

A STUDY ON WORKPLACE DISCRIMINATION

Challenges faced by LGBTIQ employees
and the perspectives of employers in Sri Lanka

Study conducted by

EQU~~U~~L GROUND

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Acronyms and Abbreviations

LGBTIQ: Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning

SOGIE: Sexual Orientation and/or Gender Identity/Expression

O-Level: Ordinary Level (General Certificate of Education: Ordinary Level)

A-Level: Advanced Level (General Certificate of Education: Advanced Level)

ILO: International Labour Organisation

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

ICCPR: International Covenant on Civil and Political Rights

UPR: Universal Periodic Review

C190: Violence and Harassment Convention, 2019 (No. 190)

IGLHRC: International Gay and Lesbian Human Rights Commission

UN: United Nations

UNHRC: United Nations Human Rights Council

EG: EQUAL GROUND

D & I: Diversity and Inclusion

HR Manager: Human Resources Manager

Definitions

Lesbian	A woman who is physically, emotionally and/or spiritually attracted to other women.
Gay	A person physically, emotionally and/or spiritually attracted to someone of the same sex. Usually used to describe men loving men and also used to identify the whole LGBTIQ community – as in ‘Gay Community’.
Bisexual	A person physically, emotionally and/or spiritually attracted to both men and women.
Transgender	A person whose sense of personal identity and gender does not correspond with their birth sex.
Intersex	A term to describe individuals born with any of several variations in sexual characteristics including chromosomes, gonads, sex hormones or genitals that do not fit the typical definitions for male or female bodies.
Questioning	A person who is questioning their sexuality or gender identity.
Queer	A word that describes sexual and gender identities other than straight and cisgender. Lesbian, gay, bisexual, and transgender people may all identify with the word queer.
Closeted	A person who is not entirely open about his/her/their sexuality or has not ‘come out’ as LGBTIQ to everyone.
Coming out	A process of self-acceptance as an LGBTIQ person and/or publicly sharing one’s SOGIE.
Heteronormativity	The mainstream social belief that being heterosexual is “normal”.

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Executive Summary

This study is an exploratory research to ascertain the plight of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning (LGBTIQ) employees in Sri Lanka, from the perspectives of employed LGBTIQ persons, as well as organisational management. It gathered data on the experiences of LGBTIQ employees and the attitudes of organisational decision-makers and managers, on providing equal treatment and protection to LGBTIQ employees. Further, it looked at patterns of discrimination and harassment faced by LGBTIQ employees and explored the available mechanisms to protect them from such incidents.

193 LGBTIQ employees, engaged in various job sectors, participated in the employee survey, while 45 decision-makers, managers and/or representatives from different organisations operating in Sri Lanka took part in the employer survey.

The findings from the employee survey revealed that, though the majority of the respondents completed tertiary level education (undergraduate-31%, postgraduate-24%), most of them are not employed at higher than entry level jobs. When the respondents were asked if they are 'out' at their workplaces, 42% responded in the negative. This is also because half of the respondents (50%) believed that if they reveal their Sexual Orientation and/or Gender Identity/Expression (SOGIE) at the workplace, they might face more stigma and discrimination. It indicates that LGBTIQ employees struggle with revealing their SOGIE and being their true selves at the workplace.

The respondents were subsequently asked if they have a supportive and non-discriminative work environment. To this, 38% of the respondents gave a negative response. With regard to employment opportunities and benefits, 16% said they experienced discrimination during job interviews, 10% said they have been denied employment benefits (i.e. salary increments, promotions, transfers etc.), and 3% confirmed that they were terminated from jobs due to their SOGIE. It should be noted here that the percentages of such discriminatory behavior are low because most of the respondents did not reveal their SOGIE to anyone at the workplace. Moreover, when respondents were asked if they can complain to the management about such rights violation incidents at the workplace, 56% said they cannot because they fear facing more reprisals.

Respondents were further asked if they ever encountered any type of harassment at their workplaces. 58% stated that they have experienced verbal harassment, which included name calling, making derogatory remarks, spreading rumors, asking inappropriate personal questions etc.; 31% said they have experienced sexual harassment, which included verbal and non-verbal invitations to have sex, sending messages with sexual contents, comments about body/clothing/behavior etc. When respondents were asked if they can complain to the management about such harassment incidents, 44% said they cannot because they fear facing more reprisals. This indicates that even if LGBTIQ employees experienced verbal and/or sexual harassment at their workplace, they chose to remain silent because of the fear facing increased discrimination and/or stigmatisation. Consequently, 23% of the respondents also mentioned leaving their jobs due to psychological and emotional harassment.

As it is evident that LGBTIQ employees face various challenges in the world of work, they were also asked to provide suggestions on how to change such conditions and create supportive and inclusive work environments. Many respondents (30%) stated that awareness and training programs should be arranged for all work sectors, so that employers can become educated about these issues and can take proactive action.

Employers' insights and perspectives are also necessary to ascertain the workplace related issues encountered by LGBTIQ people. When the employer survey asked respondents whether, in their opinion, LGBTIQ people find it difficult to get employment, the majority (51%) said yes. Afterwards, employers were asked if they would hire a LGBTIQ person who is qualified for the job. While the majority (82%) were willing to hire a qualified LGBTIQ person, some of them also had reservations, especially when it comes to recruiting to senior level posts. Furthermore, when respondents were asked if LGBTIQ people face discrimination in the workplace, almost half of them (49%) confirmed they did. This indicates that the majority of the employers were aware that LGBTIQ people encounter various challenges at the workplace.

The employer survey also probed whether workplaces had reporting mechanisms so that rights violations and workplace discrimination can be documented, and appropriate measures can be taken. Only 38% confirmed that they have established procedures to complain about harassment and discrimination, primarily through the grievance handling mechanisms. When asked about gender-related and inclusive workplace policies, 53% said they do not have any gender-related policies at their organisations, and 56% said they do not have any inclusive workplace policies for LGBTIQ employees. Therefore, it is evident that, even when there are general mechanisms in place to report grievances of employees, these mechanisms are not effective in cases relating to issues faced by LGBTIQ employees.

The survey findings also revealed that the majority (53%) of the employers are aware of national laws that discriminate LGBTIQ people and confirmed that to some extent these laws have impact on the workplaces as well. Accordingly, 11% suggested that national legal system should be reformed so that organisations can take bold steps to eliminate workplace discrimination for LGBTIQ people. 35% also believed that strong organisational policies should be developed to end workplace discrimination.

When comparing the employee and employer surveys, it revealed that challenges cited by LGBTIQ employees have also been affirmed by the employers. Moreover, while the majority of the employees mentioned that they cannot report to the management in case of rights violation or harassment incidents at the workplace, the employer survey unraveled the reason of this phenomenon. As there is no specific policy for LGBTIQ employees, there is higher chances of being more discriminated, which prevents the LGBTIQ employees from reporting such incidents.

Finally, based on the study findings, the report gives recommendations to various actors such as the government, corporates, organisations, etc.

Chapter 1

1.1 Introduction

Non-discrimination at the workplace is a fundamental workers' right. Two key conventions of the International Labor Organisation (ILO), the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), set the international standards on the elimination of discrimination at work.

Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning (LGBTIQ) people face discrimination throughout the employment cycle, from education and training, access to employment, and refusal of employment to dismissal, denial of career training and promotion, and access to social security.¹

Globally, LGBTIQ people are underrepresented, especially in studies on employment discrimination; in Asia, research in this area is still at an early stage.² Considering this phenomenon, EQUAL GROUND, Sri Lanka has initiated the effort to widen the evidence base on workplace and employment issues facing the LGBTIQ community through this study.

What is discrimination in employment and occupation?

- (a) *Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*

Source: Article 1 (1), Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

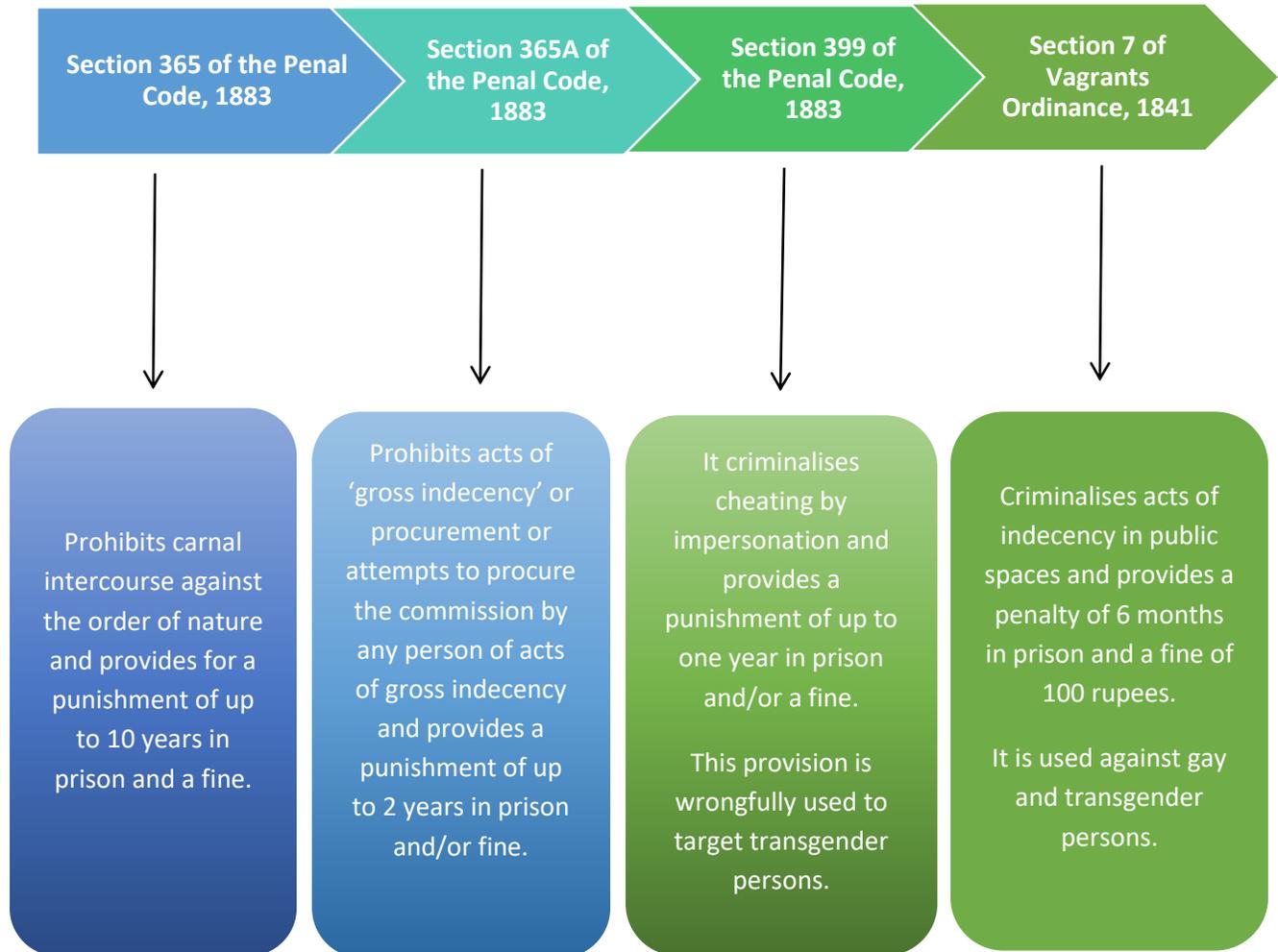
¹ UNDP, ILO (2018). *LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand.*

² Ibid

1.2 Literature review

1.2.1 The situation of the Sri Lankan LGBTIQ community, at a glance

1.2.1(a) Draconian legal system



Individuals must not be discriminated on the basis of their Sexual Orientation and/or Gender Identity/Expression (SOGIE); but Sri Lanka has made little to no progress towards removing archaic, discriminatory laws that do so.

Sri Lanka's Penal Code is not specific on what constitutes as offences under Sections 365, 365A, and 399. It is of note that originally, these laws, instituted by the British Colonial powers, targeted same sex sexual relationships between two men. However, after the amendment of these laws in 1995, these 138-year-old colonial laws are still being used to wrongfully target LGBTIQ people

in Sri Lanka.³ Another regulation, the Vagrants Ordinance, a 178-year-old law, has been used to disproportionately target LGBTIQ people, allowing the police to take them into custody and even put them in prison to extort or harass them.⁴

Prosecutions under these laws are few, yet they contribute to widespread antipathy towards LGBTIQ people.⁵ According to the prison statistics of Sri Lanka (2020), from the year 2017-2019 60 people (all adult male) have been convicted for unnatural offences and 43 people (all adult male) have been convicted under the Acts of Gross Indecency.⁶ However, there is no details about the nature of the crime committed. Therefore, it is not clear if the convicts were imprisoned for same sex activity.

