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SUBMISSION TO THE UNITED NATIONS INDEPENDENT EXPERT ON SEXUAL ORIENTATION AND GENDER IDENTITY ON COLONIALISM AND SEXUAL ORIENTATION AND GENDER IDENTITY¹

iProbono² submits this document in response to the call for inputs issued by the United Nations Independent Expert on Sexual Orientation and Gender Identity, Mr. Victor Madrigal-Borloz on Colonialism and Sexual Orientation and Gender Identity, to be presented at the 78th session of the General Assembly in October/November 2023. This submission traces the history of colonialism's impact on sexual orientation and gender identity (SOGI) in Pakistan, current-day laws and policies on SOGI, the effect of colonialism on SOGI laws and policies and recommendations to address the lasting consequences of colonialism on SOGI in the country. Our recommendations to the Government of Pakistan include a commitment to destigmatising LGBT+ persons and encouraging their integration into public life in Pakistan, curbing hate speech against community members, commissioning and disseminating research on the impact of colonial laws on the persecution of LGBT+ persons, revision of national legislation and policy including enacting legislation to protect and promote the rights of lesbians, gays, bisexuals and other sexuality-diverse populations in Pakistan, prevention and redressal of violence against community members through intersectional approaches, capacity building and sensitisation among government stakeholders, and the provision of monetary support and reparations on a case by case basis.

INTRODUCTION

Colonialism has significantly shaped the legal and societal structures in present-day India, Pakistan, and Bangladesh. Many laws introduced by the British colonial government continue to be in force in these countries today, with or without amendments. This submission will focus on the laws and policies the British colonial government imposed to control the sexual orientation and gender identity of citizens of pre-independence India³ and post-independence Pakistan.

Historically, the South Asian region has accommodated various gender and sexual expressions. Before the

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² iProbono's mission is to enable people to access their rights in pursuit of a just society. By promoting active citizenship and engaging a holistic model we advance justice for all by representing people in need, strengthen the impact of civil society, and advocate for policies that promote social equity and end discrimination. iProbono provides holistic counsel with a strong, lean team that delivers strategic direction and execution, while also leveraging the expertise and commitment of a wide community of pro bono lawyers. iProbono started working in Pakistan in 2016 and primarily focusses on securing the rights of the transgender community in the country.

³ Pre-independence India includes Pakistan and Bangladesh.

arrival of the British, India was ruled by different kingdoms, where sexuality was governed through religious texts, culture, poetry and music.⁴ Research on Sanskrit scriptures indicates that homosexuals, cross-dressing and the “third gender” was widely accepted in pre-colonial India.⁵ Ancient Hindu texts like the Kama Sutra and religious scriptures, including the Rig Veda and Ramayana, mention same-sex couples, marriages among them and raising children together.⁶ “Khwaja Sara” or “Hijras” have also been widely documented in the region. They were advisers to the Mughal court and played an essential role in developing the social and political milieu during the Mughal rule of the Indian subcontinent.⁷ The term “Khwaja” means protector or honourable.⁸ Khwajasiras could move through women-only spaces and were understood to be guardians of women.⁹ Same-sex relationships were common during Mughal rule - noblemen engaged in sexual activity with Khwajasiras or Hijras as a proclamation of masculinity.¹⁰ Their ability to move through and perform genders made them almost god-like.¹¹ Khwajasiras occupied important positions in the court, such as political advisers, administrators, generals, and guardians of harems.¹² They were also entitled to public revenue and cash and land grants.¹³ Historians note that they were considered clever, trustworthy and fiercely loyal among the larger public.¹⁴

However, this acceptance of SOGI began to erode with the arrival of the British colonial government. They arrived in the region with their ideas of Christian morality and sought to impose them on the natives through their laws and policies in a carefully curated civilisation project. The colonial government believed that law was an important tool to carry out their project of civilisation and morality among the native masses.¹⁵ They felt that the natives did not punish “perverse” sexual behaviour, and to protect British soldiers from “overly erotic” natives, they brought about laws and policies to control sexual behaviour without consultation.¹⁶

