

A REVIEW ON DISCRIMINATION OVER LGBT+ IN SRI LANKA

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Abstract

Sri Lanka as a country is being a member of numerous human rights organizations and has ratified several human rights conventions. Additionally, civilians are fighting against infringement of human rights. But they do not recognize LGBT+ individuals as humans. Even issues relating to the LGBT+ community are not freely discussed because of conventional cultural standards. But they openly discriminate against this community by virtue of tradition. In terms of historical, social, cultural, religious, political, and legal settings, they consider the LGBT+ concept to be unlawful. Through the socialization, this discrimination spreads throughout all societal institutions, including educational, religious and political, after beginning from the family. Although several NGOs and campaigns have been launched to advocate for LGBT+ rights, this condition has not changed much. As a result, many LGBT+s live under pressure with fear and lost expectations. Since these individuals face higher levels of psychological stress and suicidality, the effects of this prejudice are serious. Despite the fact that few people embrace the idea of the third gender, many more people abuse their rights. Since majority of the studies on LGBT+ issues primarily took the legal context into account, this study aims to close the scholarly gaps in the field. Therefore this study examines how discrimination occurs, its impacts and the ways of eliminating this discrimination from a variety of angles. Finally, it is recommended that the LGBT+ community should receive the same respect as other humans since all humans are born free and equal in dignity and rights.

Keywords: community, discrimination, LGBT+, rights, sexuality

Introduction

“Nature made a mistake, which I have corrected.” – Christine Jorgensen

“Sex” is determined by biological factors of personality while “Gender” is more often determined by the social and cultural factors. Only two genders; male and female, are recognized as gender by South Asian culture, while there is another concept named “third gender”, which has widely existed in the Asian region. The concept of the third gender received a great attention all over the world. Nepal in 2007, Bangladesh in 2013, India in 2014 has recognized the third gender community as a

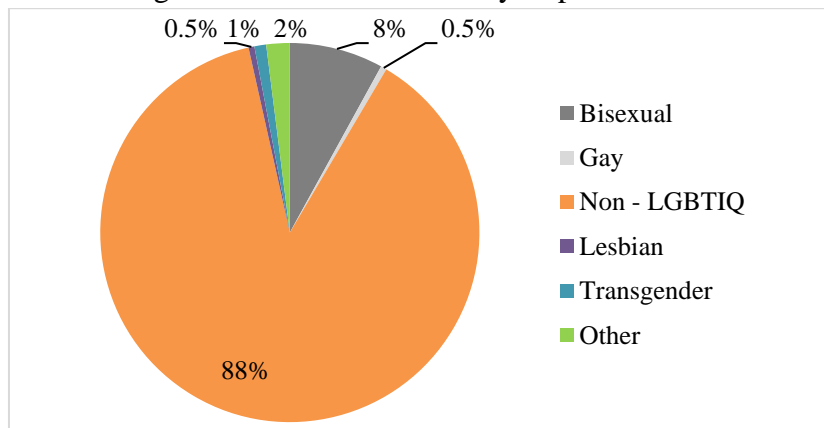
separate gender. Although LGBT+ community receives a limited recognition through administrative decisions, Legal System of Sri Lanka does not identify the third gender concept (Wijayath, 2020). As the current situation in this regard does not look very consolatory, it is timely to address this issue. Before address this issues, it is important to have an overall idea on what the concept of LGBT+ means. Chowdhury (2021) in a report on “A study on workplace discrimination: Challenges faced by LGBTIQ employees and the perspectives of employers in Sri Lanka”, defines each letters of the concept as follows;

Table 1: Definitions of LGBT+

Lesbian	A Woman who is physically, emotionally and/or spiritually attracted to other women.
Gay	A man who is physically, emotionally and/or spiritually attracted to other men.
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	An individual 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	Sexual and gender identities other than straight and cisgender. Lesbian, gay, bisexual and transgender people may all identify with the word queer.