1.2.1(b) International commitments

Sri Lanka has ratified core international human rights treaties that obligate the government to protect the rights of individuals (which explicitly include the LGBTIQ population) against violence, discrimination, and other type of abuses, by both private actors and government officials and agents.⁷

Fundamental rights recognised by the Sri Lankan constitution includes non-discrimination under article 12(2), which states that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, and place of birth or any one of such grounds”. At least on two occasions, the Sri Lankan government has committed before the United Nations (UN) that LGBTIQ persons are constitutionally protected, and non-discrimination on SOGIE is implicitly included under this constitutional provision. In fact, in 2014 the then government told the UN Human Rights Council (UNHRC) that discrimination based on one’s SOGIE was considered unconstitutional.⁸ In 2017, the Sirisena-Wickremesinghe government pledged to “ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard.” In addition, with the intervention of the Human Rights Commission of Sri Lanka in 2016, the Registrar General’s Department and the

³ Amnesty International, *Sri Lanka: End Discrimination against LGBTI people* (2019), <https://www.amnesty.org/en/latest/news/2019/12/spectrum-sri-lanka-lgbti/>

⁴ Ibid

⁵ EQUAL GROUND, Sri Lanka, Northwestern Law and Global Initiatives for Human Rights (2016), *A Shadow Report for the Committee of Economic, Social and Cultural Rights (ICESCR)*, https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_ICO_LKA_25036_E.pdf

⁶ Prison Statistics of Sri Lanka (2020), Vol. 39, Table 4.12, P.no. 37, http://prisons.gov.lk/old_web/Statistics/Statistics-2020.pdf

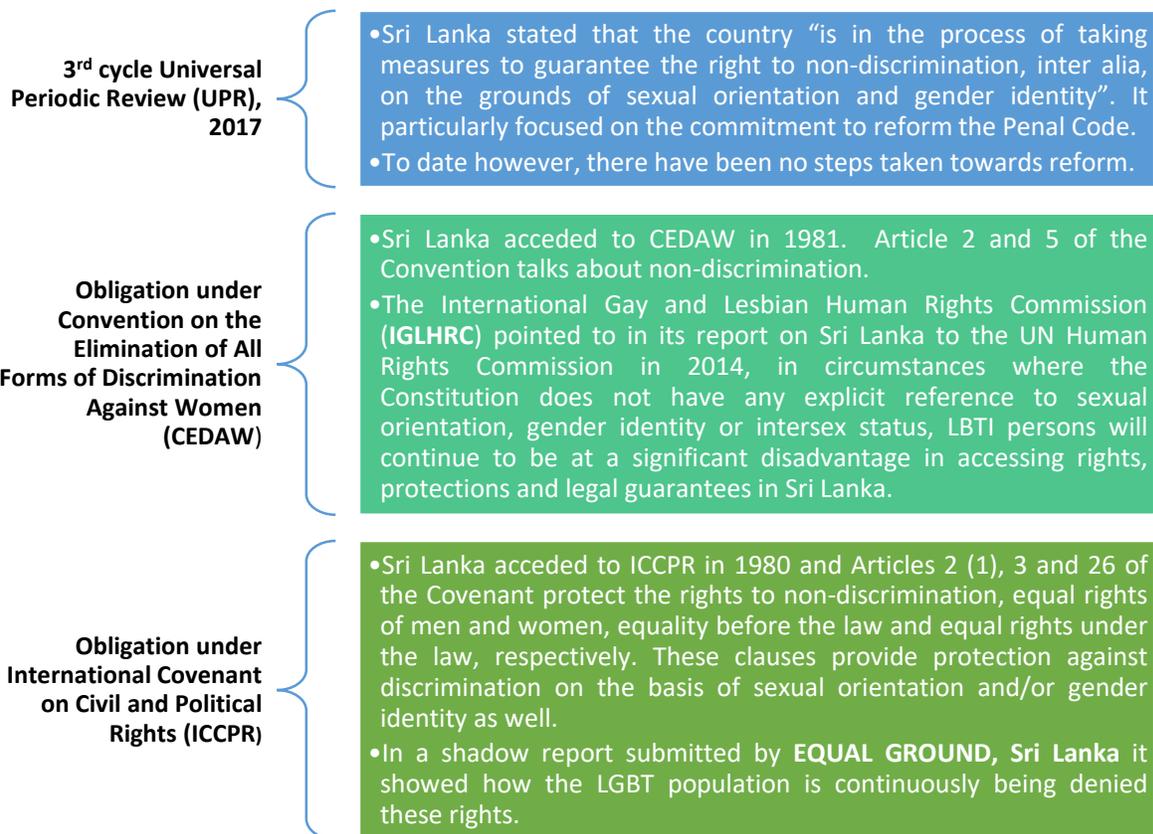
⁷ Human Rights Watch, *Sri Lanka: Challenging ‘Gender Norms’ brings Abuse* (2016), <https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse>

⁸ Outright Action International, *Sri Lanka Government says LGBT Rights are Constitutionally Protected*, <https://outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

Ministry of Health issued two circulars, to provide Gender Recognition Certificates (GRC) to transgender persons who wish to amend the gender assigned to them at birth in their official documents.

However, when it comes to granting LGBTIQ rights, time and again, the government and its leaders have failed to meet these international commitments.

To which extent commitments have been fulfilled⁹



⁹ Amnesty International, *Sri Lanka: End discrimination against LGBTI people* (2019), <https://www.amnesty.org/en/latest/news/2019/12/spectrum-sri-lanka-lgbti/>
 Kaleidoscope Human Rights Foundation and EQUAL GROUND, *Parallel report to the UN Committee on the Elimination of Discrimination against Women regarding Sri Lanka's protection of the rights of LGBTI persons* (2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26326_E.pdf
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 EQUAL GROUND (2014), *A Shadow Report on Human Rights Violations against Lesbian, Gay, Bisexual and Transgender (LGBT) people in Sri Lanka*, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_CSS_LKA_18258_E.pdf

1.2.1(c) Pseudo protection at the national level

Article 12 of the Constitution	<p>Art. 12(2): No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.</p> <p>It refers to “sex” not “sexual orientation” or “gender identity” and as a result it does not explicitly protect LGBTIQ people.</p>
The Legal Gender Recognition	<p>The Gender Recognition Circular was issued in 2016. The process was implemented the same year.</p> <p>However, this can be withdrawn or easily reversed by any person who has the authority to do so since it is a mere circular and public officials still have mixed reactions towards this.</p>
The Supreme Court condemned laws that discriminate LGBTIQ people in 2016	<p>In reaction, in 2017 the then Deputy Solicitor General <i>Nerin Pulle</i> stated that Sri Lanka's Constitution does not provide the courts the power of judicial review thus it cannot expel a law; however he assured that the government would move to decriminalize same sex sexual activity.</p> <p>To date (2021), no progress made towards it.</p>
A move towards updating Human Rights Action Plan 2017-2021	<p>In 2017, the Government also decided to update their Human Rights Action Plan crafted by a committee of CSOs banning discrimination against someone based on their SOGIE.</p> <p>At the cabinet approval stage however, it was decided to not include the said ban in the action plan and therefore, no laws were put in place following this statement.</p>

“The contemporary thinking, that consensual sex between adults should not be policed by the state nor should it be grounds for criminalisation appears to have developed over the years and may be the rationale that led to repealing of the offence of gross indecency and buggery in England.”

- Justice Eva Wanasundera, PC, Judge of the Supreme Court (SC Appeal No. 32/11; Decided on 2016)¹⁰

These actions clearly illustrate that actively protecting the rights and interests of LGBTIQ persons in Sri Lanka is not a domestic priority.

¹⁰ Full Judgement available at: http://www.supremecourt.lk/images/documents/sc_appeal_32_11.pdf

1.2.2 Legal protection at the workplace for LGBTIQ employees around the globe

Seventy-seven countries prohibit discrimination due to sexual orientation in employment, including Australia, Canada, France, Germany, Mexico, the Netherlands, Switzerland, and the United Kingdom.¹¹

On 15 June 2020, the Supreme Court of the United States in *Bostock v. Clayton County*¹² banned discrimination on the basis of sexual orientation and gender identity in workplaces. This means that workers across the US cannot be terminated for being LGBTIQ.¹³

In June 2017, the Canadian government amended the Human Rights Act to outlaw employment discrimination based on gender identity and expression.¹⁴

In September 2018, India's Supreme Court struck down section 377 of India's Penal Code, a colonial-era law that penalised consensual same-sex relations.¹⁵

As of 2020, 93% and 91% of Fortune 500 companies have non-discrimination policies that include sexual orientation and gender identity, respectively.¹⁶

In a statement made by Guy Ryder, Director General, International Labor Organisation (ILO, 2015) he opined that the ILO mandate encompasses equality and non-discrimination in the world of work. Moreover, a diverse workforce brings with it different ideas and ways of doing things that can propel innovation and enhance profitability.¹⁷ With this, in 2019, the ILO adopted a new Convention no. 190 (along with Recommendation no. 206) to end violence and harassment in the workplace.

The irony is, even with the workplace rights protection laws in place, LGBTIQ Americans have experienced discrimination based on SOGIE at the workplace. According to Klawitter's review of a variety of studies of wage differences in the United States, Netherlands, UK, Sweden, Greece,

¹¹ Catalyst, *Lesbian, Gay, Bisexual and Transgender Workplace Issues: Quick Take* (2020), <https://www.catalyst.org/research/lesbian-gay-bisexual-and-transgender-workplace-issues/>

¹² *Bostock v. Clayton County*, Georgia, SC Appeal no. 17-1618, Argued October 8, 2019—Decided June 15, 2020- in this case Gerald Lynn Bostock was fired from his job as a county child welfare services coordinator when his employer learnt that he's gay.

¹³ Catalyst, *Lesbian, Gay, Bisexual and Transgender Workplace Issues: Quick Take* (2020), <https://www.catalyst.org/research/lesbian-gay-bisexual-and-transgender-workplace-issues/>

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ LGBT workers entitled to equal rights and benefits at the workplace, Statement by ILO Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia, 17 May, 2015, [Lesbian, Gay, Bisexual, Transgender rights: LGBT workers entitled to equal rights and benefits at the workplace \(ilo.org\)](https://www.ilo.org/public/libdoc/iloorg/2015/05/150101en.pdf)

France, and Australia, on average gay and bisexual men earn 11% less than heterosexual men with the same qualifications.¹⁸

Almost half (46%) of LGBTIQ workers in the United States are closeted in the workplace.¹⁹ Furthermore, a quarter (25%) of LGBTIQ employees reported staying in a job due to a LGBTIQ-inclusive work environment, while 10% of LGBTQ employees have left a job because the work environment did not accept LGBTQ people.²⁰

In India – Sri Lanka’s closest neighbor – for many queer and transgender professionals, inclusion and acceptance at the workplace is far from reality. In a 2019 survey conducted by TimesJobs, India, titled ‘Diversity and Inclusion initiatives practiced by the Indian corporates,’ responses from over 1,137 professionals across industry verticals revealed that 57% respondents were convinced that their company will never hire a professional from the LGBTIQ community for a senior leadership position.²¹ In any state of India, an employee can be fired for being gay, lesbian or even bi-sexual. In such cases, then it is no surprise some employees might not even know if their colleagues are queer or not.²² Moreover, 65% of employees said that they have not seen any change at their workplace even after the decriminalisation of Section 377 of the IPC.²³

A 2016 World Bank report placed India’s loss in GDP due to homophobia and transphobia at up to \$32 billion.²⁴

1.2.3 Existing workplace legal and policy measures in Sri Lanka

Though implicitly (not explicitly) all forms of discrimination, including workplace discrimination on the basis of SOGIE, are prohibited under the Sri Lankan Constitution, LGBTIQ people in Sri Lanka continue to face challenges.