⁴ Alamgir Alamgir, *Decolonization of Gender and Sexuality: Exploring the Stories of Discrimination, Marginalisation, Resistance, and Resilience in the Communities of Khawaja Sara and Hijra in Pakistan*, 2022, LGBT Communities [Working Title], IntechOpen, available at - <https://www.intechopen.com/online-first/85181> (Accessed 25 May 2023)

⁵ Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex*, 2010, (Accessed: 24 May 2023)

⁶ Sanjana Ray, *Indian Culture Does Recognise Homosexuality, Let Us Count The Ways*, 11 September 2018, available at - <https://www.thequint.com/opinion/homosexuality-rss-ancient-indian-culture-section-377#read-more> (Accessed 25 May 2023)

⁷ Hassaan bin Sabir, *Colonial Hangover LGBT rights in the subcontinent*, The Cornell Diplomat available at - <https://journals.library.cornell.edu/index.php/tcd/article/view/583/575> (Accessed: 24 May 2023)

⁸ Sara Shroff, *The Colonial Choreography of Queer Value*, Queer Asia, 2 December 2017, available at - <https://queerasia.com/2017/12/02/the-colonial-choreography-of-queer-value/> (Accessed 25 May 2023)

⁹ *Id.*

¹⁰ Katherine Butler Schofield, *The courtesan tale: Female musicians and dancers in Mughal historical chronicles*, Gender & History, Vol 24(1), 2012, pp. 150-171.

¹¹ *Supra* note 7

¹² iProbono, *Beyond Gender: The South Asian Experience*, Pg. 61, available at - <https://i-probono.com/download/?id=5503> (Accessed 25 May 2023)

¹³ *Being Queer Was Not Always A Crime In Pakistan*, Dawn, 29 September 2014, available at - <https://www.dawn.com/news/1135082> (Accessed 25 May 2023)

¹⁴ *Id.*

¹⁵ The Human Rights Watch, *This Alien Legacy: The Origins of Sodomy Laws in British Colonialism*, 17 December 2008, available at - <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism> (Accessed 25 May 2023)

¹⁶ *Id.*

These laws include Section 377 of the Indian Penal Code, 1860¹⁷ and Part II of the Criminal Tribes Act, 1871. The British colonial government saw Khwajasiras and Hijras as cisgender men and considered them to habitually indulge in sodomy, leading to their gender expressions and relationships being criminalised.¹⁸ Part II of The Criminal Tribes Act targeted Khwajasiras and Hijras by controlling and governing their dealing and registering them as criminals.¹⁹ This law indicated in clear terms that the donning of women's clothes or jewellery by "eunuchs"²⁰ in public, dancing or playing music in public or for hire in private would be a punishable offence carrying two years' imprisonment and/or fine.²¹ The law also deprived "eunuchs" of their civil liberties - they were required to register their properties and were prohibited from acting as guardians of any minors, adopting sons, or making any gifts or wills.²² This law has since been repealed in India²³ and Pakistan²⁴ after independence but continues to stigmatise LGBT+ persons in the two countries today.

LAWS AND POLICIES ON SEXUAL ORIENTATION AND GENDER IDENTITY IN PRESENT-DAY PAKISTAN

The British colonial period established the Penal Code of 1860 in the subcontinent, applying English criminal law. Despite several amendments, Pakistan retained many provisions of the code, including criminalising same-sex sexual activity. Section 377²⁵ of the Pakistan Penal Code does not explicitly mention homosexuality, but "carnal intercourse against the order of nature" is punishable, with penalties ranging from fines to life imprisonment.²⁶ Under Sharia law in Pakistan (Hudood Ordinance 1979²⁷), homosexual

¹⁷ The Indian Penal Code, 1860, was implemented across present-day India, Pakistan, and Bangladesh. Post-independence, this law continues to be the basis of penal sanctions and prosecutions in all three countries till today. While the Indian Supreme Court has recently decriminalised consensual sexual activity among adults including same-sex relations, Bangladesh and Pakistan are yet to.

