



**SUBMISSION TO THE INDEPENDENT EXPERT ON  
Sexual Orientation and  
Gender Identity (SOGI)  
on the Rights to  
Freedom of Expression,  
Assembly and  
Association, as they  
relate to SOGI**

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iProbono<sup>1</sup> submits this document in repose to the call for inputs issued by the Independent Expert on Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity (IE SOGI), Mr Graeme Reid, to inform his thematic report to the 56th session of the United Nations Human Rights Council on the human rights to freedom of expression, freedom of assembly and freedom of association, as they relate to protection against violence and discrimination based on SOGI. This submission highlights iProbono's experiences securing the rights of the LGBT+ community in Bangladesh and Sri Lanka, focusing on the right to freedom of expression, association, and assembly. iProbono's recommendations include amending legislation criminalising same-sex relations, affecting the online expression of LGBT+ lives, legislating to protect the rights of transgender persons, and sensitising law enforcement personnel.

## 1. BANGLADESH

Bangladesh routinely de-prioritises human rights and civil liberties.<sup>2</sup> There is very little space for any discussions on the civil and political rights of marginalised groups like the LGBT+ community. Anti-LGBT+ sentiments have been growing since early 2014<sup>3</sup>, culminating in the brutal murder of two activists in 2016.<sup>4</sup> This created a chilling effect on the community, with many activists leaving the country.<sup>5</sup> Although activism resumed in 2018, the resurgence of fundamentalist and militant groups in 2023 reignited anti-trans and anti-LGBT+ movements,<sup>6</sup> setting the stage for a year of uncertainty and threats in 2024. This underscores the imperative for international attention and support to protect the rights and safety of the LGBT+ community in Bangladesh.

### 1.1. Freedom of Expression

Although Article 39 of the Constitution of the People's Republic of Bangladesh guarantees freedom of expression to all citizens,<sup>7</sup> the SOGI community in Bangladesh continually encounters

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<sup>1</sup> iProbono's mission is to enable people to access their rights in pursuit of a just society. By promoting active citizenship and engaging a holistic model, we advance justice for all by representing people in need, strengthening the impact of civil society, and advocating for policies that promote social equity and end discrimination. iProbono provides holistic counsel with a strong, lean team that delivers strategic direction and execution while leveraging the expertise and commitment of a wide community of pro bono lawyers. A global organisation established in 2009 in the United Kingdom, we work across South Asia. iProbono started working in Bangladesh and Sri Lanka in 2015/16. Our thematic areas cross-cut equality law in the region, and our team has expertise in child rights, housing rights, disability rights, gender equality, trafficking in persons, street law, LGBT+ rights, sexual and reproductive health rights, migrant rights, refugee rights, and economic, social and cultural rights. For more information, please visit our website - [www.i-probono.com](http://www.i-probono.com)

<sup>2</sup> "Human Rights in Bangladesh" (*Amnesty International*) <<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/bangladesh/report-bangladesh/>>

<sup>3</sup> "The Ruins of Bangladesh's LGBT Community" (*The ruins of Bangladesh's LGBT community, January 1, 2018*) <<https://www.cmi.no/publications/6489-the-ruins-of-bangladeshs-lgbt-community>>

<sup>4</sup> "Bangladesh Gay Activist Killing Claimed by Al-Qaeda Affiliate" (*BBC News*) <<https://www.bbc.com/news/world-asia-36137665>>

<sup>5</sup> "Moving Memories | Rasel Ahmed" (*South Asian American Digital Archive (SAADA), September 1, 2021*) <<https://www.saada.org/movingmemories/rasel>>

<sup>6</sup> Stewart C, "Anti-Trans Protest Leads to Cancellation of Bangladesh Speech" (*Erasing 76 Crimes*, December 8, 2023) <<https://76crimes.com/2023/12/08/anti-trans-cancellation/>>

<sup>7</sup> The People's Republic of Bangladesh Constitution, 1972, Article 39: *Freedom of thought and conscience, and of speech: (1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence— (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed.*

challenges in exercising this freedom. Primary among these is Section 377 of the Bangladesh Penal Code 1860,<sup>8</sup> which criminalises homosexuality, resulting in the deprivation of political and civil rights for the LGBT+ community and a denial of their freedom of expression. Moreover, ministers have consistently made unequivocal statements opposing homosexuality in Bangladesh,<sup>9</sup> indicating a governmental reluctance to acknowledge the existence of SOGI individuals.

