as elsewhere - and one that women from all castes, classes and religions are too familiar with, even if it affects them differently...And for centuries, women’s experiences have provided a wealth of information on what happens to those who are surveilled yet deviate from the norm - online abuse targeted at women exemplifies this today again so very well.’¹⁰³

Because ‘surveillance’ is of particular importance to women - and even more perhaps to lesbian women - and because the conversations with our respondents confirmed this, we were keen to examine ‘surveillance’ as a cross-cutting point of concern.

On the use of the term ‘lesbian women’

We use the term ‘lesbian women’ throughout this paper because we want to signal both gender and sexuality as important to their narratives; we are not being prescriptive as far as a norm of ‘lesbian’ or ‘woman’ identities are concerned. Broadly, we use this term - while acknowledging its inadequacy and understanding that is merely approximate - to refer to a participant group of women who desire and love women.

Methodology

1. A Focus Group Discussion which brought together 6 lesbian women
2. 16 responses to the online survey, from lesbian women (in English and Sinhala)
3. One-on-one interviews held with 3 lesbian women
4. Additional research on gendered and sexualized perspectives of surveillance and online violence against LBT persons in Sri Lanka (citations provided)

103 <https://genderingsurveillance.internetdemocracy.in/>

Use

Lesbian women's responses from the Focus Group Discussion and the one-on-one interviews indicated that they have three main and overlapping uses for the online space: as an "information tool", a "social networking tool", and an "advocacy tool" for social justice issues, including feminist and LGBTQ issues (Gayani). The majority of these engagements were on social media platforms like Facebook, while a very few spoke in relation to their use of Twitter, Instagram, and Snapchat. Other uses that were not cited as much but were still important, were work related, involving sharing and promoting one's work and following international professional communities.

A number of respondents said that they use the online space, most prominently Facebook, to search for and stay updated on current affairs, including LGBTQ-related news. Online spaces are used in a variety of ways to obtain LGBTQ news. For instance, some subscribe to prominent overseas LGBTQ news magazines and keep track of the work of local LGBTQ organisations via their online posts. Others, like Gayani, are very deliberate in using online resources for news and information. She said,

I think it [Facebook] is my primary source of information. The newsfeed is very important to me. [...] I very strategically subscribe to organizations, news sites and groups so as and when things happen it's always there. I check Facebook on a regular basis, the news feed, not just to be like 'Ok who is having a party?' But as an information tool, where we are constantly consuming information like BBC and National Geographic or whatever is going on, the New Yorker, the Economist, everything is happening for me at the same time. So it's fantastic as a tool because I don't have to individually go for those sites to get those information- it is there. If there is something I actively want to pursue I have my information organized in such a way on Facebook that I can always follow those threads and then kind of inquire further. So information can be from what is happening in politics, to world affairs, to philosophy to arts and culture, theatre, everything. So it is really my primary source of information. More so than a social networking tool.

Gayani's responses also indicated that the online space is facilitating to the extent that it could create a loop where these three uses, information seeking, networking and advocacy, come together. She said,, "if you are friends with activists, then you know what is going on...like marriage equality and decriminalization... through Facebook primarily... and you support their campaigns and write about it on Facebook." Online news was not just viewed as content that was posted by designated and authoritative news sites. Being able to learn from the exchange of information and ideas amongst ordinary people whom one would not usually find focusing on LGBTQ topics, was also treated as part of obtaining news online. Speaking of a Sri Lankan Facebook groups, Mali said,

The value of it is that LGBT and straight people meet online and have a discussion on that group. So I think that this doesn't usually happen in the world face to face. But because we share issues on Facebook, people start talking about what they are actually thinking about, instead of just going to a demonstration and standing there. So we can see this discussion formulating and an exchange of information.

“Family surveillance” and “Public Surveillance”

If this describes a scenario of lesbian women becoming agentic through the online space by accessing, consuming and producing news and doing advocacy on LGBTQ and other issues, Gayani and others were also quick to qualify and problematise that narrative. They noted that the space for “self-expression” (Gayani), to initiate, and to engage dynamically, was often contingent on and constrained by their consciousness of surveillance. Many stated that they were troubled by the sense of having to negotiate “family surveillance” and “public surveillance” (Shami). In this dual understanding of surveillance, “family surveillance” was broadly understood as the feeling of being subject to scrutiny online by family members. Essentially, this meant “in terms of what you share, what your thoughts are” there is “the worry: Who in the world is going to see? This aunty? “ (Gayani). . “Public surveillance” was understood as “the government or other persons are surveilling us through different mediums [and] without us knowing, reading what we are writing” (Rekha).

Both types of surveillance affected how lesbian women used online space as an information tool (and in some instances, to do advocacy),

but not everyone was equally affected. For instance, some feared online public surveillance more and dismissed being impacted by family surveillance, while others felt affected by both types. Those who were “out” to their family, or refused to be subject to family control, rejected family surveillance but were nevertheless concerned by public surveillance.

These views highlight the fact that the policing and control of lesbian women’s online engagements by their families is an issue of some significance. As established by a previous study which focused on the offline space, retaining autonomy within the family unit can be a problem for some lesbian women, not least because women’s personal independence is often not recognised, and also because family honour and reputation are perceived to rest on women’s proper conduct in matters of gender and sexuality.¹⁰⁴ Echoes of this appear in lesbian women’s narratives about online space. Two narratives highlighted the family’s attempts to surveil and manipulate lesbian women’s online engagements so that they do not compromise either the woman’s or the family’s reputation or image. Kala said,

I mean you don’t have to wear a t-shirt and say I am gay and proud and walk around with that but in terms of what you share, what your thoughts are, the need to restrain yourself is so much-- for me I found it to be very oppressive in the past...There was a time in the past, I did this whole drag king kind of thing, like absolutely fantastic, and I had that as my profile picture and obviously this aunty calls my mother saying ‘Something has happened to your daughter, she has become a weirdo’. And then my mother calls, saying ‘You need to change your profile picture’.

Kala resented her family’s presumed prerogative to have a say in what she did with her gendered and sexualised self-expression online, stating, “it becomes everyone’s business”. Furthermore, she also saw this as as her family’s attempt to make her adhere to gender and sexual norms in the online space and to deny her her right to define who she was and express herself as she wished. Another participant cited a similar scenario of her family intervening in ways that made her modify her online interactions.

104 Not Gonna Take It Lying Down, Women’s Support Group (2014)
<https://www.scribd.com/document/214827257/Not-Gonna-Take-It-Lying-Down-English>

Before I came out to my family, there was a point when I had told them and they weren't happy about it. My mother actually Googled the word 'gay' and my name and there were so many posts that came up and she was horrified. Like even things that I had done even voluntarily for an organisation and all these articles or whatever that I had written on it. So then I actually had to write to Google and get them to get it off the cache and all sorts of madness. So that was whole drama until I got it off.

