

BRIDGE
to
EQUALITY

සමානාත්මතාවය සොයා...
சமத்துவத்தை தேடுதல்...

LAWS & POLICIES

affecting
SOGIE
in Sri Lanka



INTRODUCTION

The BRIDGE to Equality project presents this booklet as a resource for the Sri Lankan LGBTI community. The booklet has been prepared following a community consultation with a few community leaders who shared their experiences and expectations of a booklet on laws and policies prepared exclusively for the community.



CONTENT

- LAWS: VAGRANCY
- LAW: SEX WORK
- FUNDAMENTAL RIGHTS
- POLICY: GENDER RECOGNITION CERTIFICATE
- SRI LANKA POLICE
- INSTITUTIONS FOR REDRESS
- EMERGENCY CONTACTS



LAWS: VAGRANCY

The Vagrants Ordinance No. 04 of 1841

Section 3: Persons who are deemed idle and disorderly persons

If you behave in an aggressive and disorderly manner in public.

Example: If you are found to be wandering or idling in public without purpose

Section 3. Persons who are deemed idle and disorderly persons.

If you are an able bodied person who;

- Intentionally refuses to maintain themselves
- Behaves in aggressive or disorderly manner
- Wandering and idling with no purpose
- Defacing the side of any house/building or notice;

In Public,

You are considered an 'idle and disorderly person'

A police officer may arrest without a warrant

Section 7: 'Soliciting', 'acts of gross indecency' and 'loitering' in public

Section 7. Soliciting and acts of indecency in public places.

If you promote or engage in;

- Illegal sexual activity
- Indecent activity
- In a public place against the set laws or without permission, or
- In a private place where you cannot give acceptable reason for being there

You are guilty of an offence, and police may arrest without warrant.

LAW: SEX WORK

Sex work is not a crime in Sri Lanka.

Soliciting in public is a crime as per Section 7 of Vagrants Ordinance.

The Brothel's Ordinance prohibits maintaining a brothel.

Brothels Ordinance No 5 of 1889

Section 2

- If you own, manage or help manage a brothel
- If you are living in a place known to typically be used for prostitution
- If have some degree of ownership of a place known to you to be a brothel

You are guilty of an offense.

A brothel is defined as a place where males visit repeatedly to have sexual intercourse with women.

Penal Code S360A

Section 1: recruiting a person to become a prostitute is a crime.

Section 1

If you recruit or attempt to recruit a male or female at any age to become a prostitute.

Vagrants Ordinance

Section 9: if an individual lives off of another's earnings of prostitution it is a crime

Section 9 (1) (a):

If you knowingly live off another person's earnings from prostitution it is an offense

Note: In case of carrying Condoms:

Carrying a condom is not a crime under the Vagrants Ordinance. A condom is a medical device and cannot be used as proof of sex work.



FUNDAMENTAL RIGHTS

(A) Rights available to every "person":

Articles;

10. Freedom of thought, conscience and religion

11. Freedom from torture or cruel, inhuman or degrading treatment

12. Right to equality before the law and the equal protection of the law

Right to non-discrimination on grounds of race, religion, language, caste, sex, political opinion or place of birth

13. Freedom from arbitrary arrest;

Right not to be arrested except according to procedure established by law, and to be informed of the reason for the arrest

Right not to be kept in custody without a judicial order for longer than the period prescribed by law.

Right of a person charged with an offence to be heard in person or through an Attorney-at-Law at a fair trial by a competent court

Right not to be punished with death or imprisonment except by order of a competent court made in accordance with procedure established by law

Right to be presumed innocent until proved guilty

Right not to be punished retrospectively, i.e. for something that was not an offence at the time it was committed

14. Freedom of Speech, assembly, association, movement

Freedom of speech and expression including publication

Freedom of peaceful assembly.

Freedom of association.

Freedom to form and join a trade union

Freedom to manifest one's religion by observance, practice and teaching.

Freedom, by oneself or in association with others, to promote one's own culture and use one's own language

Freedom to engage in any lawful occupation, profession, trade, business or enterprise.

Freedom of movement and of choosing one's residence within Sri Lanka.

Freedom to return to Sri Lanka

Restrictions on FR

Art 15. Provides that restrictions may be provided on grounds of;

In the interests of;

- National security when relating to public security.
- In the interests of racial and religious harmony
- In relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.
- In the interests of national economy.
- In the interests the protection of public health or morality for the general welfare of a democratic society.

Art.17 Remedy for FR Violation

Every person shall be entitled to apply to the Supreme Court, in case of a violation or even a potential violation of one's Fundamental Rights by a state authority.

Art. 126. Fundamental rights jurisdiction and its exercise

Supreme Court has the jurisdiction to decide on Fundamental Rights Violations.

Must be filed in Supreme Court within one month of violation.

You may complain regarding the violation to the Human Rights Commission Sri Lanka which would pause the one month time limit.