A number of research findings suggest that LGBTIQ employees in Sri Lanka experience discrimination and harassment in the workplace. According to the LGBTIQ *Stigma and Discrimination Index* by EQUAL GROUND (2010), 21.85% of LGBTIQ persons have been refused

¹⁸ Badgett Lee, *The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India* (2014), p. 28, <http://documents1.worldbank.org/curated/en/527261468035379692/pdf/940400WP0Box380usion0of0LGBT0People.pdf>

¹⁹ Ibid

²⁰ Ibid

²¹ Vatsala Devki Vats, *Workplace Inclusion & Diversity: Still a Distant Dream for LGBTIQ+ Community* (2019), <https://www.indiatimes.com/lifestyle/workplace-inclusion-diversity-lgbtq-501227.html>

²² Ibid

²³ Ibid

²⁴ Ibid

employment or denied work due to their SOGIE.²⁵ Another 21.43% of the respondents have been refused promotions or have had their job description or the nature of their work changed repeatedly on the basis of their SOGIE.²⁶

There are no specific laws relating to the prevention of workplace discrimination or harassment. LBT individuals reported sexualised verbal harassment on the basis of their sexual orientation, pressure to perform sexual acts with other women for male employer's "viewing pleasure", approached for sex by senior colleagues, and being "outed" (exposed as LBT without permission) to senior management.²⁷ Although the ILO's 2013 Code of Conduct and Guidelines on Sexual Harassment at the Workplace defines sexual harassment as harassment that is based on sex and/or sexuality and could include verbal harassment that refers to a person's sexual identity, most sexual harassment policies in both public and private employment settings do not include harassment on the grounds of sexual orientation and gender identity.²⁸ Exacerbating this lack of redress is the stigma associated with homosexuality and gender non-conformity in Sri Lanka, which prevents LBT individuals from reporting workplace sexual harassment and accessing any formal redress without being subject to further harassment and abuse by employers.²⁹ Moreover, after the ILO adopted C190³⁰ in 2019, many unions and organisations of Sri Lanka are pushing the government to ratify it, but so far no progress has been made; rather the Employers Federation of Ceylon (EFC)³¹ raised a few concerns and expressed their disagreements,³² as few of the provisions of this law cover vast issues like ensuring protection to employees from sexual harassment in transportation and accommodation provided by the employer.

While some private workplaces may have non-discrimination policies in place, often this fails to spell out non-discrimination in terms of sexual orientation and gender identity.³³ In the state sector, non-discrimination policies either do not exist or are rare.³⁴ Additionally, in the corporate

²⁵ EQUAL GROUND, *The LGBT Stigma and Discrimination Index of Sri Lanka* (2010), p.no 40, <https://www.equal-ground.org/wp-content/uploads/The-LGBT-Stigma-and-Discrimination-Index-of-Sri-Lanka-A-project-of-EQUAL-GROUND.pdf>

²⁶ Ibid

²⁷ International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka: A Shadow Report* (2014), <https://outrightinternational.org/sites/default/files/SriLanka1014WCover.pdf>

²⁸ Ibid

²⁹ Ibid

³⁰ The Convention Concerning the Elimination of Violence and Harassment in the World of Work

³¹ It is today the principal organisation of employers, promoting employer interests at national level, especially focusing on industrial relations and labor law.

³² Sharanya Sekaram (27 May, 2020), ILO Convention no. 190: The Struggle Continues, Daily FT, <http://www.ft.lk/opinion/ILO-Convention-No-190-The-struggle-continues/14-700718>

³³ Women's Support Group, *The Status of lesbian, Bisexual and Transgendered Persons in Sri Lanka*, NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination against Women (2011)

³⁴ Ibid

sector, the enactment of a policy on sexual harassment is left entirely to the discretion of the companies, and as such no formal uniform policy is adopted across the board.³⁵

Transphobia and homophobia are expressed in many forms, directly, indirectly, vertically, horizontally, and structurally, in work cultures.³⁶ It could be direct verbal harassments, or physical harassments, or indirect non-verbal gestures, or administrative decisions, or norms or rules in the working culture.³⁷ Also, such harassments come from fellow workers or from the management.³⁸ As no proper mechanisms exist to address these issues, LGBTIQ people are forced to stay in a toxic workplaces, which affects their growth and development.

Many multinational businesses are gradually recognising the links between the inclusion of LGBTIQ employees and business outcomes and have taken voluntary steps to end discrimination against LGBTIQ workers in order to maintain a competitive workforce. The exclusion of LGBTIQ people is costly to economies.³⁹ Exclusion can generate negative economic like lower productivity, diminished human capital development, and poorer health outcomes. From this economic perspective, the exclusion of LGBTIQ people is costly to everyone.

³⁵ Ibid

³⁶ Institute for Participatory Interaction in Development (IPID), *Rapid Situation Analysis of Transgender Persons in Sri Lanka* (2016), p.no 37, https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/Rapid-situational-Assessment-of-TGs-Sri-Lanka-2017.pdf

³⁷ Ibid

³⁸ Ibid

³⁹ Badgett Lee, *The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India* (2014), p. 28, <http://documents1.worldbank.org/curated/en/527261468035379692/pdf/940400WP0Box380usion0of0LGBT0People.pdf>

1.3 Methodology

This study is an exploratory research, which attempts to dig deep into the current situation of LGBTIQ employees in Sri Lanka, through the lenses of both employed LGBTIQ persons and organisational management. It gathered data on the experiences of LGBTIQ employees and the attitudes of organisational decision-makers and managers on providing equal treatment and protection for LGBTIQ employees. Further, it looks at patterns of discrimination and harassment faced by LGBTIQ employees and explores what can be done with the available mechanisms to protect them from such mistreatment. Though several previous studies indicate that LGBTIQ persons in Sri Lanka have often faced discrimination and harassment at their workplaces, no systematic and comprehensive study has been undertaken to analyse the situation of LGBTIQ employees and their employment conditions in the Sri Lankan context.

This study used a mixed methodology, with several data collection tools used to gather both quantitative and qualitative data. Availability sampling method was deployed to select the study sample.⁴⁰ For this study, data was collected in two phases. The core findings have been divided into and focused on two major issues; one is about the workplace challenges encountered by LGBTIQ employees and the other is perspective of employers in this regard. Geographically, LGBTIQ employees and several employers from various districts have participated in this survey.

Data was collected from employed LGBTIQ persons through a self-administered online questionnaire, which sought to capture the experiences of LGBTIQ employees and their experience with harassment and discrimination at work, in particular. The questionnaire consisted of both close ended and open-ended questions. The questionnaire was shared with the LGBTIQ community on EQUAL GROUND's Facebook page, directly emailed to community members, conveyed to LGBTIQ members over the phone, and at a data-collection stall during Colombo PRIDE 2019 celebrations. The questionnaire was shared in all three languages (Sinhala, Tamil, and English). During the first phase 67 respondents participated in this survey; 18 answered in English, 2 in Tamil and 47 in Sinhala. However, the survey excluded non-LGBTIQ respondents. Therefore only 65 were considered as valid respondents. In the second phase, 140 respondents participated; 90 answered in Sinhala, 43 in English and 7 in Tamil. Unfortunately, considering the objective and target population of this survey, responses of non-LGBTIQ people, students and unemployed persons had to be discarded. Thus, 128 were considered as valid response. Therefore, the total number of participants for the employee survey was 193.

Another questionnaire was used to conduct face to face interviews with employers and managers, to gather data on their perceptions and attitudes towards LGBTIQ employees and the

⁴⁰ Availability sampling is a specific type of non-probability sampling method that relies on data collection from population members who are conveniently available to participate in study.

workplace protections available to protect them, particularly with organisational policies, culture, and other practices and procedures. In the first phase, 29 responded to the questionnaire. During the second phase, the same questionnaire was shared online and self-filled by another 18 organisational representatives and/or decision-makers. This questionnaire also consisted of close ended and open-ended questions in order to get an overall picture of the world of work. Unfortunately, as a few responses were repetitive, two were discarded. So, the final count of valid responses was 16. Thus, for the employer's segment perceptions and attitudes of 45 organisation and/or companies have been taken into consideration.

For the data analysis part, as initially questionnaires were developed online, google survey's auto generated calculation was used. Additionally, a second analysis with coding was made in Microsoft Excel to confirm and cross-check the results attained in the google survey. Various excel tools like pivot tables, cross-tabulation, charts, and tables have been used to extract and highlight significant and relevant information. A quality check process was put in place to eliminate irrelevant and incomplete data along with any errors.

This mix-method study also included a desk review of existing studies, law, and policies on the subject, globally and nationally.

1.4 Limitations of the study

While the employment cycle, according to international labour standards, covers *before* (e.g. education and training, access to employment), *during* (e.g. working conditions, equal pay for work of equal value, job benefits, career development and security of tenure), and *after* employment (retirement), this study focuses mainly on the *during* and the *before* stages, which put emphasis on access to employment, treatment in the workplace and job benefits, and challenges.

The sample size is particularly small. The sample size was further reduced due to the high rates of unqualified, repetitive, and incomplete responses found in the online surveys. During the second phase of employee survey, initially 140 people participated, but due to the mentioned reasons, in the advance analysis only 128 responses were counted.

The primary data collection of the study was mainly limited to the views expressed by employees, employers, and a limited number of key informants. Unemployed persons were not included in this study.

The employee survey was an online survey and the researcher had limited control over how the respondents are selected. There could be increased risks of sampling errors. Also, LGBTIQ people who are working in formal sectors especially in various companies and organisations, have mostly participated in the survey. Thus, those working in the informal sector, such as daily wage earners and those who do not have internet literacy may have been overlooked in the study due to the methodology followed.

For the employer survey, 125 companies were contacted initially (during first phase of the survey) but only 10 companies were willing to participate. Consequently, the majority of the organisations which took part in the survey was through personal contacts of the researcher, resulting in a sampling bias. As issues related to the LGBTIQ community are considered taboo in Sri Lanka, it can be one of the reasons for the low numbers for the employer survey.

Though for both the employee and employer surveys, respondents from various districts participated in the survey, the majority of them were from Colombo. Thus, the study findings, while portraying workplace related issues of different districts, does not represent the entire workplace scenario of Sri Lanka.

It is a preliminary study to identify the workplace related issues encountered by the LGBTIQ people in Sri Lanka. However, to get a more in-depth picture of workplace discrimination against LGBTIQ people, a large-scale research is needed.

Notwithstanding these limitations of the research, the findings provide an insight to better understand discrimination against LGBTIQ people in the workplace and the policy action that is required to address it.

Chapter 2

Workplace Experiences of LGBTIQ Employees

This chapter presents the findings of the online survey conducted among LGBTIQ employees about their workplace related experiences/challenges. A total of 193 LGBTIQ employees participated in this survey.

2.1 Demographics

2.1(a) Age:

Of the 193 respondents, 48% belonged to the 25-32 age group, 20% to 18-24, another 20% to 33-40 and the rest, 12% are above 40 years of age. Overall, the survey shows high youth engagement.⁴¹

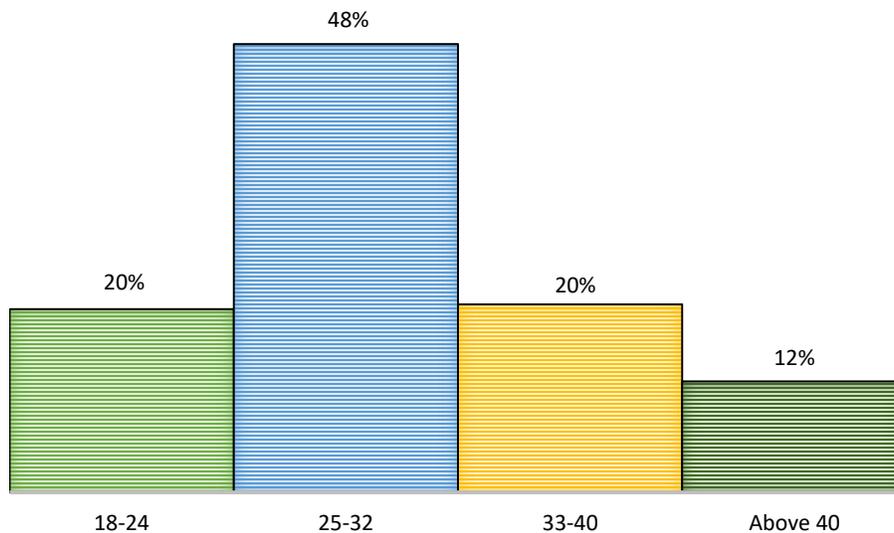


Figure 1: Age of respondents

2.1(b) Ethnicity:

Among the respondents, 86% were Sinhalese, 7% were Tamil, 4% were Muslim, 2% were Burgher and the rest, 1%, belongs to the other category.

⁴¹ National Youth Policy of Sri Lanka defines youth as those within the age group of 15-29 years taking into consideration the nature of the transition from dependent child to independent adult in the Sri Lankan context. However, we limited the survey to those who are over 18 years of age, due to legal concerns (Department-of-Census-and-Statistics, 2017).

Ethnicity	Frequency	Percentage
Sinhala	166	86%
Tamil	14	7%
Muslim	7	4%
Burgher	4	2%
Other	2	1%
Total	193	100%

Table 1: Respondents' ethnicity

In Sri Lanka, Sinhalese make up 74.9% of the overall population (according to the 2012 census)⁴², which can explain the high number of Sinhalese participants in the survey.