Following the official recognition of the ‘Hijra’<sup>10</sup> community in Bangladesh in 2013,<sup>11</sup> local NGOs and CSOs have diligently worked to foster social acceptance of Hijras and transgender persons. Notable achievements include incorporating a chapter on transgender, sex, and gender into the class seven history and social science textbooks in 2023.<sup>12</sup> However, faced with opposition from fundamentalist groups,<sup>13</sup> amendments have been made to the transgender narrative in the 2024 textbook.<sup>14</sup> Despite these changes, fundamentalist elements continue to protest the syllabus as of January 2024,<sup>15</sup> with the government likely to make further changes to the chapter.<sup>16 17</sup>

<<http://bdlaws.minlaw.gov.bd/act-367/section-24587.html>>

<sup>8</sup> *Penal Code, 1860, Section 377, Unnatural offences. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*

<<http://bdlaws.minlaw.gov.bd/act-11/section-3233.html#:~:text=Whoever%20voluntarily%20has%20carnal%20intercourse,Explanation.>>

<sup>9</sup> “Bangladesh Can Never Allow Same Sex Marriages: Shahriar Alam” (*New Age | The Most Popular Outspoken English Daily in Bangladesh*) <<https://www.newagebd.net/article/47524/bangladesh-can-never-allow-same-sex-marriages-shahriar-alam>>

<sup>10</sup> Hijras are biological males who reject their ‘masculine’ identity in due course of time to identify either as women, or “not-men”, or “in between man and woman”, or “neither man nor woman”. Hijras can be considered as the western equivalent of transgender/transsexual (male-to-female) persons but Hijras have a long tradition/culture and have strong social ties

formalised through a ritual called “reet” (becoming a member of Hijra community). There are regional variations in the use of terms referred to Hijras. For example, Kinnars (Delhi) and Aravanis (Tamil Nadu). Hijras may earn through their traditional work: ‘Badhai’ (clapping their hands and asking for alms), blessing new-born babies, or dancing in ceremonies. Some proportion of Hijras engage in sex work for lack of other job opportunities, while some may be selfemployed or work for non-governmental organisations. (*NALSA Judgement, Writ Petition (Civil) No.400 of 2012, page-55, “Hijra”*)

<<https://main.sci.gov.in/jonew/judis/41411.pdf>>

<sup>11</sup> Rajeeb SH and others, “Recognition of Hijra as a Third Gender: A Boon or a Bane for the Community? - শুদ্ধশর” (শুদ্ধশর- মন জাগাতে নয়, মন জাগাতে, To inspire, not to impress, April 1, 2019) <<https://shuddhashar.com/recognition-of-hijra-as-a-third-gender-a-boon-or-a-bane-for-the-community-shakhawat-hossain-rajeeb/>>

<sup>12</sup> History and Social Science Activity Book, Class Seven-2023 (*Chapter- Community, Page 59-63*)

<[https://drive.google.com/file/d/1an\\_YVON0B9\\_hDoMxG6Ee4txhEgJoEV3y/view](https://drive.google.com/file/d/1an_YVON0B9_hDoMxG6Ee4txhEgJoEV3y/view)>

<sup>13</sup> “Bangladesh Withdraws School Books after Anti-LGBTQ Backlash” (*The Hindu*, February 11, 2023)

<<https://www.thehindu.com/news/international/bangladesh-withdraws-school-books-after-anti-lgbtq-backlash/article66498012.ece>>

<sup>14</sup> “History and Social Science Activity Book, Class Seven-2024” (*Chapter- Similarity and Difference between people, Page 46-51*)

<<https://drive.google.com/file/d/1Q3D1Bo0v8JlcbGLGAXo7SSG05n6vlt3n/view>>

<sup>15</sup> “Controversy Erupts over ‘Hijra’ Story in Class VII Textbook” (*The Business Standard*, January 23, 2024)

<<https://www.tbsnews.net/bangladesh/education/controversy-erupts-over-hijra-story-class-vii-textbook-780250>>

<sup>16</sup> “Five-Member Committee Formed to Review Sharifa Story in Textbook” (*New Age | The Most Popular Outspoken English Daily in Bangladesh*) <<https://www.newagebd.net/article/223654/five-member-committee-formed-to-review-sharifa-story-in-textbook>>

<sup>17</sup> <<https://www.risingbd.com>, “If There Is Controversy over ‘Sharifa’s Story’, Changes Will Be Made: Minister” (*Risingbd Online Bangla News Portal*) <<https://www.risingbd.com/english/national/news/101869>>

Consequently, all SOGI-led and civil society organisations working for SOGI rights in Bangladesh have been compelled to cease their activities. A leading NGO advocating for Hijra and Transgender rights had to take down its social media accounts and websites,<sup>18</sup> due to continuous threats stemming from a website operated by an individual arrested for engaging in militant activities in 2014.<sup>19 20</sup>

In 2022, the Bangladesh government took steps to safeguard the rights of and protect transgender individuals by formulating a draft law.<sup>21</sup> As a result, extremist groups initiated hate campaigns against the law and gender-diverse communities, including the transgender community.<sup>22 23</sup> These groups also targeted NGOs that were working on gender diversity in Bangladesh.<sup>24</sup> Fundamentalist entities have resorted to publishing names and pictures of LGBT+ activists on various social media platforms,<sup>25 26</sup> alongside making offensive and provocative statements about transgender persons and homosexuality during Friday prayer sermons in mosques nationwide throughout January 2024.<sup>27 28 29</sup> Recently, a group of religious leaders met with the state minister for education, demanding the removal of anything offensive to religious

<sup>18</sup> Bandhu Social Welfare Society, a pioneering organization in Bangladesh, has been dedicated to advocating for the rights of Hijra and transgender individuals since its establishment in 1996. Regrettably, the organization has faced persistent targeting by extremist groups, leading to the decision to temporarily shut down its website (<https://bandhu-bd.org/>) and associated social media accounts.