POLICY: GENDER RECOGNITION CERTIFICATE

Circular No: 01-34/2016 issued on 16.06.2016 on “Issuing of Gender Recognition Certificate for Transgender Community” by the Ministry of Health;

- Consultant Psychiatrist is to issue GRC to assist with the process of changing the sex in birth certificate.
- Only issued to those above 16 years
- It will indicate desired gender as to be shown on birth certificate
- Certified by consultant psychiatrist and the head of the institution working under the Ministry of Health
- Following the amendment in the birth certificate persons can proceed to apply for the NIC, Passport, Driver’s License, and Education certificates etc.

Circular:

English:

<http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=english>

Tamil:

<http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=tamil>

Sinhala:

<http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=sinhala>

SRI LANKA POLICE

Complaining to the Police about a criminal offence

Regardless of your SOGIESC you have the right to make a complaint at Sri Lanka Police.

Q: Where to make the complaint?

A complaint typically must be made near to where the crime was committed.

Q: When should you make the complaint?

As soon as the crime occurred.

Q: What to do at the Police station?

Speak with the OIC. They will direct to Subject Division where complaint is taken down. They cannot deny your request to make a complaint.

(E.g. if it is a complaint of Robbery, then you will be directed to the Criminal Investigations Department etc)

Q: What if they refuse to take down complaint?

Request to speak with the Assistant Superintendent of Police (ASP).

Inform police that they will be in violation of your fundamental Rights.

Q: What information should you provide when making the complaint?

- Identify yourself (Full Name, NIC Number, Age, Occupation, Residence, Contact details)
- Time, Date, Place of incident
- Describe the Accused (As much detail as available, preferably Name, Gender, Age, Occupation/Designation)
- Describe the Accusation (E.g. Sexual harassment, what is the kind of harassment, what did they do for you to perceive it as such)
- What is the recourse you seek (Wish to go to court, settle, compensation, etc)

Q: What to expect after complaint is written down?

Police officer should give you instructions on how to follow up on your complaint.

You are entitled to a copy of your complaint in case of a missing NIC, License etc.

You are not issued a copy of complaint if it could induce falsified evidence upon later trial date

If you are the accused, then you are entitled to a copy of the complaint

Q: What to do in case of police misdoings?

If you wish to make a complaint about the actions of Sri Lanka Police;

- Lodge a complaint with the Public Complaints Investigation Division (PCID) or any of the Provincial Offices of the National Police Commission.
- There shall be a Provincial Director appointed for each Province who shall be in charge of the investigations into the public complaints received by the Provincial Office. He shall report direct to the Director, PCID at the Commission.
- Any public complaint received against a Police Officer or the Police Service shall be acknowledged by an authorized officer within one week.

Note: When going to the police station to place a complaint, it is advisable to take legal counsel with you.

Note:

Complaining of sexual violence

It is advisable to go to the police immediately without destroying DNA evidence. If you go to a hospital first, inform them that you intend to make a police complaint.

The Police division evidence collection includes medical tests, fingerprints, DNA tests, etc

Rights in case of arrest or detention

You still have fundamental rights even if you are arrested as per Article 13.

Regardless of your SOGIESC police must follow the following steps when arresting;

- Informed you of reason for arrest.
- If arresting officer is not in uniform, they must identify themselves by stating their name, designation, number and police station
- Every person held in custody must be brought before the judge of the nearest competent court
- If arrested without warrant, police can only hold you for 24 hours until you are produced before a judge

Note: In case of a search; police must inform you of reason for search and cause for reasonable suspicion

- If a woman, a Female Police Officer must be present during the arrest
- You can request to be taken to the police station to be searched are entitled to request that you be taken to the station in order to submit to a search

Upon Arrest, police officer has a duty to inform the arrested persons acquaintance, friend, family or attorney informing them of their arrest.

If you are placed in custody, you can request for basic needed items to be brought to you such as clothes, water and food.

INSTITUTIONS FOR REDRESS

Human Rights Commission Sri Lanka

Protection of Victims of Crime and Witnesses Act, No.04 of 2015

(No.428/11A, Denzil Kobbekaduwa Mawatha, Battaramulla)

To provide protection for the victims of crimes and witnesses.

Example: if you are attending an identification parade and take a step back out of fear for your safety

Prevention of Domestic Violence Act, No. 34 Of 2005

A person experiencing or is likely to experience an act of domestic violence may make an application to the Magistrate's Court for a Protection Order.

The Magistrate's Court can issue an Interim Protection Order valid for 14.

The Court can issue a Protection Order valid for 12 months.

It is for the safety of the person suffering violence.

The PDVA uses gender neutral terminology, therefore, any person regardless of SOGIESC can file an application seeking protection from their 'spouse', 'ex-spouse', or 'cohabiting partner'.

Under this act both physical violence and emotional abuse constitute 'domestic violence'.