2.1(c) SOGIE:

SOGIE	Frequency	Percentage
Gay man	97	50%
Lesbian	20	10%
Bisexual	37	19%
Transgender	24	12%
Intersex	1	1%
Queer	5	3%
Other	9	5%
Total	193	100%

Table 2: Respondents' SOGIE

Of the total respondents, 50% identified as gay men, 10% as lesbian, 19% as bisexual, 12% as transgender, 1% as intersex, 3% as queer and the remaining 5% as other.

Compared to the lesbian, bisexual, and transgender populations, the visibility of gay men is higher in the survey. This is in line with the prevalent social norms in Sri Lanka; having been socialised within a hetero-patriarchal society, the LBT population often grapple with more issues relating to identity, compared to gay men.⁴³

⁴² Sri Lanka Demographics Profile (2020), https://www.indexmundi.com/sri_lanka/demographics_profile.html

⁴³ Women's Support Group (2011), *The Status of Lesbian, Bisexual Women and Transgendered Persons in Sri Lanka*, NGO Shadow Report to the Committee on the Elimination of all forms of Discrimination against Women, P.no.04.

2.1(d) District of work and residence:

District of work	Frequency	Percentage
Colombo	139	72%
Gampaha	16	8%
Galle	7	4%
Kandy	5	2%
Kurunegala	7	4%
Other	19	10%
Total	193	100%

Table 3: Respondents' district of work

District of residence	Frequency	Percentage
Colombo	91	47%
Gampaha	37	19%
Galle	9	5%
Kandy	12	6%
Kaluthara	6	3%
Kurunegala	8	4%
Other	30	16%
Total	193	100%

Table 4: Respondents' district of residence

Of all the respondents, 72% stated that their district of work is Colombo. Moreover, when they were asked about their district of residence, 47% said Colombo. Gampaha and Galle were the second and third highest districts for both work and residence. People from other districts like Kandy, Kurunagela, Kaluthara, Batticaloa, Ampara, Badulla etc. also took part in the survey. This shows that the findings of this survey not only shed a light on workplace related issues of metropolitan or commercial cities but also cover some rural areas.

Since Colombo is the commercial capital of the country and many of the workplaces are located/headquartered in Colombo, it explains why majority of respondents said they were working in Colombo. Also, Colombo has the highest population density which explains why most respondents reside in Colombo, compared to other districts.

2.1(e) Education:

Educational qualification	Frequency	Percentage
Grade 1-5	2	1%
Grade 6-11	5	3%
O-Level	14	7%
A-Level	26	13%
Diploma/Vocational training	36	19%
Undergraduate	59	31%
Post-graduate	47	24%
Other	4	2%
Total	193	100%

Table 5: Respondents' highest level of education

The respondents were asked to note their highest educational qualification. To this, 31% responded they have completed undergraduate level education, 24% completed post-graduate level education, 19% got diploma/vocational training, and from the rest, some completed Advanced Level (A/L), some Ordinary Level (O/L) etc. Overall, this is a relatively educated population, when compared to the national averages.⁴⁴

2.1(f) Job (management level):

Another question on the survey was on the respondents' current job positions. The answers here were varied. The objective of this question was to understand how the LGBTIQ persons are employed at different tiers in the workplace, according to their job role. Therefore, the responses have been categorised into six types:

1. Top management (CEO, Director, Founder, Head of dept. etc.)
2. Mid-level management (Team leader, project manager, Sr. executive etc.)
3. Supervisory/lower-level management (Asst. manager, Coordinator etc.)
4. Specialists/professionals (doctor, Artist, Engineer, Teacher etc.)
5. Entry level (officer, accountant, clerk, operator, junior positions etc.) and
6. Other (freelancer, seasonal worker etc.).

⁴⁴ According to the Labour Force Survey 2017, approximately 20% of the total employed Sri Lankan population have completed up to or above Advanced Level (A/L), while in this survey majority of the respondents have completed their graduation.

Management level	Frequency	Percentage
Top level	4	2%
Mid-level	23	12%
Supervisory/Lower-level	24	12%
Specialists/Professionals	32	17%
Entry level	76	39%
Other	34	18%
Total	193	100%

Table 6: Respondents’ job (management level)

39% of the respondents fall under the category of entry level, whereas 12% belong to lower level, another 12% to midlevel management, while only 2% made it to top level. 17% belonged to the specialist/professional category and the rest 18%, had other responses.

When comparing the education level at management level, it reveals that, though the majority of the respondents completed tertiary level education (undergraduate-31%, postgraduate-24%), most of them are not employed higher than at entry level jobs.

To this, one of the LGBTIQ respondents said:

“Visibility of LGBTIQ employees should be increased, especially at top-management level.”

- Senior Registrar, Government Institute

Indeed, some are at mid (12%) and supervisory (12%) level, but that is comparatively a smaller percentage.

On a positive note, some – albeit a small number - LGBTIQ respondents are serving as doctors, engineers, designers, teachers, managers, coordinators etc., under specialist/ professional and mid-level management categories.

2.1(g) Work sector:

Work sector	Frequency	Percentage
Government	37	19%
Semi-government	8	4%
Non-government	27	14%
Private	94	49%
Multinational	19	10%
Self-employed	3	2%
Other	5	2%
Total	193	100%

Table 7: Respondents' sector of work

When asked about their sector of work, 49% of respondents said they work in the private sector, 19% in govt., 14% non-govt., 10% in multinational, 2% self-employed and the rest 3% had other responses.

When compared, the responses to this question with the previous one (Table 6), it reveals that of the 23 respondents who are employed in mid-level management, 61% work in the private sector. Moreover, of the 24 respondents who are employed in the supervisory/lower-level management, 46% work in the private sector. It indicates that compared to the government or the semi government sectors, LGBTIQ employees who are employed in the private sector, are doing comparatively better.

2.2 Employment-related issues/challenges

2.2(a) Being 'out' at the workplace and its consequences:

Coming 'out' in the workplace can be a difficult task in a country like Sri Lanka, where same sex sexual relationships between consenting adults has been criminalised and has a great deal of stigma attached to it. Therefore, many LGBTIQ persons remain 'closeted' in their workplaces.

Hence, the employee survey posed a question to find out to which extent colleagues at workplaces know the respondents' SOGIE.

How many people at the workplace know about your SOGIE?	Frequency	Percentage
Everybody knows	35	18%
Only the management knows	1	1%
Only some colleagues	45	23%
Colleagues and managers, not everyone	28	15%
Nobody knows	82	42%
Other	2	1%
Total	193	100%

Table 8: How many people at the workplace know about your SOGIE?

In response, 42% said nobody at their workplace know their SOGIE, while 23% said only some of their close colleagues know. Another 15% said colleagues and managers know, but not everyone. Only 18% said everybody at their workplace knows their SOGIE. It indicates that LGBTIQ employees are quite selective when it comes to revealing their identity, due to deep rooted stigma and discrimination in the world of work.

With this, another question was posed to ascertain what might happen if a respondent’s SOGIE is known to everyone at their workplace.

What might happen if you reveal your SOGIE at the workplace?	Frequency	Percentage
My identity will be accepted	24	12%
No difference	59	31%
I will face more reprisal	97	50%
Other	13	7%
Total	193	100%

Table 9: What might happen if everyone at the workplace knows about your SOGIE?

As much as 50% of the respondents said they will face more discrimination and stigma, while only 31% said there will not be any difference and 12% said their identity will be accepted; 7% had other opinions. This reveals that half of the respondents are not comfortable/do not feel safe enough to reveal their SOGIE at their workplaces.

Fear of discriminatory treatment and violence often leads many LGBTIQ workers to keep their SOGIE a secret.⁴⁵ Consequently, of 97 respondents who said they will face more discrimination and stigma if they revealed their SOGIE, 62% in fact did not reveal their SOGIE to anyone at the workplace. This shows that LGBTIQ employees struggle with revealing their SOGIE at the workplace.

2.2(b) Respondent's ability to wear clothes of their preferred gender:

Respondents were asked whether they can wear clothes of their preferred gender at their workplaces.

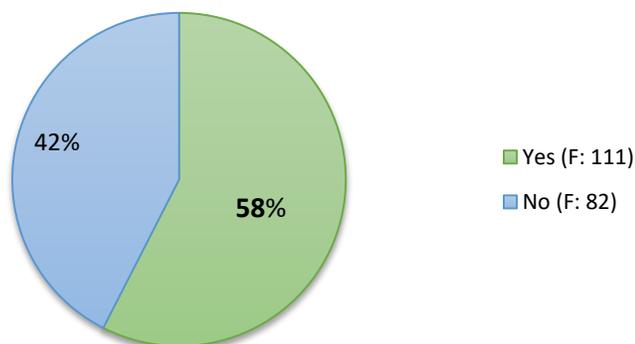


Figure 2: Can respondents wear clothes of their preferred gender?

58% responded they could wear the clothes of their preferred gender, while 42% responded that they could not.

The response was further split to analyse whether this was based on their SOGIE; it showed that of the 82 respondents who said they cannot wear the cloths of their preferred gender 59% were gay, 7% were lesbian, 20% were bisexual, 10% were transgender, 3% were queer and the rest 1% identified as other.

In most of the institutions/organisations, if not formal, there is an informal understanding regarding dress codes,⁴⁶ which are often heteronormative in nature. This study findings show that many LGBTIQ employees struggle with expressing themselves freely due to such dress codes.

⁴⁵ ILO's Pride Project (2012), *Discrimination at the work on the basis of Sexual Orientation and Gender Identity*.

⁴⁶ Women's Support Group (2011), *The Status of Lesbian, Bisexual Women and Transgendered Persons in Sri Lanka*, NGO Shadow Report to the Committee on the Elimination of all forms of Discrimination against Women, P.no.04.

2.2(c) Overall work environment:

The respondents were asked to what extent they have supportive and non-discriminatory work environment:

To what extent do you have a supportive work environment?	Frequency	Percentage
To a large extent	49	25.39%
To some extent	70	36.27%
Rarely	33	17.09%
Not at all	41	21.25%
Total	193	100%

Table 10: To what extent do you have a supportive work environment?

36.27% said to some extent, while 25.39% said to a large extent. Thus, the cumulative positive response for this question is 61.66%. Contrarily, 17.09% said they rarely have such a supportive work environment, while 21.25% said they do not have such support at all. So, the cumulative negative response is 38.34%.

Interestingly, of the respondents who said they have a supportive work environment 'to some extent', 40% of them did not reveal SOGIE to anyone; of the respondents who said they have a supportive work environment 'to a large extent', 27% did not reveal their SOGIE to anyone. It implies that as they did not come out to people at work, they did not encounter workplace related issues due to their SOGIE.

The responses were also compared with different sector of work as well. The figure above shows 70 respondents said they have a supportive work environment at least to some extent. Of them 50% are working in the private sector, 16% in multinational, 16% in government, 13% in non-government and 4% in semi-government and the rest 1% in 'other' sector. It indicates more LGBTIQ employees who are in private or multinational sectors have a supportive work environment compared to those in govt. or semi-govt. sectors.

2.2(d) Discrimination at job interviews:

A question was asked whether the respondents were ever denied job opportunities at job interviews due to their SOGIE.

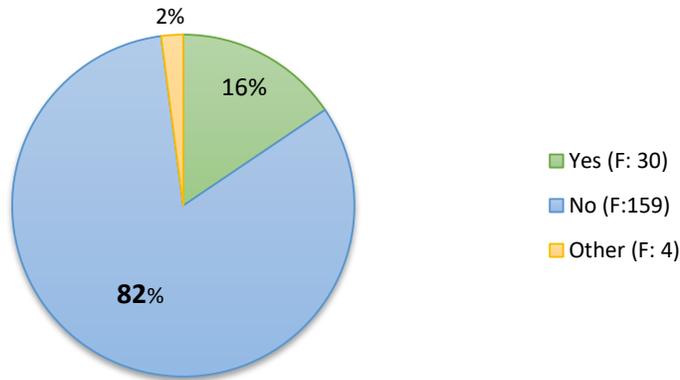


Figure 3: Were respondents ever denied job opportunities during job interviews due to their SOGIE?

82% of the respondents said no, 16% said yes and the rest 2% had other responses. It is important to understand that, generally during job interviews asking questions or querying about one's SOGIE is not a common practice in Sri Lanka, which can be the reason of why the majority of the respondents answered this question in the negative.

Another important finding of this study is, of the 30 respondents who mentioned they have been discriminated during job interviews due to SOGIE, 30% of them were transgender persons. In general, transgender persons whose appearance does not match the expectations of others, face more questions about their gender identity, trigger scrutiny at job interviews, and are asked inappropriate personal questions.⁴⁷ The study findings confirm this phenomenon.

2.2(e) Discrimination with regard to employment benefits:

With regard to employment benefits, a question was posed whether the respondents were ever denied benefits like salary increments, promotions, or transfers etc. due to their SOGIE.