<sup>19</sup> “বাংলাদেশে এলজিবিটি এজেন্ডার নেপথ্যে কারা? পর্ব ১” (Asif Adnan - Archive, January 14, 2024) <<https://chintaporadh.com/behind-the-curtain-1>>

<sup>20</sup> “HC Grants Bail to Asif Adnan” (*The Daily Star*, December 23, 2014) <<https://www.thedailystar.net/hc-grants-bail-to-asif-adnan-56788>>

<sup>21</sup> “Hijra Protection Act being drafted to ensure life with family” (*Dhaka Tribune*, March 23, 2021) <<https://www.dhakatribune.com/bangladesh/development/241973/hijra-protection-act-being-drafted-to-ensure-life>>

<sup>22</sup> Hossain MS, “হিজড়া ও ট্রান্সজেন্ডার শব্দের অস্পষ্টতায় দেশে ভয়াবহ বিপর্যয়ের ঝুঁকি | Sorowar’s Thoughts” (*Sorowar’s Thoughts*, November 17, 2023) <<https://mshossain.com/hijra-and-transgender-ambiguity-risk-of-disaster-in-country/>>

<sup>23</sup> “Hefazat-e-Islam Urges Govt Not to Formulate Law for Transgender People” (*New Age | The Most Popular Outspoken English Daily in Bangladesh*) <<https://www.newagebd.net/article/223656/hefazat-e-islam-urges-govt-not-to-formulate-law-for-transgender-people>>

<sup>24</sup> “বাংলাদেশে এলজিবিটি এজেন্ডার নেপথ্যে কারা? পর্ব ২” (Asif Adnan - Archive, January 14, 2024) <<https://chintaporadh.com/behind-the-curtain-2>>

<sup>25</sup> “Personal information related to Shale Ahmed, Executive Director of Bandhu Social Welfare Society” (*Facebook, Friday Post, January 14 2024*) <[https://www.facebook.com/login/?next=https%3A%2F%2Fwww.facebook.com%2Fstory.php%3Fstory\\_fbid%3Dpfbid02pPtXWohBQuSEurpo43b91sjQ9D6ouyBpzVKEXxmpJW6FbbegDPcfFEKXe7kkRHoAl%26id%3D61553371213654%26mibextid%3DNif5oz%26paipv%3D0%26eav%3DAfZYvq-c2UgohibL2ITRhyP8-RyzgvChK9Btmql51j5mVwihJRva8W3PMIHpSmjkP-M](https://www.facebook.com/login/?next=https%3A%2F%2Fwww.facebook.com%2Fstory.php%3Fstory_fbid%3Dpfbid02pPtXWohBQuSEurpo43b91sjQ9D6ouyBpzVKEXxmpJW6FbbegDPcfFEKXe7kkRHoAl%26id%3D61553371213654%26mibextid%3DNif5oz%26paipv%3D0%26eav%3DAfZYvq-c2UgohibL2ITRhyP8-RyzgvChK9Btmql51j5mVwihJRva8W3PMIHpSmjkP-M)>

<sup>26</sup> “BRAC and Bandhu Social Welfare Society’s Involvement with LGBT+ works” (*Facebook, Friday Post, January 22, 2024*) <[https://www.facebook.com/login/?next=https%3A%2F%2Fwww.facebook.com%2Fpermalink.php%3Fstory\\_fbid%3Dpfbid0dDBtei4ZvVqSu2ax4X21LsRaZVT4ITRR9CWrxWdp7diaJcX3cQEJtm1UtVE7xKD8%26id%3D61553371213654](https://www.facebook.com/login/?next=https%3A%2F%2Fwww.facebook.com%2Fpermalink.php%3Fstory_fbid%3Dpfbid0dDBtei4ZvVqSu2ax4X21LsRaZVT4ITRR9CWrxWdp7diaJcX3cQEJtm1UtVE7xKD8%26id%3D61553371213654)>

<sup>27</sup> France-Presse A, “Transgender Recognition Protested in Bangladesh” (*The Manila Times*, January 27, 2024) <<https://www.manilatimes.net/2024/01/28/world/asia-oceania/transgender-recognition-protested-in-bangladesh/1929988>>

<sup>28</sup> “বাংলাদেশে এলজিবিটি এজেন্ডার নেপথ্যে কারা? পর্ব ৪” (Asif Adnan - Archive, January 15, 2024) <<https://chintaporadh.com/behind-the-curtain-4>>

<sup>29</sup> Hossain MS, “ট্রান্সজেন্ডারিজম ভয়ঙ্কর এক বুদ্ধিবৃত্তিক আগ্রাসন! (ভিডিও- জুম্মা খুতবা) | Sorowar’s Thoughts” (*Sorowar’s Thoughts*, November 18, 2023) <<https://mshossain.com/ট্রান্সজেন্ডারিজম-ভয়ঙ্কর/>>

values from the curriculum at all levels, a promise the Education minister has committed to uphold.<sup>30</sup>

Considering these circumstances, although there is talk of passing the Transgender Rights and Protection Act by the end of 2024, concerns persist at all levels that the government may refrain from progressing with this law due to the prevailing situation.<sup>31</sup> Additionally, despite a continuing effort to cultivate social acceptance for Hijra and transgender communities in Bangladesh, negative sentiments are prominent among Bangladeshis. Combining sexuality with gender, Hijras and Transgender individuals are labelled as homosexuals, leading to demands for their exclusion and repression.