Source: Chowdhury, 2021

Figure 1: LGBT+ Community Representation

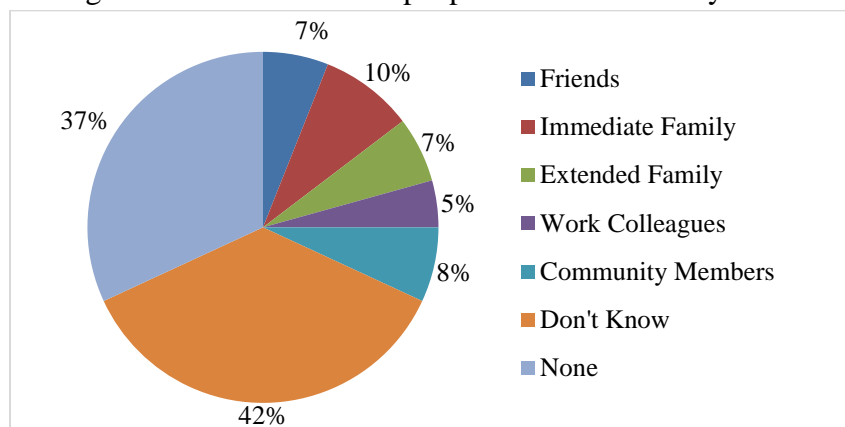


Source: Equal Ground, 2021

Equal Ground (2021) in its report on “Mapping LGBTIQ Identities in Sri Lanka” has identified that the majority, those who have identified themselves as LGBT+ was found in 18 – 29 of ages. Also, the highest percentage of such people was found in North Western and North Central provinces. Some of LGBT+ individuals have understood their sexual orientation during the

school days, while some understood themselves after they migrated for employment (Equal Ground, 2021). It can also be identified that majority of LGBT+ community is afraid to reveal their identity to friends and immediate family, since the fear of non-acceptance and embarrassment (Equal Ground, 2021).

Figure 2: Who do LGBT+ people hide their identity from?



Source: *Equal Ground*, 2021

To come out without fear, LGBT+ community expect a society free of discrimination (22%), LGBT+ supportive laws and protection of their human rights (12%) as well as equal acceptance from society (7%) (Equal Ground, 2021). To that end, it should first take a view on how they lost these expectations, the main objective of current study.

History of LGBT+ Journey in Sri Lanka

Sri Lanka during per-colonial period, relatively was a sexually liberal society, because there was polyandry like concepts in practice under the Kandy law (Gonzalez, 2019).

When considering the post-colonial period, church's declaration of sexual ethics during Portuguese period has regarded being non-heterosexual as a violence of norms in sexuality. Howsoever, Sri Lankan King Buwanekabhahu III also engaged in homosexuality. During British period, British government enacted several laws and regulations limiting and controlling freedom of sexuality, which thereby worsened the concepts on gender and sexuality (Gamage, 2020). In order to rectify and Christianize "local" practices and save Christians

from "native corruption," the British established these laws criminalizing homosexuality (Holm, 2020). According to a participant in a study conducted by Gonzalez following collective actors of the Sri Lankan LGBTQ movement,

“It's not about an 'LGBT issue' we have in this country. It's about the whole cultural tradition issue that we didn't have. This was imposed by the British in the colonial era, which we're saying now that is our tradition” (Gonzalez, 2019).

Worsening the condition, in 1995, Penal code of Sri Lanka was amended, replacing the word 'person' for 'male, to make it gender-neutral. Lesbianism was also prohibited by the same amendment and law and the possible penalties over their activities were expanded. This was enough for police and anti gay groups to label gays and lesbians as perverts and law breakers (Chandratilaka and Mahanamahewa, 2015).

Starting from early 1990s, a number of LGBT+ related organizations such as the local human rights watchdogs the Centre for Policy Alternatives and the Gay Advocacy Organization (Gamage, 2020), as well as LGBT+ movements such as Companions on a Journey (COJ)¹ and

¹ COJ was the first gay group in Sri Lanka established in 1995 with the support of Dutch government. Sherman de Rose, the founder of COJ received death threats, assaults

and boycotts as a result of being the first person to publicly identify as gay the country.

The Women’s Support Group (WSG)² were started. Continuing the process, since 2000, several NGOs were also started to fight for LGBT+ rights. Equal Ground was the first such NGO started in 2004, which assist LGBT+ community in achieving their rights through different fields and events like Colombo Pride. National Transgender Network (NTN), Venasa Transgender Network, Chathra, Young Out Here, the Community Welfare Development Fund (CWDF), Heart to Heart, and Grassrooted Trust are some other NGOs which actively participate in relevant advocacies (Gonzalez, 2019). There are also online information networks on LGBT+ such as Sakhi Collaboration, Accept Lanka and Equal Ground (Gamage, 2020).