Again, this participant was forced to literally digitally erase a history of her subjective involvement with LGBTQ issues—her activist and academic work—due to her family's 'horror' that such things were visible online.

Family surveillance, as these women understand it, are means of disciplining them and curtailing their online visibility and expression. Their families' desire that no one should be able to see their 'queer' markers is clearly not just a technical issue of making them scrub and sanitise their online engagements. Family surveillance did not always operate through incidents. It was manifest through a more generalised consciousness of surveillance, in the sense of an awareness of what their families would disapprove of their doing online, such as being 'publicly' and visibly queer, being involved in LGBTQ advocacy and academic work, and so on. .

It is important to record that this was not every woman's experience. Some, like Rekha, pushed back against the idea that family could be inhibiting in the online space, saying "I am an adult now so I don't have my parents looking into my business". Others, like Pushpa, did not feel inhibited because they put their faith in knowing and trusting their families: "In my family there are a few people who know about me. They don't know that I am lesbian but they accept the way I am. Because of that they have no issues. They are all on my facebook. Because they love me I don't think that they are surveilling me. I know that within my family how they think about me so because of that." Still others, like Thusitha, asserted their agency fiercely and refused to recognise the possibility of feeling inhibited by family: "I have added my family members onto my Facebook. If they have a problem with it then it's their problem and not mine. If they want to remove me they can...I think because there was no issue for me from home... I think let anyone think what they want it doesn't matter to me. I was like that

then and I am still like that now. I don't restrict myself when I need to express myself, just because my friends or family are on Facebook."

It is important to record that, for some participants, family surveillance was felt affectively, as "oppressive", as a matter of forcing one to "restrain" oneself, because the issues at stake, as Kala noted, is nothing less than the question of "how open you are about who you are...your authenticity". Family surveillance was seen to disrupt this capacity. As Kala noted about the affective toll it took on her after she had to change her online engagement at her family's request,

After that I was very careful as to what I put out there. It was fun for me, for me it was a form of self-expression, like it's tough, it's a constant balance, it is at a psychological level, you're always making those choices. And I think as a gay person it is unfortunate, in a sense, that you have to do that because a lot of other people will not think of it at that micro level, as to what the hell they are doing every time they post something on Facebook.

Similarly, Kishani, was also concerned about her family finding out via Facebook about her relationship with another woman. "I worry about it because that's not the way I want them to find out," she said. "Especially Facebook, it doesn't feel like it would have my back at any point. The most I protect myself is on Facebook."

Family surveillance: "Fun"/ "Authentic"

These views also provide an important insight into a certain understanding of online family surveillance that requires interrogation. In attempting to represent that surveillance, participants such as the one quoted above, tended to construct the online space as an arena of being playful, ironic, and provisional about one's expression of gender and sexuality, and the family as the disciplinarians who constrained that possibility because they take everything that is said online at face value and in earnest and miss the point that 'play' and 'fun' are defining features of online interactions.

There is a complex set of assumptions behind this understanding. One strand concerns the presumption that family surveillance is associated with the family's lack of social media literacy. This is the rather condescending idea that older members especially, perhaps because they are from an 'analog' generation, misread the operation of digital

signifiers of gender and sexuality in the online space and are unable to grasp that the drag king outfit “was *fun* for me, it was *a form of self-expression*” rather than a strict expression of gender or sexual identity. In other words, they do not ‘get’ the notion that the online space is the space of performativity—what you see is not what you get, but only a curated version, one product of an attempt to express oneself. Intersecting with this is also another condescending idea about older family members (the snoopy ‘aunty’), which is that they are not au fait with queer politics and performativity.

These assumption highlight the intersections of gender, sexuality, generational politics, assumptions about social media performativity, and so on, in the construction of family surveillance. It also highlights what appears to be an important point of incoherence, which is in the juxtaposition of the performative and the ‘authentic’ in Kala’s understanding.. Kala’s emphasis on the idea that she was having ‘fun’ with her drag king costuming, which was misread as her ‘real’ identity by an ‘aunty’ and her mother, brings in her desire to assert the element of gender performativity in the face of what she sees as an older generation’s inept reading of how people ‘do’ gender on social media. However, this is curiously out of step with a more essentialist assertion, which is that family surveillance intervenes in “who you are...your authenticity”.

Family surveillance: Changes and shifts

A further crucial insight about perceptions of family surveillance, is that it changes and shifts over time. Those who were not now overly concerned with family surveillance observed that this had not always been so, and that it had changed over time due to various factors such as being “out” to their families and their families gradually coming to some acceptance; being older and, and so on. Lara, who is now ‘out’ and not overly concerned about family surveillance, recalled how, “a few years ago, I wasn’t too cool at that point in my life. I wasn’t out. I mean I was out but to closer friends. And I remember a friend made a comment on Facebook [that said I was a lesbian], and I lost it! This is on a platform where everyone else can see it and home can see it.”

Shami’s mother’s pressure had forced her to go the lengths of asking Google to delete any LGBTQ-related post associated with her (perhaps similar to activating the right to be forgotten), but her circumstances had changed since then. She noted that, now, “rather than family surveillance my fear is of public surveillance. About sharing something that is queer. Or making a post ect. So the public surveillance is more

fearful because it is also related to my work and I don't want to be outed at the moment. I am out to my family so it is not an issue at all."

Perceptions and subjectively felt experiences of family surveillance also change over time based on how lesbian women manipulate their online interactions with family members. Mali, Lara and Kishani were representative of a number of lesbian women who chose to manipulate standard Facebook repertoires to send the message that the family did not have the prerogative to observe them, and that, in fact, they could turn the tables and make the family the object of surveillance. This included selectively adding or not adding family members; adding family but keeping them on limited profile; only adding the "second generation: cousins, my uncle's son, my uncle's daughter" (Mali); ignoring family members who posted homophobic posts, and so on. When Mali found "what is known as casual homophobia, I see it in their feeds", she was incensed. Initially she decided that, for her, "family surveillance...is about keeping family at bay". However, she accidentally stumbled upon the fact that 'liking' her family's posts quite intensively could shift the surveillance from her on to them, and make them feel observed, in an aggressively 'nice' way. Because of this reversal, the family member in question "stopped kind of posting those comments", so, "people can also change over time on Facebook".