## 1.2. Freedom of Association and Peaceful Assembly

The civil society space in Bangladesh is deemed closed by Civicus Monitor,<sup>32</sup> particularly for LGBT+ organisations.<sup>33</sup> The LGBT+ community lacks legal recognition, hindering their ability to organise, associate freely, and hold peaceful assemblies. While the 2013 Gazette officially recognised the Hijra community, only one out of 46 Hijra organisations have received approval and registration from the Bureau of NGO Affairs, restricting their eligibility for financial donations. Due to legal restrictions, no LGBT+-focused organisations can obtain official registration to work in Bangladesh. The Foreign Donations (Voluntary Activities) Regulation Act 2016, ostensibly targeting terrorist financing, poses challenges for NGOs, including those advocating for LGBT+ rights, with stringent requirements, including scrutiny by government intelligence agencies. Amendments to the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961,<sup>34</sup> including the prohibition of the organisation's executive council members from being involved in 'anti-national', 'prohibited political' or 'anti-constitutional' activities, could further limit freedom of association.<sup>35</sup> These provisions are likely to further government supervision and make conditional the right to freedom of association.<sup>36</sup> A trend of mass arrests and legal actions against citizens, activists, journalists, and political figures continues unchecked. Human rights activists, including those advocating for LGBT+ rights, are at

<sup>30</sup> বুয়েটগ্রাম, “শিক্ষামন্ত্রী নওফেলের সঙ্গে হেফাজত নেতাদের সাক্ষাৎ” (*bdnews24*) <<https://bangla.bdnews24.com/ctg/gxeu4yk0zc>>

<sup>31</sup> <https://www.facebook.com/rtvonline/>, “আমরা ট্রান্সজেন্ডারকে স্বীকৃতি দিইনি : স্বরাষ্ট্রমন্ত্রী” (*RTV Online*) <<https://www.rtvonline.com/bangladesh/257935>>

<sup>32</sup> “Bangladesh - Civicus Monitor” (*Civicus Monitor*) <<https://monitor.civicus.org/presscentre/bangladesh/>>

<sup>33</sup> Chaney P, Sabur S and Sahoo S, “Civil Society Organisations and LGBT+ Rights in Bangladesh: A Critical Analysis” (2020) 15 *Journal of South Asian Development* 184 <<http://dx.doi.org/10.1177/0973174120950512>>

<sup>34</sup> The Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 <[https://dss.portal.gov.bd/sites/default/files/files/dss.portal.gov.bd/law/1cbe4342\\_6739\\_4ecc\\_9633\\_16364e690f79/1961.pdf](https://dss.portal.gov.bd/sites/default/files/files/dss.portal.gov.bd/law/1cbe4342_6739_4ecc_9633_16364e690f79/1961.pdf)>

<sup>35</sup> Pratidin B, “নজরদারিতে আসছে স্বৈচ্ছাসেবী সংগঠন | বাংলাদেশ প্রতিদিন” (বাংলাদেশ প্রতিদিন) <<https://www.bd-pratidin.com/last-page/2023/11/12/938529>>

<sup>36</sup> “Bangladesh: Controversial New Law Regulating Work and Activities of Foreign NGOs” (*The Library of Congress*, March 20, 2015) <<https://www.loc.gov/item/global-legal-monitor/2016-11-25/bangladesh-controversial-new-law-regulating-work-and-activities-of-foreign-ngos/>>



risk of being targeted, contributing further to an already shrinking civic space.<sup>37</sup> Furthermore, activists advocating for LGBT+ rights face threats from religious fundamentalists,<sup>38</sup> particularly when addressing gender-related issues.<sup>39</sup> These threats create a challenging environment, further limiting the exercise of freedom of association and peaceful assembly for LGBT+ rights advocates.

### 1.3. Internet Regulations

The Cyber Security Act 2023 (CSA) carries a legislative framework which is ostensibly neutral in its language but has a discriminatory effect on the human rights of LGBT+ individuals, activists, and civil society organisations, particularly in the realm of freedom of expression, association, and peaceful assembly. Section 8 of the CSA grants the government authority to arbitrarily shut down websites anytime.<sup>40</sup> While not explicitly targeting LGBT+ individuals, this provision creates an environment of fear and self-censorship among community members and community-based organisations, severely hampering their ability to freely create and maintain online platforms for advocacy.<sup>41</sup> The Integrated Lawful Interception System (ILIES) and Section 42 of CSA confer extensive powers to law enforcement,<sup>42 43</sup> conflicting with constitutional guarantees for the right to privacy.<sup>44</sup> This results in constant surveillance that disproportionately affects LGBT+ individuals and organisations, impinging on their right to privacy and hindering their ability to