⁴⁷ Human Rights Watch (2016), *All Five Fingers are not the Same*, P.no 18, https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf

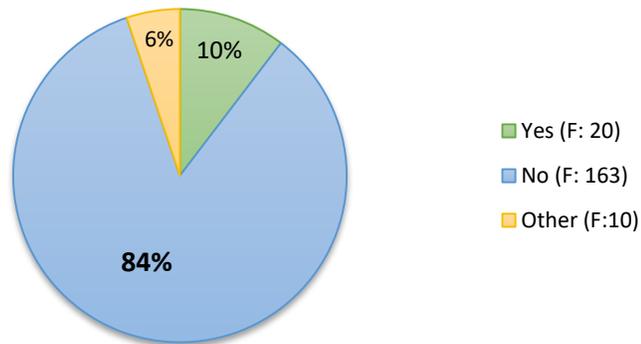


Figure 4: Have respondents ever been denied employment benefits due to their SOGIE?

84% said they were never denied any of these benefits whereas 10% said yes, and 6% had other responses.

As the percentage of respondents who said they did not face any discrimination regarding their employment benefits is higher, this response has been examined to find out the actual reason. Findings show that of 163 respondents who have never been denied such benefits, 46% did not reveal their SOGIE at the workplace. Ironically, only 1% revealed their SOGIE to the management, which retains the power to provide or decline such benefits.

2.2(f) Termination of employment due to SOGIE and respondent's stance towards it:

Another question was whether the respondents were ever laid off or were fired because of their SOGIE. To this, 93% of the respondents said they did not face anything like this; only 3% said yes, and 4% had other responses.

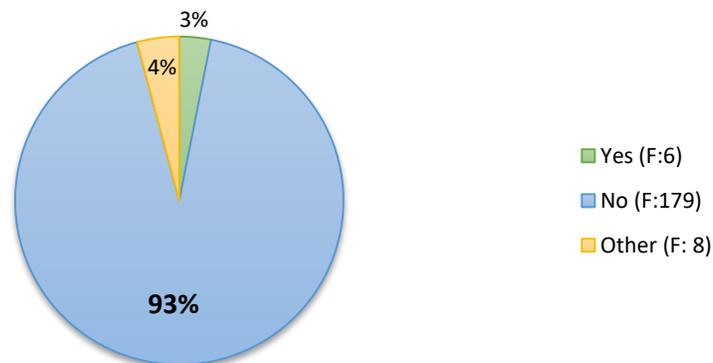


Figure 5: Have respondents ever been terminated from the job due to their SOGIE?

Again, as the percentage of respondents who said they have not been terminated from their job due to SOGIE is higher, this response has been scrutinised. Findings show that, of the 179 respondents, 44% did not reveal their SOGIE to anyone at work. Ironically, less than 1% of them expressed that the management, which takes such decisions, know about their SOGIE.

Then respondents were asked whether they would take legal action if they were terminated from their employment due to SOGIE. To this, 47% showed their willingness to take legal action, while 45% said they will not take any legal action and the rest 8% had other responses.

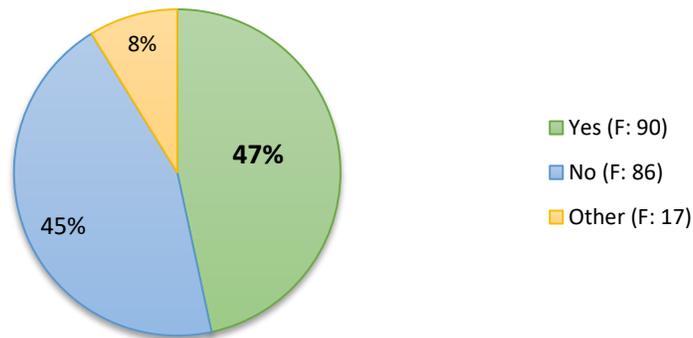


Figure 6: Will respondents take legal action if they get fired from employment due to their SOGIE?

The unwillingness of a large proportion of respondents (45%) to take legal action is understandable, considering the legal and social constraints imposed on Sri Lanka's LGBTIQ population in general. With this, it is important to note that the 8% of LGBTIQ respondents who provided 'other' responses mentioned that as same sex relationship between consenting adults is criminalised, it is not possible to take any legal action by LGBTIQ people even if they get laid off from employment due to SOGIE.

In other instances, LGBTIQ workers are reluctant to file formal complaints because of the potential economic loss from losing their jobs if their employers found out, or because of a lack of confidence in the complaining mechanisms and procedures.⁴⁸

2.2(g) Complaining to the management about workplace rights violation and consequence:

Respondents were also asked if they can complain to the management if they face any rights violation due to their SOGIE at the workplace.

⁴⁸ ILO's Pride Project (2012), *Discrimination at the work on the basis of Sexual Orientation and Gender Identity*.

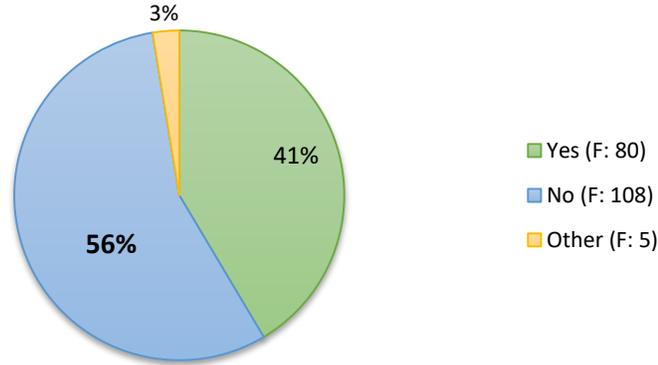


Figure 7: Can respondents complain to the management about workplace rights violations?

56% said they cannot make any such complaints, whereas 41% responded they can, and 3% had other responses. It means more than half of the respondents did not feel that they could complain to the management even if their workplace rights were being violated.

Conspicuously, of the 41% respondents who affirmed that they could complain to the management, no one revealed their SOGIE to the management.

With this, another related question was posed where the respondents were asked what might happen if they complained about such workplace rights violations to management. 37% said action will be taken against the perpetrator, 22% stated that no action will be taken, 30% said they will face more reprisals and 11% had other responses.

What will happen if respondents complain to the management about workplace rights violation incidents?	Frequency	Percentage
Action will be taken against the perpetrator	72	37%
No action will be taken	42	22%
I will face more reprisals	58	30%
Other	21	11%
Total	193	100%

Table 11: What will happen if respondents complain to the management about workplace rights violations?

When this question was compared with the previous one, the findings showed that of the 108 respondents who said they cannot complain to the management about workplace discrimination and rights violation incidents, 46% feared of facing more reprisals as a consequence of such complaints and 25% believed no action will be taken by the management. It means, often LGBTIQ do not complain about such workplace issues because the existing system cannot resolve them.

Remarkably, of the 80 people who said they can complain to the management, 18% also mentioned no action will be taken. This means that even among those who feel they are able to complain about such issues, a significant number have no confidence that meaningful action will be taken to resolve the issues.

2.3 Incidents of harassment at the workplace

2.3(a) Verbal harassment:

Respondents were asked if they have ever faced verbal harassment due to their SOGIE at their workplace.

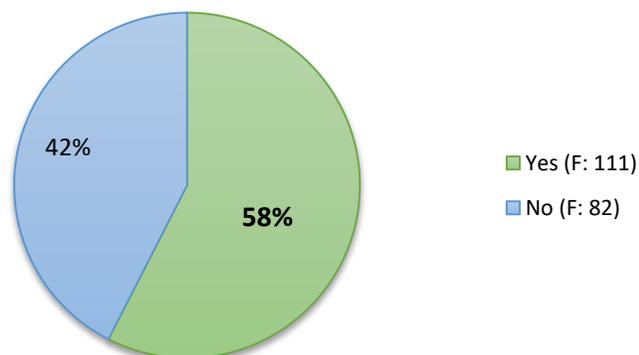


Figure 8: Have respondents faced verbal harassment at the workplace due to their SOGIE?

58% stated that they have encountered verbal harassment at their workplace, while 42% said they have not.

Notably, of the 82 respondents who said they have not encountered verbal harassment at the workplace, 40% of them did not reveal their SOGIE to anyone at work.

Afterwards, the 111 respondents who asserted that they have faced verbal harassment were asked to specify (as many as applicable) the various kinds of verbal harassment they faced at their workplace:

Answer	Types of verbal harassment					
	Scolding/ Threatening	Name calling/Derogatory remarks	Spread rumors	Humiliation/Making fun	Asking personal questions	Other
Yes	7%	46%	43%	56%	68%	3%
No	93%	54%	57%	44%	32%	97%

Table 12: Types of verbal harassment

As the table shows, of the respondents who stated they have faced verbal harassment at the workplace due to SOGIE, the majority of them (68%) cited ‘asking personal questions’ as the common form of verbal harassment.

These responses were also compared with the respondents’ SOGIE to understand who are most prone to such types of verbal harassment:

Have you ever faced verbal harassment at workplace?	SOGIE						
	Gay man	Lesbian	Bisexual	Transgender persons	Intersex	Queer	Other
Yes	58%	80%	46%	67%	-	40%	44%
No	42%	20%	54%	33%	100%	60%	56%

Table 13: Cross-tabulation of verbal harassment and respondents SOGIE

As shown earlier, most of the respondents of this survey are gay men (Table 2). However, when respondents SOGIE was considered, the findings painted an intriguing picture. Of all the lesbian respondents, 80% said they encountered verbal harassment, while of all the transgender respondents 67% cited the same.

This shows that compared to other clusters, lesbian and transgender persons face verbal harassment at the workplace the most.

When the types of verbal harassments were compared with different job sectors to identify where the employees are most vulnerable, it showed the respondents faced such verbal harassment irrespective of their job sectors (government, semi-government, non-government, private, multinational etc.). It shows that LGBTIQ employees are susceptible to verbal harassment at all job sectors.

Often, such harassment incidents are difficult to document because it may be conveyed through subtle social cues or implicit words.⁴⁹ Whether it takes shape in harsh words or quiet judgments, discriminatory behavior and workplace harassment impact the lives of LGBTIQ people.⁵⁰

2.3(b) Sexual harassment:

Apart from verbal harassment, respondents were also asked about sexual harassment at the workplace.

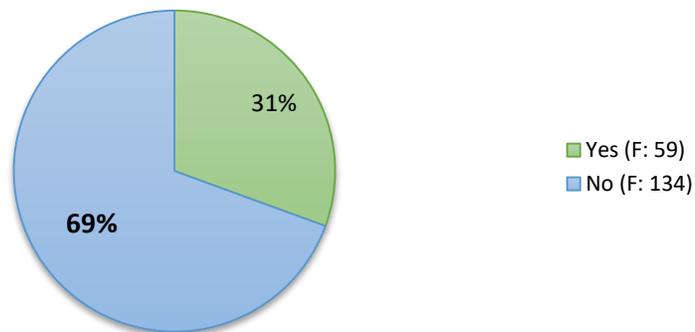


Figure 9: Have respondents faced sexual harassment at the workplace due to their SOGIE?

To this, 31% responded yes, whereas 69% said they did not face any sexual harassment. Notably, people who said they have not encountered sexual harassment at the workplace due to SOGIE, 43% of them did not reveal their SOGIE to anyone at work. This means that they did not reveal their SOGIE at the workplace, and consequently they did not face such issues due to their SOGIE.

Subsequently, 59 respondents who said they faced sexual harassment at the workplace were asked to specify (as many as applicable) the types of harassment:

⁴⁹ Human Rights Watch (2016), *All Five Fingers are not the Same*, P.no 47, https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf

⁵⁰ Ibid

Answer	Types of sexual harassment							
	Invite to have sex	Request to witness you having sex	Messages with sexual contents	Comment on clothing/body/behavior	Grabbing/stroking/pinching	Threat to rape	Actual/attempted rape	Other
Yes	36%	19%	27%	61%	44%	14%	3%	3%
No	64%	81%	73%	39%	56%	86%	97%	97%

Table 14: Types of sexual harassment

As the table shows, of the respondents who stated they faced sexual harassment at the workplace due to SOGIE, the majority of them (61%) cited ‘comment about clothing/body/behavior’ as the common form of sexual harassment. Discrimination and harassment at the workplace often occur because of perceived non-conformity with heteronormativity and because of preconceptions of how women and men are expected to appear and behave. Often women who are perceived to be “masculine,” or men who are perceived to be “feminine” in behavior or appearance, suffer discrimination or harassment.⁵¹

These responses were also compared with the respondent’s SOGIE to understand who are prone to such types of sexual harassment:

Have you ever faced sexual harassment at the workplace?	SOGIE						
	Gay man	Lesbian	Bisexual	Transgender persons	Intersex	Queer	Other
Yes	23%	45%	38%	33%	-	60%	33%
No	77%	55%	62%	67%	100%	40%	67%

Table 15: Cross-tabulation of sexual harassment and respondents’ SOGIE

Just as verbal harassment, though the majority of this survey respondents are gay men (Table 2), in case of sexual harassment the findings of this cross-tabulation show that it is women who face

⁵¹ ILO’s Pride Project (2012), *Discrimination at the work on the basis of Sexual Orientation and Gender Identity*

more sexual harassment. Of all the lesbian respondents, 45% faced sexual harassment at the workplace due to their SOGIE.