What should also not be underestimated in this discussion is the importance of affective changes which are connected to lesbian women coming into their own. Gayani recalled that, "when some injustice happens maybe in relation to a friend or something, I used to speak out because there is an audience usually on Facebook." She qualified that by recalling her initial apprehensions that, "the issue with Facebook is that you have your aunties and uncles and neighbours and everybody and then you are like hmmm." But looking back now, she felt that she had grown out of feeling the pressure of family surveillance as she had before, by a sense of being an older woman and not as easily inhibited or intimidated. Describing that process of coming into her own, she said,

There was a point in time in my life where when I was younger that I was very scared to speak out on LGBTIQ stuff because I knew my aunties and uncles were on Facebook. I did not want to put like let's say a gay pride flag or my profile picture or something because I did not want to be outed. So that was an issue. But now I am like what the fuck, kind of thing. So it's interesting

how that evolves over time, the experience. Now that I have passed 30, I am less scared to talk on Facebook. I don't bother anymore with restricted lists [when I post comments].

Public Surveillance

Narratives about public surveillance were also closely associated with what many lesbian women said about their use of the online space for information seeking, networking and advocacy. Concerns about how their professional lives may be affected was voiced by many. Again, Facebook was cited by the majority of participants, as the site which they had to use very carefully because of potential surveillance by colleagues and others connected to their workplace. A common anxiety was about never being sure (or able to ensure) that they could filter their audiences appropriately in each instance that they post something that could be the object of surveillance by their workplace and result in dire consequences. Rapti said,

How do you then filter your audiences depending on the kind of work you do as well? I think in my profession, in terms of the content that I post and people getting to know... and the legal and social background in this country... I am a very passionate person, I feel strongly about things. Not that I vocalize them, but in terms of what I share I don't necessarily think much about it. But that does come into mind quite a bit, in terms of how that then translates into reality, for my lived experiences.

Similarly, Mali said,

I have added those who work with me, on Facebook. I am not constantly thinking about if they are there or not but it's something that I do know is at the back of my mind. Because you think about how much the people in your workplace need to know about you. This is something you need to think about all the time.

These responses highlighted an interesting insight, chiefly that lesbian women did see that the issue of public surveillance was not just a matter of malicious actors or authoritarian states, and that it went well beyond any technical issues of knowing how to protect oneself by adjusting privacy settings. They spoke about it in a much broader

sense, in terms of the nature and politics of social media. They had a consciousness that “Facebook is a medium of surveillance”, and not a neutral platform on which a few aberrant actors will create problems by keeping tabs on what others do: “there is a constant surveillance, you’re watched, you’re judged, right, I mean like you said even if it is a political post, even if it is a comment” (Gayani).

There are a range of ways in which participants negotiate this understanding. A number of lesbian women indicated that taking a technical approach to ensuring safety from surveillance is exhausting because they have to think about who their audience should be each time they post something. It was also not viable for everyone, for the very important reason that the technical solution of adjusting privacy settings is easier to do on laptops and is more fiddly with smartphones, and many lesbian women in the study did not own a laptop or did not frequently use one they owned. It was because she knew that she could not always change her privacy settings easily on her smartphone that Lara, for instance, decided to take a different approach, ensuring that she added certain people when she felt she could not, but placing them permanently on limited profile.

For Thusitha, holding back is not an option. She “is not afraid to publish” information from LGBTQ magazines on her Facebook page, and posts her personal information (including her telephone number), with the attitude that not holding to ideas of privacy and accepting that surveillance is built into Facebook is part of the contract that has always already been signed by all Facebook users. But hers was not a fatalistic acceptance. Rather, she felt that the feeling of being cowed by surveillance was not a realistic option if one wanted to use Facebook, since part of the ways of using Facebook was for the user to constantly negotiate with surveillance. “If you are scared, why are you on Facebook?”, she asked.

Others had a more ambivalent response. A number of participants said that they were guarded in how they posted on Facebook, and were not very active around LGBTQ issues because of concerns about public surveillance. Some, like Lara and Harshi, said that they could not be bothered to do so. “It’s not that I don’t want to be open but I don’t have the energy. I kind of refrain about being too open on Facebook,” said Harshi. Hiranthi recalled that she had much less freedom now than before, to post LGBT information, because of changes in her personal circumstances. She observed,

Because I have become a public figure I am not as out as I was before. So I don't post as many LGBT or queer posts, whether sharing something or an article I have read or whatever, I am more careful about what I post and what I comment on. And that is something I am juggling with at the moment. So I just want to add that also.

Concurring with her, Rekha said,

I am also involved in public service, our institution has a Facebook page. But I do not like get added onto it because this would directly affect my job. So there are issues like this when I am using the internet. So I cannot share anything related to LGBT even if I wanted to. I am not free in that sense and there are problems for me like that. And it would be great if these are resolved so that it wouldn't be an issue for us. I like to share information

At the same time, Rekha also posts her telephone number on her Facebook profile.

Anoteworthy aspect of this evolution in how lesbian women experience public surveillance in their use of the online space, pertains to how they themselves subjectively come to terms with it and resourcefully tackle it. Rapti, for instance, who is an instructor in an educational institution, was initially concerned about whether her colleagues or others would see what she posted. She said,

“There are people from my institution who have added me on Facebook for a long time.... then after a while then that means they know what I am posting. So that is a bit problematic for me. For a long time because of that I censored myself quite strictly. But now my approach within my institution, is about how to be open minded and critical, like if you cannot handle that on Facebook, then, you know ‘tough’ kind of attitude.

Social networking and dating

Making friends and sustaining friendships are two other central uses of the online space, chiefly Facebook. Some, like Pushpa, said that they “use Facebook mainly to find friends, especially LGBT friends that will

be coming through friends of mine, because most of the friends on my list are lesbians.” Others, like Lara, said that they do not actively search for friends on Facebook, and that they usually ‘friend’ people that they already know. Facebook was also used for maintaining a “network” of LGBT friends from different parts of the world. Gayani said, “In terms of LGBT, I think having a network of people at the international level is enabled through Facebook, because I have lived in several countries and then you have friends in several countries.”

Dating

The study probed for whether women used the online space for dating purposes. The general view emerging from the focus group discussion (and confirmed by the online survey), was that online dating in general, and the use of dating apps more specifically, was not common amongst lesbians, as far as women were aware of the behaviour in their circles. This was confirmed across different age groups. Except for two participants, the others said that they had not and did not actively use Tinder or any other dating apps.

One of the factors cited by a few of the women in the study was that they were in a “committed relationship” (Thusitha) with another woman, which implied that they were not looking to date. However, this was not the only factor, not least because not all women were partnered. Attitudes to dating apps were hinted at as one aspect of it. Mali wanted to affirm that although dating apps were not used, there was nothing to show that lesbians were necessarily averse to them or looked down on women who used them. Citing a small number of cases of some lesbians who were comfortable with using dating apps and had found them fulfilling, she took the view that it offered a space for women to find other women to date. Although this was not entirely free from issues of politics or safety, she felt that that did not entirely gainsay the value of such a space, especially when the space for women to meet one another offline was restricted by structural factors. Thus, “even though we don’t use it, I think it’s a good thing”. Ratna also thought that dating apps were useful as one way for women to find other women to date, saying “I don’t use dating sites, but I have gone to them and searched them and taken a look at them.” Conversely, the views of a few women implied that they were neither aware of nor curious about dating apps; many also didn’t seem to know that there were international dating apps for women only; there was some uncertainty about whether these apps could be used locally.