¹⁸ *Supra* note 4

¹⁹ Criminal Tribes Act, 1871, available at - https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1871-27.pdf (Accessed 25 May 2023)

²⁰ This law essentially created eunuchs as a category to embody the various gender non-conforming communities in India at the time.

²¹ *Id.* at Section 26

²² *Id.* at Section 29

²³ In India, it was replaced by the Habitual Offenders Act, 1952 which continues to stigmatise tribes and gender non-conforming individuals in the country.

²⁴ As stated in *Shah Fahad v. Government of Pakistan through Secretary Interior, Islamabad & Ors.*, 2023, available at - <https://www.peshawarhighcourt.gov.pk/PHCCMS/judgments/WP-No-1052-P-of-2022.pdf> (Accessed: 25 May 2023)

²⁵ Section 377 of Pakistan Penal Code 1860. Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Pakistan: Penal Code [Pakistan], Act No. XLV, 6 October 1860, available at:

<https://www.refworld.org/docid/485231942.html> (Accessed 24 May 2023)

²⁶ Immigration and Refugee Board of Canada, *Pakistan: Situation of homosexuals, including the application of laws towards homosexuals, the number of prosecutions of homosexuals and their outcomes; whether any regions have an open and active gay community*, 29 November 2007, PAK102660.E, available at: <https://www.refworld.org/docid/4784def1c.html> (Accessed 24 May 2023)

²⁷ National Legislative Bodies / National Authorities, *Pakistan: Ordinance No. VII of 1979, Offence of Zina (Enforcement of Hudood) Ordinance, 1979*, 10 February 1979, available at: <https://www.refworld.org/docid/4db999952.html> [Accessed: 24 May 2023]

acts are punishable by corporal punishment, imprisonment, or even death. However, there appear to be no recent reports of these provisions being used against LGBT+ persons.²⁸ There are also no reports of the death penalty being levied in cases concerning same-sex relations in the past few decades.²⁹ Additionally, Section 294 of the Pakistan Penal Code, which criminalises obscene acts and songs punishable by imprisonment, fines, or both, has been used against the LGBT+ communities.³⁰ There are 10 other sections of the Pakistan Penal Code which may be used to prosecute and target gender and sexuality-diverse populations.³¹

Despite the Pakistani constitution guaranteeing freedom of expression under Article 19,³² Section 34 of the Prevention of Electronic Crimes Act, 2016, grants the Pakistan Telecommunication Authority the power to remove or block content deemed against the "glory of Islam, public order, decency, or morality," reflecting a colonial mindset.³³

There is limited information on prosecutions against LGBT+ persons in Pakistan and their outcomes. These cases are rarely reported in the media, but there have been a few cases in recent years.³⁴ Over time, these laws have been interpreted in alignment with Islamic teachings. The Transgender Persons (Protection of Rights) Act of 2018, a landmark legislation for the transgender community in Pakistan, recognised self-identified gender and prohibited discrimination against the transgender community.³⁵ However, in May

²⁸ Loft, P., Curtis, J. and Mills, C. (2022) LGBT+ rights in South and Central Asia, Research Briefing. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9508/CBP-9508.pdf> (Accessed: 24 May 2023).

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 141 (unlawful assembly), 153 (provocation with intent to commit riots), 268 (public nuisance), 269 (negligent act likely to spread infection of disease dangerous to life), 270 (malignant act likely to spread infection of disease dangerous to life), 290 (punishment for public nuisance in cases not otherwise provided for), 292 (sale, etc., of obscene books, etc.), 371A (selling person for purposes of prostitution), 371B (buying person for purposes of prostitution) & 469 (forgery for purposes of harming reputation) of Pakistan Penal Code (PPC) 1860, is available at - <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64050/88951/F1412088581/PAK64050%202017.pdf> (Accessed: 23 May 2023)

³² Article 19: Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt *Constitution of the Islamic Republic of Pakistan* [Pakistan], 10 April 1973, available at: <https://www.refworld.org/docid/47558c422.html> (Accessed: 24 May 2023)

³³ In September 2020 the government sent notices to Tinder, Grindr, Tagged, Skout and SayHi to remove the dating services. *Pakistan Blocks Tinder and Grindr for 'immoral content'* (2020) *BBC News*. Available at: <https://www.bbc.com/news/technology-53977780> (Accessed: 24 May 2023).