Marking a turning point in the LGBT+ history, a circular was passed to issue Gender Recognition Certificates to transgender people in 2016 by the Sri Lankan government, which allowed them to change the gender indicated in birth certificates, national identity cards, and passports (Gamage, 2020). The individual who wish to alter the gender on their identity documents must get a gender recognition certificate for this reason. To receive this gender recognition certificate, a transgender person must go through hormone therapy, a psychiatric examination, and any required surgery. However, practically, receiving these medical procedures in Sri Lanka is a challenging and expensive process (Wijayath, 2020).

Socio-Cultural Attitudes toward LGBT+ Community

Reminding that there are gender expectations and gender norms, Sri Lankan society believe individual’s assigned sex at birth must align with the gender expression. This belief thereby leads

to discrimination and abuses experienced by LGBT+ people in several areas such as housing, employment, education, and health care in both the government and private sectors. As a result, many such individuals are afraid to come out or are struggled by coming out.

Specially, LGBT+ individuals are addressed using different names by Sri Lankan community, such as;

- Male-to-female transgender people and sometimes for both transgender men and women – Nachchi, Napunsakaya (eunuch or hermaphrodite), Ponnaya (derogatory slang)
- Lesbians – Aappa (Hoppers)
- Gays – Samanalaya (Butterfly)..... (Gamage, 2020).

A lesbian named Shanthi, research participant in a study conducted by Sermal Wijewardene in 2007 has stated as;

“I was not frightened of any physical abuse during my time at school. I was frightened only that they labelled me. You know, how did they label me? They used dirty words. Do you know the word ‘aappa’? It was frightening when they labelled me using that word.”

This dialogue evidently proves how they people are verbally discriminated and how it is affected to their peace of mind.

While DSM does not consider homosexuality as a mental illness, many Sri Lankan parents take their LGBT+ children toward psychiatric treatment. If not, they are expelled from the home (Chandradasa, 2019). That is because; they believe those children would destroy their family values, morals and culture.

² WSG was the first group advocating for the needs, claims and rights of, and providing a space for LBT women.

Not only that, LGBT+ individuals are often forced to marry against their homosexual desires (Horner, 2017), because heterosexuality, masculinity, and femininity are the only concepts that Sri Lankan culture accepts.

When considering the discriminations in education, according to a 2012 study of Equal Ground, 75% students had dismissed, suspended or prevented from attending school due to their gender expression and many students had stopped schooling due to excessive bullying, marginalization and discrimination (Equal Ground, 2016).

Gender identity is more often considered in work sector too. A customer service executive, who is openly gay, expressed his experience in a study conducted by Liyanage and Adikaram (2017) on harassment in heteronormative workplace, as follows;

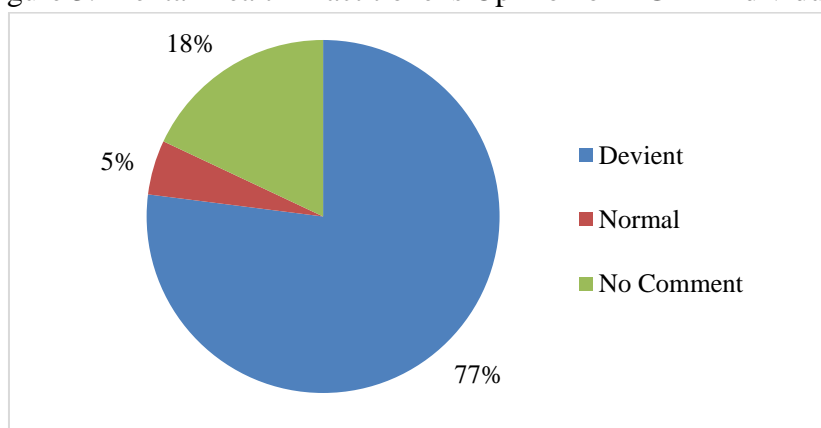
“I have missed some chances to take part in some events and initiatives, because of my [sexual] orientation. I know among my friends [peer] there may not be an issue of nominating me to initiatives. But the selection committee does not like to nominate me to the initiative since I am a gay. I can see a gay among that group, but he is closeted. But since I am open, he is in and I am out” (Liyanage and Adikaram, 2018).