EMERGENCY CONTACTS:

State Help Lines

Sri Lanka Police

Emergency Hotline: 118 / 119

Police Emergency: 011-2433333

Emergency Police Mobile Squad: 011-5717171

The National Police Commission:

National Police Commission, BMICH Premises, Block 09, Colombo 07

Contact for complaints: 1960 / 071-0361010

General: 011-5107722

Women's Helpline hotline

1938 at the Centre for Gender Based Complaints

of National Committee on Women

Tel: 011-2186063 / 011-2187038

Fax: 011-2187288

E-mail: secncwsl@gmail.com,

The Legal Officer, National Committee on Women

5th Floor, Sethsiripaya Stage II, Battaramulla.

Tel: 011-2186063 / 011-2187038

E-mail: secncwsl@gmail.com

The Bar Association of Sri Lanka

153, Mihindu Mawatha, Colombo 12.

Tel: 011-2447134, 011-2331697

Fax: 011-2447134

Email: info@basl.com

Legal Aid Commission in Sri Lanka

No 129, Hulftsdorp Street, Colombo – 12

Tel: 011-2433618

Organizations

EQUAL GROUND

Tel: 011-2075121 / 011-4334279

Fax: 011-2075414

Email: equalground@gmail.com

Women In Need

Tel: 011-4718585

connect@winsl.net

Child Protection Force

Tel: 011-4848856



BRIDGE to Equality - BRIDGE project which aims to improve the protection of human rights for LGBTQ people in Sri Lanka through the use of international human rights law to enable justice actors (judges, lawyers and other legal professionals), activists and human rights defenders to improve justice outcomes for the LGBTQ community; with a focus on overcoming challenges imposed by the current legal framework, as well as the overall promotion and protection of human rights of LGBTI people.

BRIDGE is jointly implemented by DAST, National Transgender Network and Young Out Here in partnership with the International Commission of Jurists since 2021.

BRIDGE to Equality යනු ශ්‍රී ලංකාවේ LGBTQ ප්‍රජාවන්ගේ මානව හිමිකම් සුරැකීම වෙනුවෙන් ක්‍රියාත්මක වන ව්‍යාපෘතියකි. ජාත්‍යන්තර මානව හිමිකම් සහ නීති පිලිබඳව විනිසුරුවරුන්, නීතිඥයින් සහ අනෙකුත් මානව හිමිකම් ක්‍රියාකාරීන් දැනුවත් කිරීම තුළින් ශ්‍රී ලංකාවේ LGBTQ පුද්ගලයින්ගේ මානව හිමිකම් සුරක්ෂිත කිරීම, ශ්‍රී ලංකාවේ වත්මන් නීතිමය රාමුව විසින් පනවන ලද අභියෝග ජය ගැනීම කෙරෙහි අවධානය යොමු කිරීම, මානව හිමිකම් කඩ වූ ශ්‍රී ලංකාවේ LGBTQ පුද්ගලයින් හට යුක්තිය ලබා ගැනීමට ඔවුන්ට අවශ්‍ය සහය ලබාදීමද අරමුණු කරගනී.

BRIDGE to Equality ව්‍යාපෘතිය 2021 වසරේ සිට DAST, National Transgender Network සහ Young Out Here ආයතන විසින් ජාත්‍යන්තර නීතිවේදීන්ගේ කොමිෂන් සභාව සමග ඒකාබද්ධව ක්‍රියාත්මක කරනු ලබයි.

BRIDGE to Equality (සමத்துවත්තේ තේරුම) என்பது சர்வதேச மனித உரிமைகள் சட்டத்தினூடாக இலங்கையில் உள்ள LGBTQ மக்களுக்கான மனித உரிமைகளின் பாதுகாப்பை மேம்படுத்துவதை நோக்கமாகக் கொண்ட ஒரு திட்டமாகும். LGBTQ சமூகத்திற்கான நீதி விளைவுகளை மேம்படுத்த நீதித்துறை வல்லுநர்கள் (நீதிபதிகள், வழக்கறிஞர்கள் மற்றும் பிற சட்ட வல்லுநர்கள்), ஆர்வலர்கள் மற்றும் மனித உரிமைகள் பாதுகாவலர்களை செயல்படுத்துவதனுடாக தற்போதைய சட்டக் கட்டமைப்பால் சமத்தப்படும் சவால்களை சமாளிப்பதுடன், LGBTQ மக்களின் மனித உரிமைகளின் ஒட்டுமொத்த மேம்பாடு மற்றும் பாதுகாப்பில் கவனம் செலுத்துகிறது.

BRIDGE to Equality (සමத்துවත්තේ තේරුම) எனும் இந்த செயற்திட்டமானது DAST, தேசிய திருநர் வலையமைப்பு (NTN) மற்றும் யங் அவுட் ஹியர் (YOH) ஆகிய அமைப்புகளின் கூட்டாக 2021 முதல் பன்னாட்டு நீதித்துறை வல்லுநர்கள் ஆணையத்துடன் இணைந்து செயல்படுத்தப்படுகிறது.

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