³⁴ In 2020, a couple was charged with having a same-sex marriage. During the proceedings of the court Ali Akash a.k.a Asma Bibi divorced their wife Neha Ali. The Lahore high court Rawalpindi Bench issued a red warrant for Akash Ali as he failed to provide evidence of a gender transition. Despite multiple arrest warrants, Akash did not appear in court. Eventually, the court disposed of the matter ordering that the federal government was at liberty to proceed in the matter and place the name of groom Akash Ali alias Asma Bibi on the Exit Control List (ECL) in accordance with the law: Iqbal, K. (2020) *Court disposes of same-sex marriage case, thenews*. Available at: <https://www.thenews.com.pk/print/717600-court-disposes-of-same-sex-marriage-case> (Accessed: 24 May 2023).

In 2015, two men got married and the man who recited the marriage vows was arrested by the police in Quetta. Bokhari, F. (2015) *Pakistani men arrested for exchanging marriage vows*, *CBS News*. Available at: <https://www.cbsnews.com/news/pakistan-men-face-possible-life-in-prison-for-homosexuality-over-same-sex-marriage-they-say-was-a/> (Accessed: 24 May 2023).

³⁵ Pakistan's Transgender Persons (Protection of Rights) Act, 2018, is considered the most progressive legislation for transgender persons in the South Asian region. It ensured the protection of transgender persons from sexual and physical

2023, the Federal Shariat Court ruled against the Act, ruling certain sections to be un-Islamic, maintaining that gender must align with biological sex.³⁶

The Constitution of Pakistan guarantees life, liberty, dignity, and equality to all citizens.³⁷ The impact of colonial legislation, such as sections 377 and 294 of the Pakistan Penal Code, continues to deny rights to the LGBT+ communities.³⁸ Transgender Protection Act 2018³⁹ was the one product of progress on decolonisation, which, soon after its enactment, was criticised by right-wing actors in Pakistan for being contrary to the teachings of Islam.⁴⁰ While there have been positive developments for the transgender community,⁴¹ an online campaign has emerged in Pakistan, spreading disinformation and targeting the

assault and harassment and guarantees gender identity and political rights. It recognises the transgender community's right to live with dignity as respectable citizens of the state. The Act prohibited discrimination and harassment and requires the government to establish protection centres, provide adequate medical facilities, establish mechanisms to create awareness, and support livelihoods. The Act granted transgender persons the right to vote, own and inherit property; right to education, healthcare, and employment; right to hold public office, right to assembly, and access to public places. According to the Act, kidnapping, abducting, or inducing to have illicit intercourse shall be punished with life imprisonment and a fine. The Act also protects transgender persons from being deprived of inheriting property. Section 16 of the Act ensured that transgender persons shall enjoy all rights as contained in Part II of Chapter I of the Constitution. FARUQI, M., MENON, M. and AHMED, N. (2020) *LEGAL AND SOCIAL REFORMS TO PROTECT TRANSGENDER PERSONS IN PAKISTAN A REVIEW OF PAKISTAN'S TRANSGENDER PERSONS ACT*, iProbono. Available at: <https://i-probono.com/download/?id=5520>

³⁶ Rebekah Yeager-Malkin | U. Pittsburgh School of Law, U. (2023) *Pakistan Federal Shariat Court Rules Against Landmark Transgender Rights Legislation*, *Jurist*. Available at: <https://www.jurist.org/news/2023/05/pakistan-federal-shariat-court-rules-against-landmark-transgender-rights-legislation/> (Accessed: 24 May 2023).

³⁷ Article 25 ensures equality before the law and equal protection of the law and states that there shall be no discrimination on the basis of sex alone. Articles 25(3) and 26(2) allow the state to make special provisions for the protection of women and children. Article 26 & 27 provide for equal access to public places and equality of employment in the public and private sectors. *Women rights*, *Women Development Department*. Available at: https://wdd.punjab.gov.pk/women_rights (Accessed: 24 May 2023).