After observing both verbal and sexual harassment incidents at the workplace, it can be stated that lesbians, as women and a minority group are in double jeopardy.

2.3(c) The ability of respondents to complain against workplace harassment and its consequences:

Subsequently, respondents were asked if they can complain to the management against verbal and/or sexual harassment.

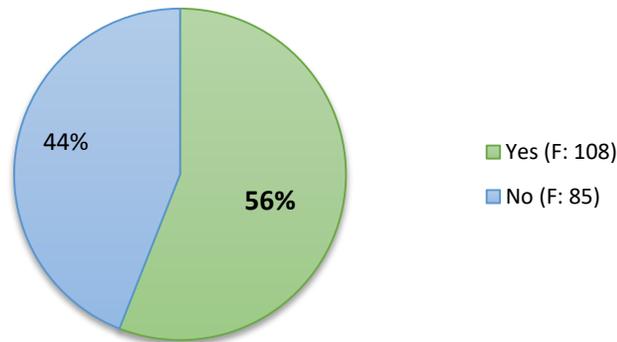


Figure 10: Can respondents complain to the management against verbal and/or sexual harassment?

56% said they can complain to the management, whereas 44% said they cannot make such complaints.

The responses of the 108 respondents who said they can complain to the management if they face verbal/sexual harassment were compared to check if they have revealed their SOGIE at the workplace. It showed that 31% of them had not revealed their SOGIE to anyone at the workplace. Most importantly, only 1% of them disclosed their SOGIE to the management. So, it can be well assumed that people who said they can complain to the management about a workplace harassment incident, many of them said so not because they are confident about their management system, rather it implies that as they remained discreet about SOGIE they did not have to worry about the latter consequences.

All the respondents were asked about the consequences of complaining to the management about such sexual and/or verbal harassment.

Consequences if respondents complain to the management about verbal and/or sexual harassment	Frequency	Percentage
Action will be taken against the perpetrator	89	46%
No action will be taken	38	20%
I will face more reprisal	44	23%
Other	22	11%
Total	193	100%

Table 16: Consequences if respondents complain to the management about verbal and/or sexual harassment

Here, 46% believed actions will be taken against the perpetrator, 20% stated that no action will be taken, 23% said they will face more reprisals and the rest 11% had other responses.

Moreover, of the 44 respondents who said that they might face more reprisal if they complain to the management about harassment incidents, 52% did not reveal their SOGIE at work, which indicates their fear of being stigmatised or discriminated.

Interestingly, of the 11% respondents who had 'other' responses, some elaborated that since there is no legal protection for LGBTIQ people they cannot think of any appropriate action that the management might take.

2.3(d) Have respondents ever had to leave their job due to workplace harassment?

The respondents were asked whether they had left any job as a result of any type of harassment they faced due to their SOGIE.

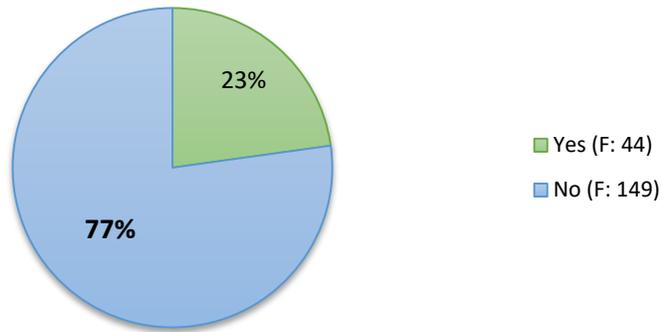


Figure 11: Have respondents had to leave a job as a result of harassment they faced due to their SOGIE?

77% respondents mentioned they have not had to leave the job due to any kind of harassment and the rest 23% said yes to it.

44 Respondents who mentioned having left jobs due to harassment were asked to specify the reasons (as many as applicable) to find out the underlying causes.

Answer	Reason of leaving job				
	Verbal harassment	Sexual harassment	Psychological and emotional harassment	Did not get employment benefits (increment, promotion etc.)	Other
Yes	43%	14%	73%	23%	9%
No	57%	86%	27%	77%	91%

Table 17: Reasons for respondents' leaving their job

As the table explains, of the respondents who said they have had to leave a job due to harassment, a significant 73% mentioned 'psychological and emotional harassment' as their reason of doing so.

2.4 Respondent's suggestions/opinions

To understand as employees, what kind of change they want or expect at the workplace, respondents were asked to provide suggestions to create a supportive and non-discriminative

work environment. Since this was an open-ended question, every respondent had diverse answers. To get a precise idea, all the responses have been categorised into nine types:

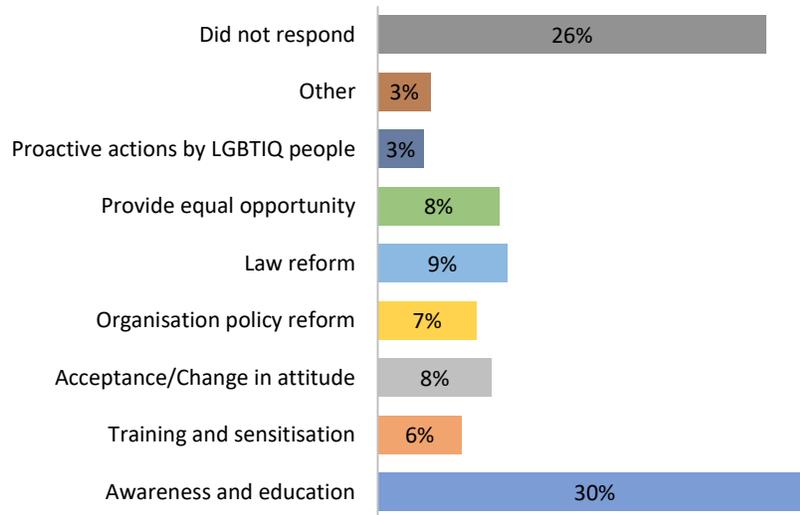


Figure 12: Respondents suggestions towards creating a supportive and non-discriminative work environment

As the figure shows, a significant number of respondents (30%) suggested creating more awareness and educating employers and employees at the workplaces about LGBTIQ issues and challenges. 6% were in favor of providing training and sensitisation workshops at different job sectors, 8% said people’s attitude should be changed towards LGBTIQ people/employees, 7% believed various organisations should reform their workplace policies and include diversity and inclusion, 9% said the national law which still criminalises same sex relationship between consenting adults should be reformed, 8% stated LGBTIQ employees should be provided with equal opportunities and benefits, 3% said not only others rather the community itself should take proactive actions if they encounter any rights violation incident and 3% had other opinions.

An LGBTIQ respondent stated:

“Work environment should be inclusive. All the companies and organisations should review their existing policies and also should set strict repercussions for those employees who do not accept their fellow LGBTIQ employees.”

- Employee, Private company

Another respondent said:

“Previously, EQUAL GROUND has conducted sensitisation training with John Keells Holdings and as a result it has introduced explicit inclusive policy. Such trainings should be conducted more.”

- Coordinator, Private company

2.5 Employment-related experiences of respondents during the COVID-19 pandemic

The second phase of this survey was conducted amidst the COVID-19 pandemic. To ascertain if this had affected their employment, respondents were asked to share any employment-related difficulties they encountered due to the pandemic. 128 respondents answered this question.

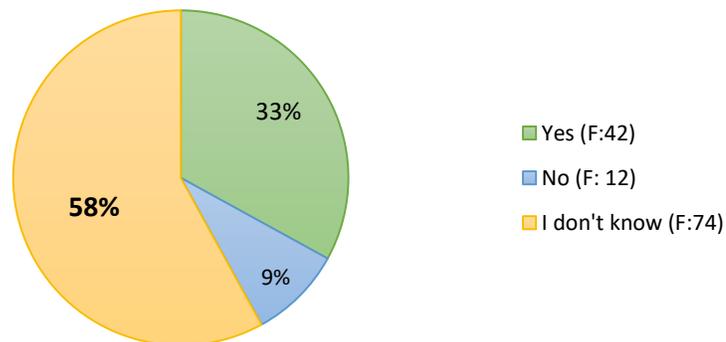


Figure 13: Has the LGBTIQ community faced employment challenges due to COVID-19?

As the figure illustrates, though 58% respondents said they did not know, 33% said COVID-19 affected their employment in many ways, which include salary reductions, being laid off etc. On the contrary, 9% said it did not affect their employment.

It is distressing, but unsurprising, to see how the pandemic is impacting vulnerable populations, marginalising them even more than they already are.⁵²

⁵² The Impact of COVID-19 on LGBTIQ Communities of Color (2020), A research by Human Rights Campaign (HRC) and PSB

Chapter 3

Employers' Perspective and Opinion about LGBTIQ People/Employees

This chapter presents the findings from the employer survey. It discusses the employers' attitudes and opinions towards LGBTIQ employees and their rights, as well as workplace protections available for them. 29 organisations were interviewed using an interviewer-administered questionnaire, while 16 representatives from diverse organisations filled the same questionnaire online. Altogether, 45 representatives from different organisations/companies participated in this survey.

3.1 Respondents profile

3.1(a) Work profile:

All the respondents (45) were asked to mention their respective designations at the workplace. This was an open-ended question. The objective was to ensure representation of different departments of a company or organisation, so that issues related to LGBTIQ employees can be identified properly. Thus, the responses have been categorised into seven types:

Work profile	Frequency	Percentage
Top management	18	40%
Human Resource	13	29%
Administrative unit	2	4%
Program/ Service department	6	14%
Media/ Communications department	3	7%
Finance department	1	2%
Did not mention	2	4%
Total	45	100%

Table 18: Employers work profile

As the figure shows, 40% of the respondents were from top management (CEO, Managing Director, Executive Director etc.), 29% from human resource department (HR officer, HR manager etc.), 4% from administrative unit (administrative officer), 14% from program/service department (program officer, program manager, advocacy officer, convener etc.), 7% from media/communications department (editor, media and communications officer etc.), 2% from

finance department (accountant, finance officer etc.), while the rest 4% did not provide the required information.

3.1(b) Sector of work:

Respondents were also asked to provide information about their sector of work. To this, 7% said government, 4% belonged to semi-government, 11% to non-government, 53% to private (local), 18% to multinational companies and international partnerships and 7% to other.

Sector of work	Frequency	Percentage
Government	3	7%
Semi-government	2	4%
Non-government	5	11%
Private (Local)	24	53%
Multinational companies and international partnerships	8	18%
Other	3	7%
Total	45	100%

Table 19: Employers sector of work

More than half of the respondents (53%) cited their work falls under private (local) sector. It is important to note that, while various private organisations may have non-discrimination policies to safeguard the workplace rights of LGBTIQ employees, in the state/government sector such policies do not exist or are rare.⁵³ To which extent this statement is true will be analysed in the following discussion with the support of this study findings.

3.1(c) Respondent's districts of work:

Respondents were asked to provide geographical information of areas/districts where they are functioning. Of the 45 respondents, 43 answered this question.

⁵³ Women's Support Group (2011), *The Status of Lesbian, Bisexual Women and Transgendered Persons in Sri Lanka*, NGO Shadow Report to the Committee on the Elimination of all forms of Discrimination against Women, P.no.05.

Districts of work	Frequency
Colombo	36
Gampaha	3
Nuwara Eliya	1
Anuradhapura	1
Kaluthara	1
Island wide	7

Table 20: Employers districts of work

As the table shows, though most of the respondents mentioned only Colombo as their workplace, in seven other instances some of the respondents said they work island wide. Some were also from Gampaha, Nuwara Eliya, Anuradhapura, and Kaluthara. It indicates that the study findings not only cover the employers from Colombo but also represent employers and organisations from other districts albeit a small percentage.

As Colombo is the financial capital of the country and this is where most of the jobs are concentrated, it explains the high number of respondents working in Colombo.

3.1(d) Current workforce:

To understand the capacity of the companies or organisations, respondents were also asked to provide an approximate number of their current workforce/employees.