Dating apps did not receive much emphasis from most of the women in the study, but this did not mean that they did not use the online space for forming emotional and sexual connections. Some stated that they had used the online space quite heavily to date and form relationships. For one woman who had a long distance relationship with her partner, platforms such as Skype, Gchat and Facetime were extremely important to maintain the relationship. Two of the respondents in our interviews - a couple - met and began their relationship online, though not through a dating site or app. They 'followed' each other professionally online for a while and then started chatting via platforms like Facebook.

Reputation

There was some anxiety about others' estimation of you depending on what you post and share, and through the politics you publicly share online etc. A certain amount of caution and forethought are practiced by some of the respondents when it comes to assessing what specific posts may or may not 'say' about them to others. This safeguarding of reputation also translates into a sense of surveillance for some, although the implications are very different from what we have discussed above.

Referring to her social media circles, Mali took the approach that "people are very self conscious on Facebook", and that she was constantly mindful of that when she posted anything, knowing that what she said would affect how her politics were seen and evaluated. She said,

When I share LBT issues on Facebook, I know that there are people who are watching what we share.. We have a peer group and they are most often trying to see or they say 'ah, you shared this? No point, this is fake news' or this news is 'ara anthavadi patthen inna kattiya liyana ekkak' [it's written from an extremist or regressive point of view] or this information is correct from this side of politics but incorrect from another side of politics.

This sort of surveillance entailed that "we need to think about these things at least three to four times before we share something, because we first think about what people may think about our politics and then act on Facebook. I know". Mali explained that "this is why I share everything very carefully, because what people think of you also changes when you share something."

One of the underlying assumptions in this form of surveillance, is that the social media profile is a direct reflection of one's 'real' self and one's 'real' politics. Kala disputed this attempt to form quick and categorical impressions, saying, "people are always going to be like, 'what is this person about' every time you say something, post something. Have a cat picture? You become a cat person!"

Anxieties about one's reputation or how one is perceived - or how one perceives oneself in these spaces - seems also connected to one's 'safety'. One participant deliberately stays out of the way of confrontation because it makes her feel unsafe but also because she believes herself to be someone who cannot win in such a confrontation.

But because I don't actually have the tools to take part in a conversation and defend it in a way that is **intellectual** or where i can definitely be confident about making the point very clear, I don't take part. But just reading somebody else's comment - just reading itself is harassment. that's enough, that's the most I can take (laughs). (Kishani)

Safety

It became clear to us that many of the lesbian women we spoke with did not approach online 'safety' in a traditionally technical sense. There were certainly anxieties about risk in terms of online engagements, but what we highlight is the fact that most emphasised the value of prudence in their approach, which included the technical but was not limited to it. A more integrated understanding of being prudent in one's online engagements was seen as a more empowering perspective for lesbian women over approaches that encouraged technical measure that were defensive or encouraged feelings of being victimised and afraid.

It was evident that many of the respondents were consciously prudent in their use of various apps and social media platforms for different purposes, particularly in terms of sharing content privately or for holding private group chats. They were clearly well-aware of privacy concerns around platforms such as Facebook. For instance, Pushpa highlighted how her group of lesbian friends began connecting with one another through a space like Facebook which facilitated such networking but was known to be relatively 'unsafe'. Once trust had

been formed and an offline meeting had taken place, they deliberately exited their Facebook group, transitioning the conversation to another online space which was perceived to be one that they had more control over, and which was more private and ‘safer’, such as Viber. This was only one example of how most of the participants creatively manipulated multiple online platforms synergistically for their varied purposes.

It is important to note that, except for one participant, none of the other lesbian women had attended digital safety trainings, as stated in the online survey. It is safe to assume that their knowledge of online privacy and safety is almost exclusively derived from experience, both personal and collective. For instance, Pushpa said,

In terms of those lesbian women who are on Facebook or on the Internet, if there is some kind of issue, say we hear of such an issue, we tell them what they should do. And many times I have told people to adjust their privacy settings. I know a lot of people who get on Facebook and still don't know how to adjust their privacy settings. So for them I would make a step-by-step screenshot and send it to them to make their privacy settings. So the group of friends that are with me have adjusted their privacy settings accordingly, and even though I haven't faced any issues, I know of the issues faced by my friends. Because of that I have given them advice on how to adjust their privacy settings. Who should they accept on facebook and who they shouldn't and what they should do etc. I have informed them of it.”

Strategies

We observed that their ‘prudence’ has led to many of these women developing simple and very ‘practical’ approaches and strategies to remain safe online. Some of these strategies were:

- Adding family members on limited profile
- Adding only ‘second generation’ relatives (i.e. their peer group), not older relatives
- Adding someone only if there are mutual friends or if there are connections amongst the mutual friends
- Not adding relatives / family members at all

- Holding back on engaging / commenting in conversations about sexuality
- Holding back on posting content about sexuality
- Holding back on engaging / commenting on posts made by family members or relatives which oppose their own views (e.g. Religious posts)
- ‘Liking’ political posts/content by others which reflect what one would want to say, in lieu of actually commenting
- Keeping posts pithy and short in order to avoid being drawn or baited on them
- Not taking objectionable comments head on, but using an oblique discourse which makes the point but is more legible to one’s peer group than to the person making the comment
- Setting up collective action - ‘alarming’ other friends if there is someone suspicious online
- Giving each other tips on things such as ‘privacy settings’
- Making judgements about not imperilling other lesbian women by posting content which identifies them

Conclusion

We found that many, if not all, of the lesbian women we spoke to, hold perspectives on their online safety which perhaps run contrary to the stereotypical narratives and beliefs about how women / women with diverse sexual orientations and gender identities, approach online engagements.

A number of them acknowledged that their online engagements were constrained, and that these were specifically gendered and sexualised experiences. Some of the respondents were not actively advocating on right-based topics online, or sharing or commenting explicitly on content directly related to sexuality and sexual rights on a frequent basis. They simply did not engage with these conversations online, sometimes out of an anxiety about facing homophobic trolling, but also because this was not how they used those tools.

However, while these constraints shaped how they engaged online, at personal, affective and structural levels, many also took pains to tease out the different strands in their experiences, so that we did not simply get a homogeneous and monolithic picture of oppression and struggle. They were particularly adept at showing how power flowed in uneven ways in the constraints placed on them, and how they were able to manipulate, disrupt, negotiate and manage their use of the online space in those interstices.