³⁸ Asia Pacific Transgender Network and Global Action for Trans Equality, *Joint Submission on the Situation of Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in The Islamic Republic of Pakistan For the Fourth Cycle of the Universal Periodic Review (UPR) of The Islamic Republic of Pakistan (January – February 2023)*, Available at - https://www.upr-info.org/sites/default/files/country-document/2023-03/JS2_UPR42_PAK_E_Main.pdf (Accessed: 24 May 2023).

³⁹ In *Mohammad Aslam Khaki & another Versus S.S.P (Operations) Rawalpindi & others case* (PLD 2013 SC 188), for the first time after the independence of Pakistan, the Supreme Court of Pakistan issued its first order in the Constitutional Petition No. 43 of 2009, acknowledging the gender identity of transgender individuals. In the subsequent three years, the Supreme Court directed the government to recognize transgender individual's gender identity and take measures to protect their fundamental rights. This case set in motion a series of legal reforms over the next decade aimed at safeguarding the rights of transgender people in Pakistan. These reforms eventually led to the passing of the Transgender Persons (Protection of Rights) Act in 2018. Rashid, A., Rashid, U. (2022). *Constitutional and Legal Guarantees for Transgender in Pakistan: Reforms and Failures in Law*. In: Guney, G., Davies, D., Lee, PH. (eds) *Towards Gender Equality in Law*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-98072-6_5

⁴⁰ *Transgender bill is against Sharia: Sirajul Haq* (2022) *The Express Tribune*. Available at: <https://tribune.com.pk/story/2378185/transgender-bill-is-against-sharia-sirajul-haq> (Accessed: 24 May 2023).

⁴¹ In 2022, Pakistani government took small steps in promoting education, and financial support for the transgender community. In Lahore, the government established the first school and *madrasah* exclusively for transgenders. The Sindh education department introduced a policy to support transgender education, while the Punjab Ministry of Education approved the construction of middle schools for transgender children. A transgender activist, Sarah Gill, achieved the milestone of becoming Pakistan's first transgender doctor. Financial aid programs and job quotas were introduced, aiming to provide assistance and inclusion for the transgender community. The Election Commission of Pakistan made it mandatory for mobile registration vans (MRVs) to ensure the registration of transgender persons at their doorstep to include them in the political process. To raise awareness and address issues faced by the transgender community, seminars, and protests were organised emphasising equality, rights, and protection. Tanya Noon, *Year in review: Struggle of Pakistan's transgender community* (2022) *The Express Tribune*. Available at: <https://tribune.com.pk/story/2393021/year-in-review-struggle-of-pakistans-transgender-community-in-2022> (Accessed: 24 May 2023).

LGBT+ community.⁴² This campaign poses a serious risk of violence and harm to vulnerable groups within the community.⁴³ It is important to note that protections primarily exist for transgender persons but not explicitly for lesbians, gays, bisexuals, or other sexually diverse populations. As a result, gay men and lesbians often keep their sexual orientation hidden.⁴⁴

IMPACT OF COLONIAL LAWS AND POLICIES ON SEXUAL ORIENTATION AND GENDER IDENTITY IN PRESENT-DAY PAKISTAN

Although diverse gender identities and sexual expressions have long been a part of South Asian culture, remnants of colonial-era laws continue to police the behaviour, sexuality and gender expression of LGBT+ individuals in Pakistan. This leads to stigmatisation,^{45 46} and with a lack of available mental health services and peer support, further leads to extreme verbal, physical and emotional abuse.^{47 48 49} Discrimination⁵⁰

⁴² The controversy surrounding the law intensified when Dr. Mehrub Moiz, a prominent voice in the transgender community, was removed from a speaking panel due to concerns about transphobia. This incident led to a wave of online attacks and hate speech against Dr. Mehrub and the transgender community at large. False narratives, including claims that the law aimed to normalise homosexuality, were propagated, leading to moral panic and further discrimination. Social media platforms became breeding grounds for hate speech and disinformation, with right-wing troll armies using hashtags and targeted campaigns to spread falsehoods about the law. The transgender community and activists faced harassment, fake accounts, hate speech, and threats to their security and well-being. Durrani, Z. (no date) *Digital Waves of Hate: The struggle continues for Pakistan's transgender community*, GenderIT.org. Available at: <https://genderit.org/feminist-talk/digital-waves-hate-struggle-continues-pakistans-transgender-community> (Accessed: 24 May 2023).