Ostracism, rejection, offensive comments, sexual innuendos, frequent jokes and name calling, sexual assault, spreading rumors, unwanted touching and threats or bribes in exchange of sexual favors are the numerous forms of harassments that community faces in heteronormative workplaces (Liyanage and Adikaram, 2018). 58% have faced verbal harassments while, 31% has faced sexual harassments at their workplace and 23% had left their jobs due to psychological harassment (Chowdhury, 2021).

Also, transgender community is regarded as mentally ill or mentally deviant individuals by healthcare staff. Even, there are no dedicated clinics for the transgender population, despite the fact that many transgendered people work in the sex industry and should be properly screened for HIV and STDs (Wijayath, 2020).

Even there is a lack of LGBT friendly psychiatrists and psychologists. 97% LGBT people don't like to have support from psychiatrist or psychologist to come out from violence faced. 80% are afraid of negative reactions by the doctors and 12% have experienced such reactions and less understanding by the doctors (Thangarajah, 2013).

Figure 3: Mental Health Practitioner's Opinion on LGBT Individuals



Source: Thangarajah, 2013

On the other hand, media is doing support in hate speech against LGBT+ community and making it legitimized (Thangarajah, 2013). Also media portrays a bad picture on homosexuality with the influence of Indian cinema (Chandradasa, 2019). Howsoever, “Flying with one wing” and “Frangipani” films have humanized homosexual relationships by representing the miserable state of that community and explain how they find ways to reveal it to the society (Boyagoda, 2018).

Severity of the impacts on such discrimination is presented by Priya Thangarajah (2013) stating that, “Several gay men have fled Sri Lanka in recent years and are at present engaged in seeking asylum in different countries including the USA and the UK, on grounds that they face persecution if they return to Sri Lanka” (Thangarajah, 2013). Also, it is highly likely that these people experience greater levels of psychological stress and suicidality (Chandradasa, 2019). Alienation that LGBT community faced due to social differences and burdensome due to their sexual identity might have result such end.

Religion in Sri Lanka and LGBT+

Sri Lanka is a country which is consisted of diverse religions namely Buddhism, Hinduism, Islam, and Christianity, and majority is Buddhism, which has dominated Sri Lanka for more than 2,300 years. Buddhism itself does not have a rule or mandate that forbids the rights of LGBT+ persons (Jayatunge, 2014).

It is documented in the "Vinaya Pitaka," that the Lord Buddha preached on the presence of two other genders in addition to male and female. They are "pandaka" (People who are having deficiencies in their male sex nature) and "ubhatobyanjanaka" (people with a dual sexual nature). As a result of recent changes to the Vinaya Pitaka, the term "Pandaka" is now used

to refer to the group of third gender people who have either male or female bodies but lack the traits that make them naturally female or male (Wijayath, 2020). A homosexual connection between two ministers at the court of King Pasenadi Kosol is described in the Kachchappa Jataka (Jayatunge, 2014). Information concerning King Kumaradasa's intimate relationship with the male Sanskrit poet Kalidasa is also contained in Mahawansa without any criticism (Gamage, 2020). Perceptions of the third commandment, which prohibits believers from engaging in "sexual misconduct," have typically been determined by local cultures. Buddhism itself, then, does not condemn homosexuality, but rather places a stigma around certain practices and gender expectations (Holm, 2020).

Most people are unaware of the actual contents of their religious texts, but they all share the conviction that homosexuality is a sin, as is stated in all three of the world's main religions: Islam, Buddhism, and Christianity. For instance, the first transgender woman's appointment as the Governor of the central province in 2016 was denied by the Chief Incumbents of the Asgiriya Chapter, one of the foremost Buddhist institutions in Sri Lanka (Gamage, 2020). Bodu Bala Sena, one of the extremist Sinhala Buddhist nationalist groups, also actively opposed the legalization of LGBT+ and often intimidated or harassed such organizations through social media (Holm, 2020). Accordingly, present Sri Lankan Buddhist society has become a tradition which oppose to LGBT identity. The Islamic mosque and Christian Church support this condition too (Gamage, 2020).