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<sup>37</sup> “UN experts urge Bangladesh to seize Human Rights Council review as opportunity to address deteriorating human rights situation” (*United Nation, OHCHR, November 14, 2023*) <<https://www.ohchr.org/en/press-releases/2023/11/un-experts-urge-bangladesh-seize-human-rights-council-review-opportunity>>

<sup>38</sup> “Do Pride Month Celebrations Help Bangladeshi Queer People?” (*iProbono, July 1, 2023*) <<https://iprobono.com/articles/do-pride-month-celebrations-help-bangladeshi-queer-people/>>

<sup>39</sup> “Entrepreneur Hounded by Death Threats over Pro-LGBT Post – DW – 07/13/2020” (*dw.com*) <<https://www.dw.com/en/bangladesh-sadeq-lgbt/a-54157105>>

<sup>40</sup> “Power to remove or block some data-information” (*The Cyber Security Act, 2023, Section 8*) <<http://bdlaws.minlaw.gov.bd/act-1457/section-52831.html>>

<sup>41</sup> “In the Shadows of Self-Censorship: The Impact of the Cyber Security Act on Bangladesh’s LGBTQ+ Movement” (*Global Voices Advox, January 4, 2024*) <<https://advox.globalvoices.org/2024/01/04/in-the-shadows-of-self-censorship-the-impact-of-the-cyber-security-act-on-bangladeshs-lgbtq-movement/>>

<sup>42</sup> Ahmed R, “Govt to Launch Advanced Surveillance System before Elections” (*Prothomalo, October 18, 2023*) <<https://en.prothomalo.com/bangladesh/474qjv8eh7>>

<sup>43</sup> The Cyber Security Act, 2023; Section 42, Search, seizure and arrest without warrant.- (1) If any police officer has reasons to believe that an offence under this Act has been or is being committed, or is likely to be committed in any place, or any evidence is likely to be lost, destroyed, deleted or altered or made unavailable in any way, then he may, for reasons of such belief to be recorded in writing, proceed with the following measures, namely: (a) to enter and search the place, and if obstructed, to take necessary measures in accordance with the Code of Criminal Procedure; (b) to seize the computer, computer system, computer network, data information or other materials used in committing the offence or any document supportive to prove the offence; (c) to search the body of any person present in the place; (d) to arrest any person present in the place if the person is suspected to have committed or be committing an offence under this Act. (2) After concluding search under sub-section (1), the police officer shall submit a report on such search to the Tribunal <<http://bdlaws.minlaw.gov.bd/act-1457/section-52866.html?lang=en>>

<sup>44</sup> The People’s Republic of Bangladesh Constitution, 1972, Article 43: (Protection of home and correspondence)- Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health – (a) to be secured in his home against entry, search and seizure; and (b) to the privacy of his correspondence and other means of communication. <<http://bdlaws.minlaw.gov.bd/act-367/section-24591.html>>

operate without unwarranted scrutiny. Section 25 further restricts LGBT+ advocacy by limiting the sharing of reports and information highlighting injustice faced by the LGBT+ community in Bangladesh on a national or international level, as there is a risk that it may be considered as tarnishing the image or reputation of the country. This clause infringes upon constitutional rights to protest injustices as citizens of the state.<sup>45</sup> Ambiguities in Section 27, particularly phrases like "endangering the integrity, security, and sovereignty of the state," create obstacles in expressing solidarity with the LGBT+ communities in other countries. LGBT+ organisations risk being unjustly labelled as involved in terrorist activities, hindering their advocacy efforts and stifling freedom of expression.<sup>46</sup>

Homosexuality and gender diversity are perceived as conflicting with the religious beliefs of the majority in Bangladesh. Advocacy for the rights of the LGBT+ community inherently challenges these religious sentiments, exposing individuals to threats from intolerant factions. Fundamentalism and extremism in Bangladesh influenced by a de facto blasphemy law like Section 28 of the CSA,<sup>47</sup> goes against the constitutional principle of secularism.<sup>48</sup> This law not

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<sup>45</sup> The Cyber Security Act, 2023; Section 25, 25. Transmission, publication, etc. of offensive, false or threatening data information- (1) If any person, through any website or any other digital or electronic medium; (a) intentionally or knowingly transmits, publishes or propagates any data-information which he knows to be offensive, false or threatening in order to annoy, insult, humiliate or malign a person; or (b) publi; (b) publishes or propagates or abets to publish or propagate any information, as a whole or partly, which he knows to be propaganda or false, with an intention to affect the image or reputation of the country, or to spread confusion, then such act of the person shall be an offence. (2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 2 (two) years, or with fine not exceeding Taka 3 (three) lac, or with both.