They focused on the importance of being well-informed; pragmatic about surveillance and constraints; not giving into fear; being prudent about safety, rather than defensive and victimised; being vigilant when they had to be without over-emphasising it; understanding that their own consciousness of the constraints (particularly surveillance) also shifted over time and were not eternal; taking a holistic view to surveillance, including recognising that there were structural factors that enabled it on social media, and so on.

What is important is to note that none of the group had any experiences with Digital Safety Trainings, as we said before, and their knowledge seemed to come from a more subjective place, honed through lived experience and learning from others.

If we were to examine traditional Digital Safety Trainings and how they are carried out, they largely follow a strictly 'technical' approach to safety. Trends have changed in Digital Safety Trainings, of course;

increasingly trainers are adopting ‘Holistic’ or ‘Integrated’ training practices: ‘The blending of digital, physical and psycho-social aspects of security may be called ‘holistic’ or ‘integrated’ security’.¹⁰⁵ But these are new practices; until recently, the prevailing attitude among many digital safety trainers was that the solution is purely technical.

Traditional Digital Safety trainings typically ‘include hands-on installation and use of tools.’¹⁰⁶ A critical research about Digital Safety Trainings for Human Rights Defenders (cited in this paper), produced some findings about the ways in which traditional digital safety trainings are carried out and some of the perceived causes behind their reduced efficacy.

“The most overwhelming and common finding across both studies was that digital security has to be taught within communities and within existing networks and collaborative structures”, writes Stephanie Hanckey, from the Tactical Technology Collective. “In our view, the research showed that digital security taught in a one-off encounter, or on an individual basis rarely works. Community or collective learning is an essential element on multiple levels.”¹⁰⁷

In a sense, her words echoed one of our key findings: the lesbian women we spoke with learned to look at ‘safety’ from their own experiences but also largely through sharing experiences, tips, knowledge and a sense of collective responsibility for each other’s safety as well as their own.

In the Tactical Tech research, they observe how the traditional ‘**fear-based, tool-centric**’ model of Digital Safety trainings is already being reconceptualized in many circles, as this model of training has proven over time to be ineffective and unethical.

In addition, we would also like to offer up the notion that this traditional model of ‘fear-based, tool-centric’ Digital Safety trainings is gender-blind and inherently male-centric in its approach to technology and digital safety, often leaving out a range of lived experiences and knowledge of diverse peoples, on navigating and managing technological tools and digital spaces.

¹⁰⁵ *Digital Security Trainers’ Practices and Observations*, Carol Waters (Tactical Technology Collective) <https://secresearch.tacticaltech.org/digital-security-trainers-practices-and-observations> Downloaded on: 29 Sept 2017

¹⁰⁶ *Digital Security Trainers’ Practices and Observations*, Carol Waters (Tactical Technology Collective) <https://secresearch.tacticaltech.org/digital-security-trainers-practices-and-observations> Downloaded on: 29 Sept 2017

¹⁰⁷ <https://secresearch.tacticaltech.org/background>

Findings which emerge from studies like this one show us a contrary picture; that so-called 'marginalised' persons, such as the lesbian women in this study, use the internet and online tools every day in multiple ways, while thinking creatively and practically about their safety and the safety of others in their communities. It was clear that these strategies are constantly evolving in ways that align dynamically with changes in their every-day lives, as well as in their practices and habits online.

Digital safety strategies and narratives which do not address every-day realities and the specific ways in which lesbian women use the internet, will not feel relevant to them. Furthermore, for many of the women, the technical approach to safety did not adequately address the broader issue of the gendered and sexualised surveillance of women.

Privacy and safety concerns were clearly prevalent in our respondent group but what we found was that more often than not, they relied on a number of self-taught tactics - and not only the technology - to come to their aid. The lived experiences and knowledge of women such as those in this study need to find their way into how technologies are designed and managed; how digital safety is conceptualized and how digital safety trainings are designed and implemented; and finally, into policy around digital safety, privacy and autonomy.

Recommendations

To the Government of Sri Lanka

1. Repeal Sections 365 and 365A of the Penal Code.
2. Reform Section 399 of the Penal Code to explicitly exclude transgender persons from the scope of “cheat by personation”.
3. Clarify the offences contained in obscenity and profanity laws, and their applicability to the online space.
4. Ensure that all laws affecting online speech and online privacy are “necessary in a democratic society”, even if this means, in some cases, total abolition.
5. Amend the Telecommunications Regulatory Commission Act (as amended in 1996), to specifically exclude the commission’s power to oversee surveillance measures in individual cases. Require any general evaluation of an ISP’s compliance with surveillance requests, if provided for, to be transparent and in the public domain.
6. Establish a separate body, either judicial or quasi-judicial in nature, to oversee ISP compliance with surveillance measures. Ensure that such a body will be comprised of individuals with adequate expertise in human rights and law enforcement and that its members will be independently appointed and secure in their tenure. Ensure the availability of judicial review against any measures authorised by such a body. Subject the body’s conduct to a general periodic review by the Human Rights Commission of Sri Lanka.
7. Ensure that *all* online surveillance measures are subject to the approval of an independent body, such as the body recommended above; in no case should an investigating official have a unilateral authority to order or initiate online surveillance measures; if exceptions are made for exigent circumstances requiring quick action, ensure that subsequent judicial or similar independent approval of such action is mandatory, within at least 48 to 72 hours of such time the action first goes into operation.
8. Ensure that surveillance measures carried out through intermediaries (such as ISPs) are only allowed where necessary,

after less intrusive alternatives have been considered and shown to be ineffective or in some other way detrimental to the legitimate aims pursued by the measure.

9. Enact legislation requiring ISPs to notify users of surveillance measures as the general rule; if exceptions are to be applied to this general rule, ensure that the application of exceptions are authorised by an independent body based on their necessity, and that the applicability of the exceptions is reviewed periodically. In no case should an exception be applied indefinitely or terminally.
10. Ensure full compliance with the Convention on Cybercrime and the International Bill of Rights in all laws related to internet regulation and surveillance.

Law enforcement agencies

11. Enact laws that guarantee the safety and inclusiveness of the online space, including laws that penalise *persistent and/or particularly egregious harassment of individuals based on their identity* (such as race, religion, gender identity, sexual orientation, national origin). Ensure that such laws adequately define the prohibited types of speech and provide intentionality as an essential element of the offence. Ensure that the penalties imposed on wrongdoers are proportionate, and serve the purpose of promoting public order and respect for others' rights in the online space.
12. Enact laws that criminalise the unauthorised disclosure and/or publication of content shared between private individuals. Ensure that such laws focus on and criminalise the aspects of abuse, harassment and exploitation related to such acts, and the violation of privacy related to such acts. Shift the focus away from notions of "obscenity" and "profanity," in such cases.
13. Strengthen existing redress agencies (such as SLCERT) to record and respond to online harassment faced by people of diverse sexualities and gender identities in Sri Lanka with full confidentiality. Ensure that victims seeking redress may hold such agents to account (through judicial review or otherwise), in terms of how reports by victims are received, and what actions are taken in response to such reports.
14. Develop and implement guidelines for CID Cyber Crime Division that guarantees non-discrimination based on gender identity and sexual orientation and protects confidentiality.