Current workforce/employees	Frequency	Percentage
50 or less	23	51%
More than 50, less than 100	2	4%
More than 100, less than 500	11	25%
More than 500, less than 1000	2	4%
More than 1000	6	14%
Did not mention	1	2%
Total	45	100%

Table 21: Employers current workforce/employees

The majority (51%) of the respondents said they have either 50 or less than 50 employees, 4% said they have more than 50 but less than 100 employees, 25% said they have more than 100 but

less than 500 employees, 4% said they have more than 500 but less than 100 employees, 14% said they have above 1000 and the rest 2%, did not provide this particular information.

3.2 Employers attitudes about LGBTIQ persons/employees

3.2(a) Opinion about hiring LGBTIQ persons:

Respondents were asked if they would employ an LGBTIQ person who is qualified for the job.

Will you hire an LGBTIQ (qualified) person?	Frequency	Percentage
Yes	37	82%
May be	5	11%
I don't know	2	5%
Other	1	2%
Total	45	100%

Table 22: Will employers hire a qualified LGBTIQ person?

The majority of the respondents (82%) said yes, 11% said maybe, 5% said they did not know, and the rest 2% had other responses.

These responses were compared to the employers sectors of work, which revealed that of the employers who are in favor of hiring LGBTIQ people, 54% are in the private sector. Notably, the findings of the employee's survey showed that, compared to the government or semi-government sector, LGBTIQ people who are working in private or multinational sector were better off (Chapter-2, Table 7).

Whilst most of the respondents were in favor of hiring LGBTIQ employees, a few had reservations about it. This indicates that while workplaces are open to employing LGBTIQ persons, occasionally, they may be subjected to discrimination in accessing employment.

As revealed in the interviews, this reluctance could further increase when it comes to recruiting for senior staff level positions. For example, one respondent who stated 'maybe' went on to state that they were not sure a transgender person could keep other staff under control in managerial or supervisory level positions. This is testament to the gender stereotypes prevalent in Sri Lankan society, where people tend to believe that LGBTIQ people are less suitable/qualified to be leaders, or they do not display inherent leadership traits, and as a result, they should not be recruited for corporate jobs or promoted to be key decision-makers.

“When a person is selected for a leadership position, leadership charisma is taken into consideration, where LGBTIQ persons may not fit into the so-called ‘boss’ archetype, and subordinates of such position-holders should respect them. Also, it is believed that such superior position-holders have to have ‘more power’ to keep others in control.”

- Human Resources Manager, Multinational company

“...As I have observed many of them are recruited to beauty culture, because currently that profession does not demand high qualifications or education standards. As many of the persons from LGBTIQ community have lost opportunity on education they lack qualification...”

- Head of Human Resources of a Local Public Organisation

The findings suggest that there is a pre-conceived notion among employers and decision makers that LGBTIQ persons are not qualified or suitable for formal employment and leadership positions. Additionally, although the employers showed a certain level of willingness to provide job opportunities for LGBTIQ persons, they do not see them fit for managerial level or leadership positions.

This is in line with the findings from the LGBTIQ employee survey (Chapter two, Table 5 and 6) where the study findings showed that though most of the LGBTIQ employees completed tertiary level education (undergraduate-31% and postgraduate-24%), they were not employed higher than at entry level jobs. Only 2% of them could make it to top management level, whereas most of them (39%) were employed at entry level.

3.2(b) LGBTIQ employees at the workplace:

Respondents were also asked if they have any LGBTIQ employees working in their respective companies/organisations.

Only 18% said yes; 20% said no, 27% said maybe, 33% said they do not know, and the rest 2% had other responses.

Are there any LGBTIQ people working in your company/organisation?	Frequency	Percentage
Yes	8	18%
No	9	20%
Maybe	12	27%
I don't know	15	33%
Other	1	2%
Total	45	100%

Table 23: Do respondents have any LGBTIQ employee in their company/organisation?

As the table shows, only a handful of employers were certain that they have employed LGBTIQ persons, whereas the majority of the respondents (33%) did not seem to be aware of employing LGBTIQ persons. This finding confirms the 42% of employees responses where they said nobody at the workplace knows about their SOGIE (Chapter two, Table 8) because they fear facing more discrimination and stigma.

The respondents were then asked, if they have LGBTIQ employees at the workplace, how did they find out about their SOGIE. Only 17 respondents answered to this question (mostly those who said yes/maybe to the previous question).

How did you find out about your employee's SOGIE?	Frequency	Percentage
They told me	4	23%
Someone else told me with their consent	2	12%
Someone else told me without their consent	2	12%
Other (I assumed by observing the way they behave/dress)	9	53%
Total	17	100%

Table 24: How did the respondents find out about their LGBTIQ employee's SOGIE?

As the table shows, most of the respondents filled the 'other' box and elaborated they assumed the employee's SOGIE by observing the way they behave or dress. It indicates that, in the workplace there is an implied dress code or code of conduct, and whenever people do not follow those norms, they draw other's attention which raise questions and suspicions about their SOGIE.

This is problematic because LGBTIQ employees are not able to be their true selves at their workplaces, which in turn has an effect on their performance as an employee. Also, decision makers and managers not being aware of LGBTIQ employees can result in a workplace that is not sensitive towards issues of LGBTIQ persons, therefore unsafe.

3.2(c) Employment challenges encountered by LGBTIQ people:

The respondents were asked for their opinion whether LGBTIQ people find it difficult to find employment in Sri Lanka.

Do you think LGBTIQ people find it difficult to find employment?	Frequency	Percentage
Yes	23	51%
No	1	2%
May be	18	40%
I don't know	3	7%
Total	45	100%

Table 25: Do you think LGBTIQ people find it difficult to find employment?

51% of the respondents said yes, 2% said no, 40% said maybe and the rest 7% said they do not know.

The majority of the employers agreed that it is difficult for LGBTIQ people to find employment. Here, one of the respondents said:

“Yes, it becomes difficult only if the person becomes visible. If they keep their sexual orientation discreet, they will face no difficulty. However, there are organisations that do not take much notice about employee’s gender or sexual orientation.”

- CEO of a Non-Governmental Organisation

This highlights the prevalent tendency to ‘victim blame.’ In order to avoid workplace issues, instead of taking proper measures against the perpetrator they expect the vulnerable individuals to remain discreet. This indicates that decision makers and managers were not able to provide a safe space for LGBTIQ employees that were conducive for them to be open about themselves. Consequently, LGBTIQ employees chose not to disclose their SOGIE; the employee survey confirms this phenomenon where many of the LGBTIQ employees did not reveal SOGIE at the workplace.

3.3 Employers’ opinion towards workplace challenges faced by the LGBTIQ people

3.3(a) Discrimination and harassment at the workplace and its consequences:

Another question was asked on whether LGBTIQ employees face discrimination and harassment at their workplaces.

Do you think LGBTIQ people face discrimination and harassment at the workplace?	Frequency	Percentage
Yes	22	49%
No	3	7%
May be	17	37%
I don’t know	3	7%
Total	45	100%

Table 26: Do you think LGBTIQ people face discrimination and harassment at the workplace?

As the table shows, 49% said yes, 7% said no, 37% said maybe, and 7% said they do not know. Findings suggest the majority of employers were aware of LGBTIQ persons being discriminated and harassed at their workplaces.

A follow-up question was posed to find out what kind of discrimination or harassment LGBTIQ employees had to encounter at the workplace. This was an open-ended question and consequently the responses varied.

However, of the 45 respondents 9 did not respond to this question. From 36 respondents who answered, responses have been categorised as follows:

Type of harassment	Count
Verbal harassment (includes name calling, making fun, inappropriate jokes, commenting about their behavior etc.)	27
Sexual harassment (includes physical abuse, inappropriate touch etc.)	3
Other (includes not treating as equals, discriminatory behavior, disrespect etc.)	6
No such harassment or discrimination happens	3

Table 27: What kind of discrimination or harassment do LGBTIQ employees encounter at the workplaces?

As the table shows, as many as 27 instances, respondents cited verbal harassment as a type of workplace discrimination. In their responses, verbal harassment mainly included name calling, ridiculing, being laughed at etc. This supports the findings from the employee survey (Chapter two, Figure 8) where the majority of the LGBTIQ respondents (58%) stated that they have encountered verbal harassment at their workplaces.

Respondents were asked if such incidents of discrimination or harassment have been reported so far. To this, an overwhelming majority of the respondents said no such incidents were ever reported.

Have there been incidents of discrimination or harassment reported?	Frequency	Percentage
Yes	2	4%
No	42	93%
Other	1	2%
Total	45	100%

Table 28: Have any incidents of discrimination or harassment ever been reported?

This is in line with the employee survey (chapter two, Figure 10) where a question was asked from LGBTIQ employees if they can complain or report to the management if they face any harassment at the workplace. 44% of the LGBTIQ employees said they cannot report it to the management because they fear facing more reprisal. This means that, the fact that such incidents

were not recorded, do not necessarily mean that they do not take place. Rather, such incidents are not reported due to victims fearing the consequences and/or feeling ashamed.

However, of the two employers (4%) who said such workplace discrimination or harassment incidents had been reported to them, one stated:

“We had to keep it under the carpet considering the reputation of the company”.

-CEO, Private company

Such culture of inaction further discourages victims from reporting such incidents.

3.3(b) Reporting mechanism in case of discrimination and/or rights violation at the workplace:

Respondents were also asked to describe their organisations’ reporting mechanisms when it comes to complaints of sexual and or verbal harassment or rights violations at the workplace. Out of the 45 respondents, 42 responded to this question. While many respondents referred to grievance handling and disciplinary action policies, a few also mentioned that they do not have any specific policy.

Reporting mechanism	Frequency	Percentage
Grievance handling and disciplinary action policy	16	38%
Report to HR	14	33%
Report directly to top management (i.e. ED, board of director etc.)	4	10%
No specific mechanism	5	12%
Other	3	7%
Total	42	100%

Table 29: Reporting mechanisms at the workplace

As the table shows, most workplaces had established procedures to complain about harassment and discrimination, primarily through grievance handling mechanisms.

3.4 Workplace policies

3.4(a) Gender related policy:

To ensure that the reporting mechanisms are functioning and serving its purpose, there has to be policies set in place. Considering this, another question was posed to find out whether the

respondents organisations had gender related policies in place. 53% of the respondents stated that they do not have any gender related policy in place.

Are there any gender related policies?	Frequency	Percentage
Yes	15	33%
No	24	53%
Other	6	14%
Total	45	100%

Table 30: Are there any gender related policies at the workplace?

3.4(b) Inclusive policy for LGBTIQ employees:

The respondents were asked specifically whether there is any inclusive policy to safeguard the LGBTIQ employees from workplace harassment and/or discrimination. Only 33% of the respondents said they have such policies in place at their workplaces.

Are there any inclusive policy for LGBTIQ employees?	Frequency	Percentage
Yes	15	33%
No	25	56%
Other	5	11%
Total	45	100%

Table 31: Are there any inclusive policies to safeguard LGBTIQ employees from workplace harassment and/or discrimination?

Respondents were also asked to elaborate their reasons for not having such inclusive policies. To this, one of the respondents stated:

“I do not think that the Human Resource department really understands the importance of such inclusive policies.”

- Brand Activation Manager, Private Company

Another respondent said:

“It really is a sensitive subject matter. Therefore, nothing as such has been written down. I believe this will change overtime.”

- General Manager, Semi-government organisation

Therefore, it is evident that although there are general mechanisms in place to report grievances of employees, these mechanisms are not effective in cases relating to issues faced by LGBTIQ employees.

To date, there is only one recorded organisation in Sri Lanka that has formally incorporated SOGIE to the categories that are protected by the group's non-discrimination policies - John Keells Holdings.⁵⁴

3.5 Employers awareness about existing legal restraints against LGBTIQ people and its impact on their work

LGBTIQ people in general have to encounter various legal, social, and political restraints. Thus, employers awareness on the existing laws of the country that affect LGBTIQ persons was explored. A majority seems to be aware that there are discriminative laws that affect LGBTIQ persons in Sri Lanka. 53% said they are aware of such laws while 47% said they do not know of such laws.

To understand if these laws have any impact on the workplace, respondents were also asked to elaborate any such impact that they feel or have experienced. One of the respondents said:

“Workplace is governed by the Employment Act (Shop and Office Act). In that, the description on how a company should have washrooms in general. Normally describes two types of washrooms for male and female only. But nothing is specified for other genders such as transgender persons. I believe it is a global issue.”

- Head of Human Resource, Semi-government organisation

Another respondent stated:

“It curtails the freedom of a person. That would have an impact on that person’s performance at work. When doing business with people coming from parts of the world where the LGBTIQ status is legal, it becomes challenging for us. For the clients, the current situation in Sri Lanka, creates a conflict of interest. They as clients and we as business entities tend to go for self-censorship.”