<<http://bdlaws.minlaw.gov.bd/act-1457/section-52848.html>>

<sup>46</sup> The Cyber Security Act, 2023, Section 27, Offence and punishment for committing cyber terrorism.(1) If any person- (a) creates obstruction to make legal access, or makes or causes to make illegal access to any computer or computer network or internet network with an intention to jeopardize the integrity, security and sovereignty of the State and to create a sense of fear or panic in the public or a section of the public; or(b) creates pollution or inserts malware in any digital device which may cause or likely to cause death or serious injury to a person; or (c) affects or damages the supply and service of daily commodity of public or creates adverse effect on any critical information infrastructure; or (d) intentionally or knowingly gains access to, or makes interference with, any computer, computer network, internet network, any protected data-information or computer database, or gains access to any such protected data information or computer database which may be used against friendly relations with another foreign country or public order, or may be used for the benefit of any foreign country or any individual or any group, then such person shall be deemed to have committed an offence of cyber terrorism. (2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 14 (fourteen) years, or with fine not exceeding Taka 1 (one) crore, or with both. <<http://bdlaws.minlaw.gov.bd/act-1457/section-52850.html>>

<sup>47</sup> The Cyber Security Act, Section 28, Publication, broadcast, etc. of information in website or in any electronic format that hurts the religious values or sentiment. (1) If any person or group willingly or knowingly publishes or broadcasts or causes to publish or broadcast anything on website or any electronic format which hurts religious sentiment or values, with an intention to hurt or provoke the religious values or sentiments, then such act of the person shall be an offence.(2) If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 2 (two) years, or with fine not exceeding Taka 5 (five) lac, or with both.

<<http://bdlaws.minlaw.gov.bd/act-1457/section-52851.html>>

<sup>48</sup> The People's Republic of Bangladesh Constitution, 1972, Article 8, Fundamental principles, 8. (1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceability.

<<http://bdlaws.minlaw.gov.bd/act-367/section-24556.html>>

only undermines the status of a significant population but also actively suppresses LGBT+ voices.<sup>49</sup> Additionally, Section 4 poses a significant threat to cross-border activism and diaspora support for Bangladeshi LGBT+ individuals abroad. This section states that if any Bangladeshi citizen engages in activities that may come under the ambit of crimes described in the CSA while abroad, that person will also be considered a criminal under this Act. As a result, it is risky for Bangladeshi LGBT+ people living abroad to advocate for community members in the country.<sup>50</sup>

## 2. Sri Lanka

Sri Lanka also criminalises LGBT+ lives and uses laws that are a colonial legacy, particularly sections 365, 365A<sup>51</sup> and 399 of the Penal Code<sup>52</sup> and the Vagrants Ordinance,<sup>53</sup> to discriminate publicly against the community. The Sri Lankan Constitution guarantees all citizens the freedoms of thought and conscience, expression, and association<sup>54</sup> and the Right to Information.<sup>55</sup> The existence of laws that criminalise one's very identity negates the fundamental freedoms assured.

Recent times have seen less physical violence inflicted upon the LGBT+ community that curtails their freedom of expression and assembly in comparison to the situation on the ground a decade ago. This is primarily due to the emergence of the people's civil movement in 2022, where the LGBT+ community increased visibility and interaction with the public through their active participation in the movement.<sup>56</sup>

The online sphere is a space where many LGBT+ persons can simply be themselves, even if they cannot fully do so in public.<sup>57</sup> Exploring and creating content that celebrates and respects being LGBT+ is comforting, especially if this is not something they experience in their offline everyday life. Their

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<sup>49</sup> Onnokotha and others, "Ruling the Digital Closet: LGBTI+ Activism in the Shadow of Bangladesh's Digital Blasphemy Laws - শুদ্ধশর" (শুদ্ধশর - মন জাগাতে নয়, মন জাগাতে, To inspire, not to impress, May 1, 2020) <<https://shuddhashar.com/ruling-the-digital-closet-lgbti-activism-in-the-shadow-of-bangladeshs-digital-blasphemy-laws-onnokotha/>>

<sup>50</sup> The Cyber Security Act, Section 4, Extra-territorial application of the Act.-(1) If any person commits any offence under this Act beyond Bangladesh which would be punishable under this Act if committed in Bangladesh, the provisions of this Act shall be applicable in such manner as if he had committed such offence in Bangladesh. (2) If any person commits any offence within Bangladesh under this Act from outside of Bangladesh using any computer, computer system, or computer network situated in Bangladesh, the provisions of this Act shall be applicable to the person in such manner as if the whole process of the offence had been committed in Bangladesh. (3) If any person commits any offence beyond Bangladesh under this Act from inside of Bangladesh, the provisions of this Act shall be applicable in such manner as if the whole process of the offence had been committed in Bangladesh.

<<http://bdlaws.minlaw.gov.bd/act-1457/section-52827.html>>

<sup>51</sup> As amended through the Penal Code (Amendment) Act No.22 1995

<sup>52</sup> Penal Code Ordinance No 2 of 1883 (Sri Lanka)

<sup>53</sup> The Vagrants Ordinance No 4 of 1841 (Sri Lanka)

<sup>54</sup> Constitution of Sri Lanka 1978, Article 14: Every citizen is entitled to (a) the freedom of speech and expression including 'publication and (b) the freedom of peaceful assembly

<sup>55</sup> *ibid*, Article 14 A (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right [...]