15. Investigate complaints of online harassment or threats against people of diverse sexual orientations and gender identities and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.
16. Take measures to ensure that all law enforcement officers respect the right to non-discrimination on grounds of sexual orientation and gender identity.

Internet service providers

17. Develop and implement guidelines that are non-discriminatory on grounds of sexual orientation and gender identity, particularly when transgender persons obtain services, and where sexuality or gender minorities are affected by adverse legal procedures.
18. Link regulatory compliance with ISPs' overall branding strategy (albeit in a manner respecting the privacy rights of individual customers). Ensure that the public is informed of the government's various surveillance powers and measures; adopt policies that prioritise the rights of the customer in all cases except where government agencies have followed and complied with the necessary procedural requirements.

Civil society organisations

19. Document both online and offline experiences of people of diverse sexualities and gender identities and advocate with the Government of Sri Lanka for legal and policy reform related to the rights of people of diverse sexualities and gender identities in Sri Lanka.
20. Strengthen partnerships and referral systems with government agencies that provide redress for online harassment.
21. Develop more effective information, education and communication around existing laws, policies and services that are related to internet use, so that people of diverse sexualities and gender identities in Sri Lanka know when their rights are violated online and seek redress when required.
22. Develop strategies to increase knowledge on cyber safety among people of diverse sexualities and gender identities in Sri Lanka.
23. Adopt a general trilingual policy in all online communications and interventions to ensure inclusiveness.

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Appendices

Appendix A: Glossary of Terms

LGBTQI – A common abbreviation for lesbian, gay, bisexual, transgender, questioning and intersexed community.

Lesbian – Term used to describe female-identified people attracted romantically, erotically, and/or emotionally to other female-identified people. The term lesbian is derived from the name of the Greek island of Lesbos and as such is sometimes considered a Eurocentric category that does not necessarily represent the identities of African-Americans and other non-European ethnic groups. This being said, individual female-identified people from diverse ethnic groups, including African-Americans, embrace the term ‘lesbian’ as an identity label.

Gay – 1. Term used in some cultural settings to represent males who are attracted to males in a romantic, erotic and/or emotional sense. Not all men who engage in “homosexual behavior” identify as gay, and as such this label should be used with caution. 2. Term used to refer to the LGBTQI community as a whole, or as an individual identity label for anyone who does not identify as heterosexual.

Bisexual – A person emotionally, physically, and/or sexually attracted to males/men and females/women. This attraction does not have to be equally split between genders and there may be a preference for one gender over others.

Transgender – A person who lives as a member of a gender other than that expected based on anatomical sex. Sexual orientation varies and is not dependent on gender identity.

Queer – 1. An umbrella term which embraces a matrix of sexual preferences, orientations, and habits of the not-exclusively- heterosexual-and-monogamous majority. Queer includes lesbians, gay men, bisexuals, transpeople, intersex persons. 2. A reclaimed word that was formerly used solely as a slur but that has been semantically overturned by members of the maligned group, who use it as a term of defiant pride. ‘Queer’ is an example of a word undergoing this process. For decades ‘queer’ was used solely as a derogatory adjective for gays and lesbians, but in the 1980s the term began to be used by gay and lesbian activists as a term of self-identification. Eventually, it came to be used as an umbrella term that included gay men, lesbians, bisexuals, and transgendered people. Nevertheless, a sizable percentage of people to whom this term might apply still hold ‘queer’ to be a hateful insult, and its use by heterosexuals is often considered offensive. Similarly,

other reclaimed words are usually offensive to the in-group when used by outsiders, so extreme caution must be taken concerning their use when one is not a member of the group.

Intersexed Person—Someone whose sex a doctor has a difficult time categorizing as either male or female. A person whose combination of chromosomes, gonads, hormones, internal sex organs, gonads, and/or genitals differs from one of the two expected patterns.

Gender Identity – A person’s sense of being masculine, feminine, or other gendered.

Sexual Orientation – The desire for intimate emotional and/or sexual relationships with people of the same gender/sex, another gender/sex, or multiple genders/sexes.

Heterosexism – Prejudice against individuals and groups who display nonheterosexual behaviors or identities, combined with the majority power to impose such prejudice. Usually used to the advantage of the group in power. Any attitude, action, or practice – backed by institutional power – that subordinates people because of their sexual orientation.

Heteronormativity—The assumption, in individuals or in institutions, that everyone is heterosexual, and that heterosexuality is superior to homosexuality and bisexuality. Heterosexism – Prejudice against individuals and groups who display non-heterosexual behaviors or identities, combined with the majority power to impose such prejudice. Usually used to the advantage of the group in power. Any attitude, action, or practice – backed by institutional power – that subordinates people because of their sexual orientation.

Homophobia – The irrational fear or hatred of homosexuals, homosexuality, or any behaviour or belief that does not conform to rigid sex role stereotypes. It is this fear that enforces sexism as well as heterosexism.

Transphobia – The irrational fear of those who are gender variant and/or the inability to deal with gender ambiguity

Coming Out – May refer to the process by which one accepts one’s own sexuality, gender identity, or status as an intersexed person (to “come out” to oneself). May also refer to the process by which one shares one’s sexuality, gender identity, or intersexed status with others (to “come out” to friends, etc.). Page 3 This can be a continual, life-long process for homosexual, bisexual, transgendered, and intersexed individuals.

Appendix B: Survey Questionnaire

1. Please select your age.
 - Below 18
 - 18 – 24
 - 25 – 34
 - 35 – 44
 - 45 – 54
 - 55 or over

2. What is your level of formal education? Please select the highest degree you have achieved. (Select the most relevant answer.)
 - Master's degree or above
 - Bachelor's degree
 - Passed A/Ls
 - Passed O/Ls
 - Passed primary education
 - Able to read and write

3. Please select the gender you identify with.
 - Male
 - Female
 - Trans M2F
 - Trans F2M
 - Third gender
 - Gender non-identifying
 - Other (please specify): _____

4. Please select the sexual orientation you identify with.
 - I am only attracted to members of the opposite sex.
 - I am only attracted to members of the same sex.
 - I am attracted to members of both sexes.
 - The sex of the person is not relevant.
 - I am not sexually attracted to others.
 - I am not sure.