- Director, Government organisation

⁵⁴ John Keells Holdings PLC, Annual Report 2017/18, *Management Approach Disclosures*, P.no-9, https://www.keells.com/resource/Management_Approach_Disclosures_2017_18.pdf

3.5(a) Employers views on protecting LGBTIQ people’s rights at the workplace:

The survey also looked at the employers’ opinions on workplace rights of LGBTIQ employees. As such, they were asked what should be done to protect LGBTIQ people from stigma and/or discrimination at the workplace. This was an open-ended question and of the 45 respondents, 37 responded as follows:

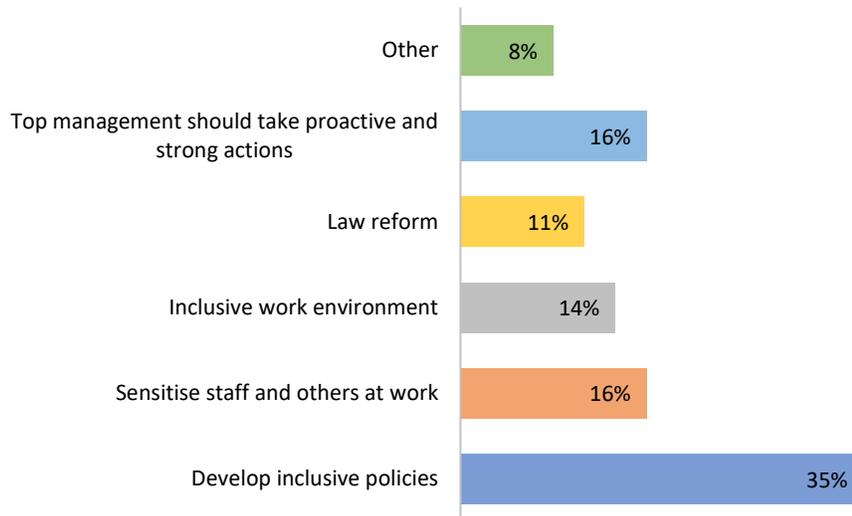


Figure 14: What should be done to protect LGBTIQ employees from stigmatisation and/or discrimination at the workplace?

As the figure shows, many respondents (35%) stated developing inclusive organisational policies. 16% said sensitisation is needed at the workplaces, 14% were in the opinion of creating an inclusive work environment where everyone will be provided with equal opportunity irrespective of race, sex, gender etc., 11% said existing legal system should be reformed, 16% believed that top management of all companies or organisations should take bold steps and the rest 8% had other responses.

One of the respondents mentioned:

“Companies should be held accountable for creating a more inclusive workplace.”

- Program Manager, Private company

Another respondent said:

“Workplace is a reflection of the larger society. The public need more awareness. The legal situation needs to change - the current situation has a negative impact. Today all the companies

have more serious issues to deal with. Therefore, if there is no law reform or inclusive legal protection then dealing with LGBTIQ related issues are of their least priorities.”

- Director, Government organisation

With regard to law reform and the government’s role, another respondent said:

“If the Government ensure protection of human rights and fundamental rights it would be easy for the employers to set up policies against discrimination and harassment of LGBTIQ people at the workplace.”

- Director, Local private company

“I have seen positive policies coming up in private companies in relation to LGBTIQ employees’ rights. The rights-based approach in government institutes must be improved, especially in institutions like the police.”

- Human Resources Manager, Local private company

These statements depict that employers understand the fact that LGBTIQ people face a plethora of challenges at the workplaces and are positive about protecting their rights. They also expressed concern that if the government will not take bold or proactive actions regarding safeguarding the rights of LGBTIQ people, it will become more difficult for them to develop inclusive policies, as all organisational policies, rules, and regulations have to be in line with national laws.

Chapter 4

Conclusion and Recommendations

LGBTIQ employees in Sri Lanka face significant challenges in their workplaces. They are often discriminated when accessing employment, job promotions, denied various employment benefits and face a plethora of challenges. This study not only investigates the challenges that LGBTIQ people face in their workplace, but also explores the mindsets and opinions of employers about the LGBTIQ community, their rights, and issues. While the study sheds light on workplace discrimination and the skepticism of employers/organisations, it has also identified some areas which can be improved and provided recommendations accordingly.

After analysing the findings of both employee and employer survey, this study has identified four major actors who can play fundamental roles in creating a discrimination free and inclusive work environment. They are:

1. The government
2. Workplaces
3. LGBTIQ organisations and/or groups
4. LGBTIQ workforce/people

Thus, the recommendations will include but are not limited to these core actors.



4.1 To government

Decriminalisation:

While there has been moderate progress in Sri Lanka by making provision of a legal gender recognition certificate for transgender persons, Section 365 and 365A of the Penal Code remain in effect, and consequently, LGBTIQ people continue to struggle to gain equal rights in society. As revealed in the employer survey, even the employers suggested law reform, which will eventually allow them to develop inclusive policies in line with national laws. Therefore, these draconian sections should be repealed, and the law should be reformed in an inclusive manner.

Consider constitutional reform:

The constitution of Sri Lanka, despite several amendments, grants no positive outcome or protection for the (LGBTIQ) community in terms of 'Right to equality'. It should initiate steps to reform the constitution explicitly by including SOGIE as grounds for non-discrimination in the Constitution. With regard to Constitutional reform, two major issues can be highlighted:

- i. Inclusion of SOGIE in Articles 12(2) and 12(3) of the Constitution of which enunciates right to equality.
- ii. Repeal Article 16(1) which is inconsistent with the protection of Fundamental Rights as it states that laws, even those which allow for right violations shall remain valid and operative and therefore cannot be challenged by a citizen in court.

Judicial review is an important aspect of rule of law and the bar of the same by the very same Constitution which affords Fundamental Rights, has also barred citizens, especially LGBTIQ citizens from taking action against laws (Penal Code S. 365 S. 365A) that are violating their Fundamental Rights. Thus, Article 16(1) which allows discriminatory laws to remain an integral part of the Sri Lankan law, must be repealed.

It is high time that the government consider such reforms to ensure the rights of LGBTIQ people, especially in sectors such as employment and labour.

Ratify C190:

The growing awareness of the pervasiveness and the adverse impacts of violence and harassment in the world of work has led to the adoption of the Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation No. 206 by the International Labour Conference in the Organisation's Centenary year.⁵⁵ This is the first international standard that

⁵⁵ Global Deal, Together for Decent Work and Inclusive Growth (2020), A Thematic Brief by International Labour Organisation.

aims to put an end to violence and harassment in the world of work; it recognises that everyone has the right to a world of work free from violence and harassment. Importantly, if ratified, the convention will cover existing gaps in national legislation and provide protection to LGBTIQ employees against all kinds of discrimination and harassment at the workplace.

Engage with social dialogue:

Social dialogue includes all types of negotiation, consultation, and exchange of information among representatives of governments, employers and workers and their organisations.⁵⁶ It can promote equality and inclusiveness at the workplace. Government should engage with various organisations and corporations and initiate social dialogue where workplace related issues including challenges faced by LGBTIQ workforce can be highlighted and ways forward can be discussed. This can be a stepping-stone of creating inclusive workplace policies.

4.2 To workplaces

Engage with social dialogue:

For an effective social dialogue, the organisations/corporates engagement is vital. It is the employers who can shed light on workplace related issues best. In a country like Sri Lanka, where there are no formal social dialogue structures for resolving work-related problems, dialogue between workers and managers/employers can be encouraged with the aim of implementing practical changes and adjustments in the workplace, often opening doors to the representation of workers by trade unions.⁵⁷

CEO Pledge:

CEO Action Pledge, spearheaded by PwC Chairman Tim Ryan, launched in June 2017 and as of December 3, 2019, has nearly 850 signatories.⁵⁸ By signing the action pledge the CEOs commit to promote and practice diversity and inclusion at the workplace; and take practical steps or develop strategic plans to this regard. In Sri Lanka, a possible way to initiate it is through Corporate Social Responsibility (CSR). Every organisation/company has their CSR plans and goals. As a part of their CSR, such organisations/companies can attempt to do something similar to the CEO action pledge.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Jackson Lewis (2020), *The Year Ahead for Employers*.

Develop inclusive policies and strong reporting mechanism:

As the employer survey revealed, many of the organisations did not have any inclusive policies to safeguard the rights of their LGBTIQ employees. Gender-inclusive and gender-responsive workplace cooperation helps enterprises to attract the best employees, enhance organisational performance, reduce costs associated with staff turnover, improve access to target markets, and minimise legal risks – all while enhancing their reputation.⁵⁹

In Sri Lanka, John Keells Holdings, in their management approach manual, expressly prohibited discrimination on the basis of SOGIE and also has a zero-tolerance policy for any form of workplace harassment. This is an example that other entities can follow.

Moreover, while formulating policies organisations should be careful while defining issues like discrimination, harassment etc. As the findings show, many of the LGBTIQ employees have encountered verbal harassment like name calling, making fun etc. Often, such offensive and derogatory acts are not covered under the definition of harassment; consequently, perpetrators can easily get away with it. Thus, not only generic but specific and effective policies should be developed.

Along with policies, a proper reporting mechanism should also be maintained under which inquiries will be conducted regarding accusations and complainants will not face reprisals for making complaints.

Sensitise/Train staff:

The employee survey findings showed that 58% of the respondents have encountered verbal harassment, which include name calling, ridiculing, making fun, cracking inappropriate jokes etc. Often the perpetrators can get away with this by labelling it as 'just fun' but they do not realise how offensive and hurtful these can be for an LGBTIQ individual. Therefore, it is vital to sensitise all tiers of management and other staff about LGBTIQ related issues.

To this end, EQUAL GROUND's work is noteworthy since they were instrumental in John Keells Holdings prohibiting discrimination on the basis of SOGIE and also establishing a zero-tolerance policy for any form of workplace harassment. They are also proactively conducting sensitisation programs with various companies, organisations and businesses to ensure a discrimination free space for LGBTIQ people.

⁵⁹ ⁵⁹ Statement by ILO Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia (17 May, 2015).

Become an ally:

Employer survey also revealed that most of the employers are aware of the challenges faced by LGBTIQ people and also agreed to implement inclusive organisational policies to create a supportive work environment. Thus, organisations can show their support and take a step forward by becoming an ally of the LGBTIQ community. Initiate advocacy activities with LGBTIQ community organisations and take a public stance to support LGBTIQ rights. This will not only benefit the LGBTIQ people but also enhance their performance, growth, and reputation.⁶⁰

4.3 To LGBTIQ organisations and/or groups

Though EQUAL GROUND is the oldest diverse organisation in Sri Lanka which includes the wider identities of the LGBTIQ community in this country as well as heterosexual allies and friends, now there are more and more LGBTIQ organisations and groups being formed across the island.⁶¹ For instance, National Transgender Network (NTN) is already providing opportunities of vocational trainings and educational development for transgender persons; but as this study revealed, transgender people are currently encountering various challenges at the workplace. These organisations and/or groups can be more involved in recording workplace violations and lobbying for more policies of D & I within the workplace with Companies etc., and sensitising and educating businesses on SOGIE and D & I.

4.4 To LGBTIQ workforce/people

Know your rights and be proactive:

During the employee survey, a handful of LGBTIQ employees (3%) mentioned that to end workplace discrimination, along with other actors (i.e. government, organisations) the community members should also take proactive actions. This survey also revealed that 56% of the respondents showed unwillingness to take any action against workplace rights violation because they fear facing more reprisals. Such LGBTIQ employees should realise that they were hired for the job because of their competence and qualification, and their SOGIE cannot and should not be a ground for discriminatory behavior against them. Therefore, strategically, they

⁶⁰ Allies are some of the most effective and powerful voices of the LGBTIQ community. To highlight the importance of Allies and provide a guideline of becoming a potential ally, EQUAL GROUND, Sri Lanka has developed a booklet; which is available at: https://www.equal-ground.org/wp-content/uploads/Ally-for-Equality_English.pdf

⁶¹ For example: There is National Transgender Network (NTN) and Venasa Transgender Network for trans persons and Equité for providing support to queer persons.

can and should take steps if ever encounter workplace discrimination and/or harassment. Therefore, they should learn about their rights under labor law as employees, organisation policy, HR manual etc., so that necessary steps can be taken in due time.

A positive correlation has been shown between providing more rights for LGBTIQ people and a country's higher per capita income and higher levels of well-being.⁶² Government and corporate sectors of Sri Lanka need to realise and utilise it.

⁶² M.V. Lee Badgett, S. Nezhad, K. Waaldijk and Y. van der Muelen Rodgers (2014). *The relationship between LGBT inclusion and economic development: An analysis of emerging economies*. Los Angeles, CA: The Williams Institute, UCLA Law School.

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