<sup>56</sup> Kadupitiyage S, 'MOVING FORWARD WITH PRIDE' (CEYLON TODAY, 2 July 2022)

<<https://ceylontoday.lk/2022/07/02/moving-forward-with-pride/>> accessed 22 January 2024

<sup>57</sup> Jinadasa M, 'Internet through mobile phone and its cognitive and behavioural impact: Changing sexuality' (2015) *Journalism and Mass Communication*, 5(12), 614-628.



virtual “fake” identity may be their true identity and they may find strength and the support they need to be true to themselves without fear.

However, studies show that it is not easy being LGBT+ online, as there are some challenges and barriers that are unique to community members, from being able to access the internet at all to having to use an alias, i.e. having a “fake” or anonymous profile to avoid exposure.<sup>58</sup> Many LGBT+ persons reported their sexual and gender identities being revealed online without consent.<sup>59</sup> In a country where one in eight adults between the ages of 18-65 years<sup>60</sup> identify as LGBT+, these real-life problems raise valid concerns regarding the safety of LGBT+ persons in all aspects of using the internet. Not every individual has the privilege of expressing themselves as they identify, as they may not be publicly “out” yet. Their virtual content may be exposed to their family, friends or work circles eliciting dire consequences,<sup>61</sup> which all severely restrict their freedom of speech and expression. In addition to this, certain state laws and policies also raise valid concerns about the well-being of LGBT+ persons online. Among these, a policy where anyone creating, publishing, sharing, forwarding, or aiding and abetting the spread of ‘false news’ on social media will be considered to have committed an offence<sup>62</sup> was introduced in Parliament in July 2020. The Cabinet of Sri Lanka approved the codification of these policies along with hate speech provisions as law in April 2021.<sup>63</sup> The Online Safety Act 2023,<sup>64</sup> which is an outcome of this effort to codify policies on the topic, has created plausible concerns<sup>65</sup> regarding the safety and freedoms of LGBT+ individuals.<sup>66</sup> As per this law, such persons deemed to have committed recognised offences<sup>67</sup> related to fake accounts or fake news<sup>68</sup>

<sup>58</sup> Women & Media Collective, ‘Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online (Erotics Study)’ (*Women & Media Collective*, 1 August 2018) <<https://womenandmedia.org/erotics-study-disrupting-the-binary-code-experiences-of-lgbt-sri-lankans-online/>> accessed 18 January 2024. The report reveals that the challenging nature of online engagement among LGBT+ community members transgender persons struggle to access state services which require the presentation of a national identity card as they may not have identification matching their gender identity, using dating apps are dangerous for LGBT+ persons due to the number of fake profiles, impersonation and in some instances targeted harassment to expose closeted community members, phone repair shops extract content from phones without consent to post online, etc.

<sup>59</sup> *Id.*

<sup>60</sup> Equal Ground, Mapping LGBTIQ Identities in Sri Lanka (2021). pp. 1–74 <<https://equalityfund.ca/wp-content/uploads/2021/06/Mapping.pdf-Research-report.pdf>> accessed 18 January 2024

<sup>61</sup> Peiris P, ‘Westminster Foundation for Democracy (WFD) - Westminster Foundation For ...’ (*Westminster Foundation for Democracy (WFD)*, 2021) <[https://www.wfd.org/sites/default/files/2022-05/wfd-web-brochure-nm\\_final.pdf](https://www.wfd.org/sites/default/files/2022-05/wfd-web-brochure-nm_final.pdf)> accessed 18 January 2024

<sup>62</sup> EconomyNext, ‘Sri Lankans Posting Information Deemed “false” on Social Media Face Arrest without Warrant’ (*EconomyNext*, 8 June 2021) <<https://economynext.com/sri-lankans-posting-information-deemed-false-on-social-media-face-arrest-without-warrant-82783/>> accessed 18 January 2024

<sup>63</sup> Tzabiras M, ‘Sri Lanka: Free Media Movement Said “fake News” Bill Could Undermine Freedom of Expression’ (*IFEX*, 27 April 2021)

<sup>64</sup> Parliament of Sri Lanka, ‘The Online Safety Bill Passed in Parliament with a Majority Vote with Amendments’ (Parliament of Sri Lanka - News - The Online Safety Bill passed in Parliament with a majority vote with amendments, 24 January 2024) <<https://www.parliament.lk/news-en/view/3859>> accessed 29 January 2024

<sup>65</sup> Sinnetamby A, ‘Decoding the Sri Lankan Online Safety Bill’ (*iProbono*, January 2024) <<https://iprobono.com/articles/decoding-the-sri-lankan-online-safety-bill/>> accessed 29 January 2024

<sup>66</sup> Arulpragasam P and Paliawadana S, ‘Proposed Online Safety Bill: Threatening Freedom of Expression’ (Latest in the News Sphere | The Morning, 24 October 2023) <<https://www.themorning.lk/articles/JzyL0xyrGZZkitk2zT4I>> accessed 18 January 2024

<sup>67</sup> As per Sections 12 and 18 specifically of the Online Safety Bill L.D.-O 34/2021, published in the Gazette on September 18, 2023 <[http://documents.gov.lk/files/bill/2023/10/391-2023\\_E.pdf](http://documents.gov.lk/files/bill/2023/10/391-2023_E.pdf)>

<sup>68</sup> Wijesinghe D, ‘Queer Spaces, Freedom of Expression, and the Online Safety Bill’ (Latest in the News Sphere | The Morning, 21 October 2023) <<https://www.themorning.lk/articles/pr5P3Z9q9v11TpAzTPr7>> accessed 18 January 2024

can be arrested under provisions in the Police Ordinance, the Penal Code, the Prevention of Terrorism Act (PTA), the Computer Crimes act and other applicable laws.

