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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Press Notice No: HRC/P/i/E/15/08/24

Press Notice

Follow up on Recommendation on Sections 365 and 365A of the Penal Code

The Human Rights Commission of Sri Lanka (HRCSL) sent a letter to the Minister of Justice, Prison Affairs and Constitutional Reforms on 13 August 2024 as a follow-up to the letter sent to the Ministry dated 22 November 2023 with reference to sections 365 and 365A of the Penal Code (Chapter 19). The said sections of the Penal Code relate to ‘unnatural offences’ and ‘acts of gross indecency between persons’ and have been used for the purpose of criminalising sexual activity between persons of the same sex.

In the said follow up letter, HRCSL emphasized the following:

- According to section 2(d) of the recently enacted Women Empowerment Act, No. 37 of 2024, one of the objects of the Act is ‘to protect women from all forms of discrimination based on gender and *sexual orientation*’ (emphasis added). Therefore, for the first time in Sri Lanka’s legislative history, a person’s right to non-discrimination on the grounds of sexual orientation has been formally recognised.
- The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 already recognised ‘sexual orientation’ as a factor that may determine the vulnerability of a victim of crime or witness.
- The mention of ‘sexual orientation’ as a ground for non-discrimination in the Women Empowerment Act comes in the wake of a recent Supreme Court determination on a Private Member’s Bill to amend section 365 and repeal section 365A of the Penal Code. The Court found that ‘decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity...’ (SC SD 13/2023 *et al*, p. 31).
- The said Private Member’s Bill clarifies that the legislative intent behind it is the amendment of provisions in the Penal Code that make sexual orientation a punishable offence. The HRCSL was of the view that the passage of this Bill would ensure full compliance with Sri Lanka’s obligations under international law, including under the International Covenant on Civil and Political Rights (ICCPR), which under Articles 2 and 26 guarantees the right to non-discrimination.
- The HRCSL stated that it was deeply concerned by the recent rise in hostile and discriminatory discourse against the LGBTIQ community. Such discourse has also featured disinformation that

the abovementioned Private Member's Bill legalises same sex marriage, when in fact the Bill does not amend the law in any manner apart from decriminalising certain sexual acts between consenting adults. While the right of all citizens to the freedom of expression includes the right to make expressions that shock, offend, or disturb portions of the population, the freedom of expression is not an absolute right. This right may be restricted on the grounds of protecting the rights and freedoms of others, including the right to non-discrimination, provided such restriction is reasonable, necessary, and proportionate.

- The HRCSL noted that Article 20(2) of the ICCPR does not explicitly refer to 'sexual orientation' when prohibiting the advocacy of hatred that constitutes incitement to discrimination, hostility, or violence. However, permitting incitement against persons on the basis of their sexual orientation is arguably incompatible with international law given the broad acceptance of sexual orientation as a prohibited ground of discrimination. The Commission clarified that it did not at this juncture recommend the expansion of criminal law to further prohibit expressions – primarily due to the potential for abuse of such law. However, it urged the Ministry of Justice to disregard any hostile, discriminatory and misleading discourse when considering necessary and salutary legislative reform.

The HRCSL accordingly reiterated its recommendation that the Ministry of Justice support the enactment of the said Private Member's Bill and consider adopting the Bill as a government proposal to ensure its expeditious passage.

Media Spokesperson
Human Rights Commission of Sri Lanka

15.08.2024