5. Relationships. Select all that apply.
 - I am in a committed relationship with a same-sex partner
 - I am in a committed relationship with an opposite-sex partner
 - I have one sexual partner
 - I have more than one sexual partner

- I don't have any sexual partners.
- I am looking to meet a sexual partner/sexual partners.
- I am legally married to someone.
- I have taken vows of celibacy.

Access of Internet

6. When did you start using the Internet? Please select the answer most appropriate to you.
- More than 20 years ago
 - More than 10 years ago
 - More than 5 years ago
 - More than 3 years ago
 - Less than 3 years ago
7. How many hours a week do you have access to the Internet for personal use?
- I have unlimited access
 - More than 40 hours a week, but not always
 - Between 40 – 30 hours a week
 - Between 30 - 20 hours a week
 - Between 20 – 10 hours a week
 - Between 10 – 5 hours a week
 - Less than 5 hours a week
8. How frequently do you use the Internet for personal use? Select the most relevant answer.
- More than 40 hours a week
 - Between 40 – 30 hours a week
 - Between 30 - 20 hours a week
 - Between 20 – 10 hours a week
 - Between 10 – 5 hours a week
 - Less than 5 hours a week
9. From which devices do you most frequently access the Internet for personal use? You can select up to three answers most relevant to you.
- My own laptop/desktop
 - My own tablet/smart phone
 - My own feature phone (phone with only basic internet capabilities)
 - Someone else's laptop/desktop (e.g. family member's, a partner's or friend's)

- Someone else's tablet/smart phone (e.g. family member's, a partner's or friend's)
 - Someone else's feature phone (a phone with basic internet capabilities)
 - Work laptop/desktop
 - Work tablet/smart phone
 - Work feature phone (a phone with basic internet capabilities)
 - Internet café
10. Have you ever accessed information relating to any of the following themes on the internet.
- LGBT related news from around the world
 - Legal and policy information related LGBT issues in Sri Lanka
 - Safe sex practices
 - Sexually transmitted infections
 - LGBT organisations
 - LGBT themed art (movies, TV shows, stories)
 - General information on services provided by the government (ID documents, taxes, vehicle registration)
11. What are the steps you take to ensure that the information you access on the internet is accurate?

Use of the Internet

12. Select all the platforms you use frequently.

Social Media Platforms

- Facebook
- Twitter
- Instagram
- Other (please specify): _____

Dating Apps

- General dating apps, such as Tinder
- Dating apps specially designed for Lesbian, Gay, Bisexual or Trans People

Messaging Apps

- Whatsapp
- Viber
- FB Messenger
- Imo
- Snapchat
- Email
- Other (please specify): _____

Forums

- LGBT-themed blogs
- Discussion Forums
- LGBT Groups
- Other (please specify): _____

Social Media Platforms

13. Please choose all the statements relevant to you.
I use social media platforms _____.
- to maintain existing relationships
 - to meet new friends
 - to meet new friends from the LGBT community
 - to find partners for monogamous relationships
 - to meet partners for sexual encounters (non-commercial)
 - to meet clients for commercial sex work
 - Other (please specify): _____
14. Do you have more than one profile on the social media platform that you use most frequently for reasons related to your sexual orientation and gender identity? (Please choose only one answer.)
- Yes, I have more than one profile on my preferred social media platform for reasons related to my sexual orientation or gender identity.
 - I have more than one profile on my preferred social media platform, but not for any reason related to my sexual orientation or gender identity.
 - I don't have more than one profile on any social media platform.
 - I don't have any profiles on any social media platform.
15. Please choose **one** statement that is most relevant to you.
- All of my profiles on the same platform feature my real name and images of my face.
 - Only one (or some) of my profiles feature my real name and images of my face.
 - I only have one profile per platform. It features my real name and images of my face.
 - I only have one profile per platform. But it does not include either my real name or images of myself (or both).
 - I don't have any profiles on any social media platform.

16. Thinking about the social media profiles that feature your real name and/or face pictures, which of these details have you truthfully included? (Please select all that apply.)
- Real name
 - Face picture
 - Home address
 - Phone number
 - Sexual orientation
 - Gender identity
 - Political affiliation
 - Groups I belong to
 - I don't have any profiles that include my real name and/or images of myself.
 - I don't have any profiles on any social media platform.
17. Thinking about the social media profiles that include your real name and/or images of yourself, please select the statement most relevant to you.
- I share LGBT-related content publicly on my profile feed (e.g. wall, timeline).
 - I share LGBT-related content on my profile feed, but I limit visibility to my “friends”, or specific “friend” circles/lists.
 - I share LGBT-related content within specific groups, but rarely on my own profile feed.
 - I never share LGBT-related content on my own profile feed.
 - I don't have any profiles that include my real name and/or images of myself.
 - I don't have any profiles on any social media platform.
18. Thinking about the social media profiles that include your real name and/or images of yourself, please select the statement most relevant to you.
- I would mention my sexual orientation and/or gender identity in my social media posts and/or comments in any situation that I feel like mentioning it in
 - I would only mention my sexual orientation and/or gender identity in my social media posts and/or comments in certain limited circumstances
 - I would never mention my sexual orientation and/or gender identity in my social media posts and/or comments
 - I maintain a sexual orientation and/or gender identity in my social media posts and comments that is different to what I privately identify with

- I don't have any profiles that include my real name and/or images of myself.
 - I don't have any profiles on any social media platform.
19. If you have profiles that do not feature either your real name or face pictures (or both) for a reason related to your sexual orientation or gender identity, please select the statement that is relevant to you.
- I would mention my sexual orientation and/or gender identity in my social media posts and/or comments in any situation that I feel like mentioning it in
 - I would only mention my sexual orientation and/or gender identity in my social media posts and/or comments in certain limited circumstances
 - I would never mention my sexual orientation and/or gender identity in my social media posts and/or comments
 - I maintain a sexual orientation and/or gender identity in my social media posts and comments that is different to what I privately identify with
 - I don't have any profiles without my real name and/or images of myself.
 - I don't have any profiles on any social media platform.
20. Why do you have profiles that do not feature your real name or face picture (or both). Please select the answers most relevant to you.
- Because my sexual orientation is considered to be illegal.
 - Because I am afraid of my family finding out about my sexual orientation or gender identity.
 - Because I am afraid of my friends finding out about my sexual orientation or gender identity.
 - Because I am afraid of my employer or work colleagues finding out about my sexual orientation or gender identity.
 - Because I am married.
 - For religious reasons.
 - Because I am a member of the clergy.
 - Other (please specify): _____
 - I do not have any profiles that do not include my real name and images of myself.
21. In terms of the social media profiles that include your real name and/or images of yourself, do you limit your participation on social media (posts and comments) fearing any of the following factors? Please choose three most relevant choices.
- I am afraid of other people finding out about my sexual orientation or gender identity