This legal environment illustrates how prevailing laws meshing with existing social stigma against LGBT+ persons leads to increased violence on community members.<sup>69</sup> The Prevention of Terrorism Act, The Penal Code sections 365, 365A (provisions that criminalise LGBT+ relations), 399 (cheating by impersonation provision) and the Vagrants Ordinance are referred to as the “Holy Trinity” used to target and arrest without warrants, those who identify as LGBT+ or the Police perceive to be part of the community.<sup>70</sup> Until recently, these laws were used almost exclusively in the physical public sphere. However, with the new legislation mentioned, this small safe space may also disappear since this law imparts the power of arrest without warrant. Although the State has assured, that these “fake news” arrests will be to curb “disturbances to the peace, disharmony between communities, sexual crimes against women and children, harassment to religious belief, and various frauds,”<sup>71</sup> it does not inspire confidence among community members based on lived experiences of persecution by the police and other government stakeholders.

LGBT+ persons are now required to further censor themselves in order to avoid possible arbitrary arrest. It is not clear how the offences will be interpreted and applied<sup>72</sup> by law enforcement authorities, for example, if a transgender person who is portraying themselves as their preferred gender identity online will be considered to be committing an offence, or whether an LGBT+ person sharing information about their negative experiences with law enforcement personnel based on their perceived sexual orientation will be considered to be spreading misinformation about law enforcement officers. It is also unclear if a member of the LGBT+ community who is facing targeted harassment online can seek protection under these laws without being subject to further violence or criminalisation.

These legal developments remain a key concern for human rights activists and LGBT+ rights-based organisations as it can be used to control and suppress the virtual lives of LGBT+ community members.

### 3. RECOMMENDATIONS

To ensure maximum protection to LGBT+ community members and to promote the full utilisation of their rights to free expression, association, and assembly, iProbono recommends the following:

#### 3.1. BANGLADESH

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<sup>69</sup> Maduwage S, ‘Arrests and Harassment of LGBTIQ Persons’ (*Groundviews*, 22 October 2020) <<https://groundviews.org/2020/10/22/arrests-and-harassment-of-lgbtqi-persons/>> accessed 18 January 2024

<sup>70</sup> Bakamoono.lk, ‘Sri Lankans Posting Information Deemed “false” on Social Media Face Arrest without Warrant’ (*Bakamoono.lk*, 10 June 2021) <<https://www.bakamoono.lk/en/article/6277/sri-lankans-posting-information-deemed-false-on-social-media-face-arrest-without-warrant>> accessed 18 January 2024

<sup>71</sup> n (9)

<sup>72</sup> Sinnetamby A, ‘Decoding the Sri Lankan Online Safety Bill’ (*iProbono*, January 2024) <<https://iprobono.com/articles/decoding-the-sri-lankan-online-safety-bill/>> accessed 29 January 2024

- The Government of Bangladesh must prioritise the repeal of Section 377 of the Bangladesh Penal Code, which criminalises homosexuality. This is crucial to ensure the right to freedom of expression of the LGBT+ community.
- The Government of Bangladesh takes concrete measures to ensure the safety of LGBT+ activists and organisations, including investigating and addressing threats from fundamentalist groups, providing adequate security to affected community members and prosecuting those responsible for any acts of violence or intimidation.
- Expedite the drafting and passing of the Transgender Rights and Protection Act to safeguard the rights of and protect transgender individuals in the country. This would signify a commitment to inclusivity and non-discrimination.
- Foster a more inclusive legal environment for civil society organisations, particularly those advocating for LGBT+ rights. Review and amend laws and regulations hindering the registration and operation of LGBT+ led organisations and organisations working to secure the community's rights, allowing them to freely associate and peacefully assemble.
- Re-evaluate and amend the Cyber Security Act 2023 to ensure that it does not disproportionately impact LGBT+ individuals and organisations. Address concerns related to online surveillance, censorship, and restrictions on freedom of expression to create a more inclusive digital space.

### **3.2. SRI LANKA**

- The Government of Sri Lanka must review, amend and/or abolish legislations that criminalise consensual same-sex relations between adult persons.
- The Government of Sri Lanka must sensitise police and law enforcement stakeholders to follow due process of law and treat everyone equally regardless of their sexual orientation and gender identity.
- The Government of Sri Lanka must review, amend and/or abolish legislations that impede the right to freedom of expression and association in the online sphere, specifically the Online Safety Act 2023.
- Critical stakeholders, such as the government, civil society, media, and the international community, should actively participate in renewed dialogue and partnership to achieve decriminalisation of same-sex relations and influence progressive legal reform.