Political Influence over LGBT+

It can be seen that the political scenario also oppose the concept of LGBT as majority of political bodies do not warmly address the LGBT

community. Even though Current President, Ranil Wickremasignhe, Former Minister of Finance, Mangala Samaraweera and Party Leader of JVP, Anura Kumara Disanayake have openly expressed themselves that they are a part of LGBT community, although they too are subjected to hate speech and other difficulties from other politicians.

Former president Mahinda Rajapaksa (2005 – 2015) highly opposed for LGBT rights, which resulted in strict surveillance and government-backed homophobic media reporting (Gonzalez, 2019). A number of LGBT organizations have faced a number of obstacles during this period. Even the circular passed to issue Gender Recognition Certificates to transgender people in 2016 by the Sri Lankan government was also an indirect method to further embarrass them.

Nalinda Jayatissa, a current member of parliament, opposed LGBT rights in 2015, claiming that same-sex marriage is unnatural and "against the growth of human beings" and that such "unnatural impulses" occur after stressful conditions. (Gonzalez, 2019). Also in 2017, government introduced a proposal to repeal Sections 365 and 365A of the Penal Code, but, former president Maithripala Sirisena rejected the proposal showing his objection toward LGBT rights (Holm, 2020).

Howsoever, being the only South Asian country to vote for the gay rights at the United Nations, Mangala Samaraweera voted in favour of gay rights in 2016. After the incident, several politicians claimed that Mangala Samaraweera should be arrested saying he violated the Penal Code of Sri Lanka. Modern Sri Lankan politicians choose to represent the popular ethno-nationalist majority in order to sustain their political careers over the long term because of the multifaceted homophobia and transphobia

evident in Sri Lankan politics today. (Gamage, 2020).

Impact of Sri Lankan Law over LGBT+ Rights

Sri Lankan government is obligated internationally to protect human right regardless of gender, race, cast, nationality or any other factors. Sri Lankan government got the membership of United Nations Organization (UNO) in 1995 and then signed and ratified a number of international, regional and local treaties in order to uphold the rights of every individual being. This wakes up our mind to question whether Sri Lankan government violates those treaties by marginalizing LGBT community.

Even the Fundamental Right chapter in Sri Lankan Constitution emphasizes the basic human rights of Sri Lankan citizens such as right to freedom of speech, the right to not be tortured, the right to freedom of thought, conscience and religion, and the right to be arrested without reason.

- Article 12 states that all people are to be treated equally before the law. This section can be used to challenge the detention of an LGBT person, especially if they have been detained and mistreated without reason (Thangarajah, 2013).
- When a person is arrested or detained, Article 13 ensures that due process of law is followed. When LGBT people are arrested, procedures are often ignored and many are not brought before a magistrate (Thangarajah, 2013).
- The right to expression is protected by Article 14. According to this article, every citizen has the right to freedom of expression. However, as we shall see, this is limited in the case of LGBT people, as crossdressers and trans people often face harassment because of their

preferred gender representations (Thangarajah, 2013).

It seems that LGBT+ community is unable to fully or partially enjoy their fundamental rights within the Sri Lankan constitution.

Pursuant to Article 125(1) of the Constitution, the Supreme Court of Sri Lanka has unique and exclusive jurisdiction to hear and rule on any dispute relating to the interpretation of the Constitution. Therefore, the Supreme Court of Sri Lanka will interpret the above sentences, but unfortunately no case has come to the Supreme Court to hear and decide the rights of third gender groups in relation to these articles (Wijayath, 2020).

It has been over 139 years since the British Empire introduced their laws into Sri Lanka and over 72 years of Sri Lankan independence. Unfortunately, same Victorian laws are still in the enforcement by criminalizing consensual same sexual acts, resulting silent society that denies or rejects the rights (Holm, 2020). This condition is also similar to the other former British colonies such as India.

Penal code of Sri Lanka, which was passed in 1883 by British colonial government, prohibits “carnal intercourse against the order of nature” and “gross indecency” in Section 365 and 365A as well as bans “cheating by impersonation” in Section 399. Although Section 365 states “penetration is sufficient or necessary to constitute the carnal intercourse necessary to the offence”, there is no definition over “gross indecency”. This provides authority for law enforcement officials to interpret the law as to whatever they consider sexually indecent. “Interviews with LGBT persons and reports submitted by LGBT organizations to the UN and various advocacy measures show that the section is mostly used to intimidate, harass and coerce LGBT persons” (Thangarajah, 2013).