- I am afraid of what other people's comments would be
 - I am not interested in displaying my sexual orientation or gender identity
 - I am not sure whether it is legal to post such topics
 - I am afraid it might result in violence against me in the physical world
 - I am afraid the government might find out about my sexual orientation or gender identity
 - I am afraid it might affect my job
 - I don't think anybody should talk about their sexuality and gender issues on social media platforms
 - Other (please specify): _____
22. Have you ever been the victim of a specific instance of violence or threat of violence on internet because of your sexual orientation or gender identity?
- Yes
 - No
23. Have you experienced or personally known someone who experienced any of the following. Please select all that applies.
- Videos exposing your or someone else's sexual orientation/ gender identity posted online or shared with a third party without consent
 - Pictures exposing your or someone else's sexual orientation/ gender identity posted online or shared with a third party without consent
 - Sexual orientation or gender identity being publicised online without consent
 - The experience of violence in the physical world, based on something posted online related to your or their sexual orientation and gender identity
 - Verbal threats to do any of the above
 - Online harassment (bullying, name-calling, condemnation, etc.)
 - Law enforcement officials checking a person's mobile phone, laptop, internet account etc without their consent
 - I have not experienced any of the above.
 - I don't know anyone who has experienced any of the above.
24. What are the platforms mostly impacted by the experiences you identified above.

Social Media Platforms

- Facebook
- Twitter

- Instagram
- Other (please specify): _____

Dating Apps

- General dating apps, such as Tinder
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Messaging Apps

- Whatsapp
- Viber
- FB Messenger
- Imo
- Snapchat
- Email
- Other (please specify): _____

Forums

- LGBT-themed blogs
- Discussion Forums
- LGBT Groups
- Other (please specify): _____

25. Thinking of the person or people responsible for the incident(s), how did they relate to the person affected (you or someone else)?

- Friends
- Immediate family member
- Relative
- Someone with a romantic involvement
- Someone with a sexual involvement
- An acquaintance
- A stranger/someone unknown
- I don't know the real identity of the person or people

26. How did you or the person affected respond to the experience? (Select all that apply.)

- Deleted/deactivated the profile on that platform
- Was forced to create a new profile on that platform
- Unfriended or blocked the person
- Confronted the person either privately or in the comments
- Made a post publicising the wrongdoer and their actions
- Reported the person responsible to the platform
- Reported the problem to law enforcement
- Confronted the individuals concerned personally in the physical world
- Did not respond

27. Did you receive a satisfactory resolution ?

- Yes
- No
- I don't know the result yet
- Did not respond

Dating and Hookup Platforms.

28. Thinking about Dating and Hookup Platforms (Tinder etc.), please select all the statements relevant to you.

- I am in or have had a romantic relationship with someone I met on such a platform.
- I have found partners for sexual encounters on such platforms.
- I have found friends on such platforms.
- I find clients for commercial sex work on such platforms.
- I have never been on such platforms.
- I have attended events promoted/communicated on such platforms.
- I promote events organised by me or someone I know through such platforms.
- I left those platforms because I did not find them useful.
- I have never been on such platforms.

29. Thinking about the pictures you share on such platforms, please select the statement most relevant to you.

- I share my face publicly
- I only share my face privately
- I never share my face
- I have never been on such platforms.

30. Thinking about the pictures you share on such platforms, please select the statement most relevant to you.

- I share only non-nude pictures, both publicly and privately.
- I share non-nude pictures publicly, but I also share nude pictures privately.
- I share nude pictures both publicly and privately.
- I don't share any pictures on such platforms.
- I have never been on such platforms.

31. Fill in the blank with the statement most appropriate to you.
When I meet someone new from such a platform for the first time,
“ _____ ”
- I always video call them and see their face before I meet them.
 - I always meet them in a public space (a main road, a restaurant, a park).
 - I invite them over, or I go to their place, or we meet at a friend's place.
 - Sometimes I meet them in a public space, sometimes I meet them directly in my place, their place, or a friend's place.
 - We sometimes meet directly in a hotel/rented room.
 - I don't meet people from such platforms in person.
 - I always meet them with someone else I know.
 - I have never been on such platforms.

Awareness of digital safety

32. Do you keep track of the security and policy updates made to the online platforms that you most frequently use?
- Yes
 - No
 - I don't know how to
33. Do you use any of the following tools and methods to increase your security online?
- Using strong passwords for your email or other Internet accounts
 - Using only platforms which provide encryption services
 - Using anti-virus software
 - Keeping your operating system updated with the latest security patches and updates
 - Using IP disguisers/blockers
 - Using anti-censorship software
 - Using a VPN
 - I have heard of some of these tools, but I don't know how to use them
 - I have never heard of these tools before
 - Others _____
34. Have you participated in any digital safety training courses, seminars or workshops?
- Yes
 - No

35. When you think about online experience compared with offline experiences, would you say:

The online environment gives me more freedom to express and explore my sexuality and/or gender identity

- Agree
- Disagree
- I don't have an opinion on this
- I am not sure

The online environment connects me more to LGBT communities in Sri Lanka

- Agree
- Disagree
- I don't have an opinion on this
- I am not sure

The online environment connects me more to LGBT communities around the world

- Agree
- Disagree
- I don't have an opinion on this
- I am not sure

The Sri Lankan LGBT movement needs to work harder to make use of the online space in its activism

- Agree
- Disagree
- I don't have an opinion on this
- I am not sure

The potential for online activism has reduced the importance of offline activism

- Agree
- Disagree
- I don't have an opinion on this
- I am not sure

Disrupting the Binary Code

Experiences of LGBT Sri Lankans Online



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Between November 2016 and July 2017, the Association for Progressive Communications (APC) carried out its multi-country research exploring the information and communications legal, policy and socio-cultural landscape related to sexuality on the internet in Nepal and Sri Lanka and, how Indian law constructs “digital obscenity”. This publication is part of the final research report “EROTICS South Asia, exploratory research: Sex, rights and the internet” published by APC 2017, from that project. EROTICS (Exploratory Research on Sexuality and ICTs) is a global network of activists, academics, and organizations working on sexuality issues including LGBT rights, sex works, sex education, SRHR rights, and gender-based violence, in addition to internet freedom advocates, policy experts, and techies. The objective of the network is to bridge inter-movement collaboration on sexual rights and internet rights, highlight technology-related violations against sexual rights activists, and build their capacity in the design, usage, and governance of the internet.



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Women and Media Collective

56/1, Sarasavi Lane, Castle Street, Colombo 08, Sri Lanka

Tel: +94-5632045 / 5635900 / 2690192

Fax: +94-2690192 / 2690201

Email: wmcslanka@gmail.com

womenandmedia.org