

**CONSTITUTIONALLY RECOGNISED ‘OTHER’:
THE FUNDAMENTAL RIGHTS OF LGBTI PEOPLE
IN SRI LANKA**

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ABSTRACT

Public officers and politicians in Sri Lanka have been transmitting mixed messages about LGBTI rights in Sri Lanka, as some claim that Sri Lanka recognises LGBTI people’s fundamental rights to be treated equally, while others deny such rights. These contradictory statements indeed have caused much confusion in the LGBTI community as well as in Government sector institutions, since no legislation was passed or policy decision was taken to clarify the Government’s position on this problem. The objective of this article is to analyse the existing law, with the aim of answering the question of whether Fundamental Rights of LGBTI people are in fact protected by the Constitution of Sri Lanka. This objective will be achieved through an analysis of domestic Fundamental Rights with reference to local jurisprudence as well as international human rights law and foreign jurisprudence, with special emphasis on Indian case law. This article begins with a brief discussion on the recent pronouncements of LGBTI rights in the international human rights landscape, followed by an examination of both legal and social impediments to the equal rights of LGBTI people in Sri Lanka. The centrepiece of this article will be a critical analysis of the Fundamental Rights provisions of the Constitution of Sri Lanka, with frequent reference to two recently celebrated judgements of the Indian Supreme Court. In this segment, the non-discriminatory provisions of Article 12 will be discussed in detail, followed by a broader discussion on the right to life, dignity, privacy and freedom of expression of LGBTI persons. While the scope of this article is limited to Fundamental Rights, the relevant aspects of criminal law will be briefly examined to present a wholesome understanding of the violation of rights of LGBTI individuals in Sri Lanka.

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