Under Section 352 of the Penal Code, it is a crime in Sri Lanka to take a minor from legal custody. This article has occasionally been used for homosexual women who have left their homes. The police is now use the article to intimidate the couple especially when one of the women is under the age of 16 (Thangarajah, 2013).

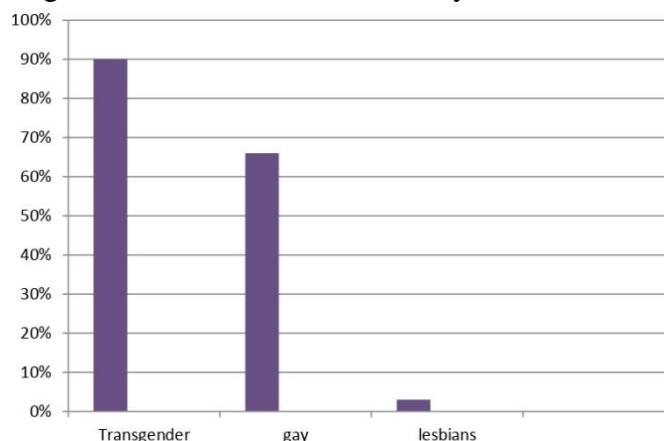
According to Section 353, abduction occurs when a person is forced to leave a place by force, fraud, abuse of power, or otherwise. This section is also particularly used in cases where women have left their homes (Thangarajah, 2013).

Transgender people are often the focus of Section 399. Transgender people are often jailed for “misleading the public.” According to The Women's Support Group, several cases of “imitation” have been brought to court, finding that women “dressed up” as men and made their “true gender identity” public (Holm, 2020).

Vagrant Ordinance enacted in 1841 by the British colonial government also prohibits e behaving in a “disorderly manner”. LGBT people, particularly transgender people, have been imprisoned under this section and faced humiliation, ridicule and demands for payment for their release (Thangarajah, 2013). According to Andrea Nichols article, “Dance Ponnaya, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka” (2010), police not only assault these people, but also take monetary or sexual benefits from them. (Holm, 2020).

The engagement of GBT men and LBT women with law is different as GBT men largely face harassment in public realm while LBT women face harassment within private and at the community level. It is enough the appearance of ‘queerness’ and likelihood of ‘carnal intercourse’ for the police to mistreat transgendered people (Thangarajah, 2013).

Figure 4: Police Violence Faced by LGBT Persons



Source: Thangarajah, 2013

According to a participant in the study of Gonzalez (2019),

“(LGBTQ) people, they don't know the law right now, so police take advantage of that, and by the time the lawyer or someone who knows the law well enough (arrives), it's too late. The injustice has already happened” (Gonzalez, 2019).

As required by colonial rules, these legal actions continue to discriminate against LGBT+ individuals today. This makes it easy for the authorities to apprehend them and even place them in jail. Although there are few people arrested under these laws, same laws are used to threaten LGBT+ community.

Conclusion

It is not enough to end this discussion in this way, since the subject scope is spread within a number of different aspects. However, in the end, it appears that the rights of LGBT+ community are being violated in Sri Lankan society.

To reduce this issue, there must have constitutional reformation and a procedure to confirm the proper practice of each article of the constitution. It would be better if Sri Lankan government can enact a separate declaration on

the protection of LGBT community, which thereby legalize the concept of third gender and gradually positively influence over non LGBT community regarding the concept. New regulations must be enforced to establish LGBT friendly work places, health sector and law enforcement organizations. Existing laws should be amended with special consideration to this community and those who discriminate LGBT must be subjected to penalties. It will be better if more researches will be conducted on this field in order to further analyze real state of LGBT community in a timely manner.

LGBT+s too are humans who should receive same treatments as other humans received. If so, isn't the societal prejudice doing against the nature? It is the time to make society free of discrimination by change the system.

“It is absolutely imperative that every human being's freedom and human rights are respected, all over the world.”– Jóhanna Sigurðardóttir

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