⁴³ This malicious campaign particularly targets and exposes vulnerable groups such as gay and bisexual men, men who have sex with men (MSM), transgender men, and transgender women who are not identified as Khwaja Sira Vaness, LGBTQI rights in Pakistan under threat APCOM (2022), <https://www.apcom.org/lgbtqi-rights-in-pakistan-under-threat/> (last visited May 24, 2023).

⁴⁴ Immigration and Refugee Board of Canada, *Pakistan: Incidents of violence or mistreatment involving sexual minorities in Islamabad, Karachi and Lahore; loss of employment or inability to rent housing due to sexual orientation* (2014), available at - <https://www.refworld.org/docid/54ca23b24.html> (Accessed: 25 May 2023)

⁴⁵ The transgender community faces the challenge of overcoming disinformation, amid the widespread myth that being trans is a Western-imported idea – a false narrative that ignores the fact that the Khwaja Sira has a 4,000-year-old history in the subcontinent. Shah Meer Baloch (2022) *'We deserve to be treated equally': Pakistan's Trans Community Steps Out of the shadows*, *The Guardian*. Available at - <https://www.theguardian.com/world/2022/nov/20/pakistan-trans-community-steps-out-of-shadows> (Accessed: 24 May 2023)

⁴⁶ After the British left India and Pakistan, the Criminal Tribes Act was repealed with respect to transgenders. However, the damage done to transgenders was irreparable. Transgenders lost social respect and various stereotypes have been built to humiliate and discount the transgender community. Liaquat Ali Khan (2017) *Transgender dignity in Islam*, *HuffPost*. Available at - https://www.huffpost.com/entry/transgender-dignity-in-is_b_10089712 (Accessed: 24 May 2023)

⁴⁷ Gujarat police arrested a 'serial killer' who confessed to having killed three men separately for having homosexual tendencies, after luring them into a relationship. *Man held for killing three 'homosexuals'* (2014) *DAWN.COM*. Available at - <https://www.dawn.com/news/1106229> (Accessed: 24 May 2023)

⁴⁸ *Serial killer from Lahore 'wanted to teach homosexuals a lesson'* (2014) *DAWN.COM*. Available at - <https://www.dawn.com/news/1102826/serial-killer-from-lahore-wanted-to-teach-homosexuals-a-lesson>

⁴⁹ Brody Levesque (2023) *Pakistan's first transgender TV anchor escapes assassination attempt*, *Washington Blade: LGBTQ News, Politics, LGBTQ Rights, Gay News*. Available at - <https://www.washingtonblade.com/2023/02/27/pakistans-first-transgender-tv-anchor-escapes-assassination-attempt/> (Accessed: 24 May 2023)

⁵⁰ Discrimination in the workplace and education system forces many LGBTQ and intersex Pakistanis to remain in the closet, and those who are out often cannot find work or continue their education. Access to health care — including testing and treatment for sexually transmitted diseases and infections — is an ongoing challenge. *Supra* note 40

against LGBT+ persons begins at a personal level with rejection from family members⁵¹ ⁵² and permeates every aspect of their social life. Living a life of concealment, "marriages of convenience"⁵³ have become the norm for LGBT+ individuals to escape the scorn of society. As per data collected by the International Commission of Jurists and its partner organisations, at least 20 transgender people were killed in Pakistan in 2021,⁵⁴ highlighting the ostracisation of Pakistan's largely visible transgender community in their own country. Censorship of the expression of divergent gender identities and sexualities, as witnessed through the ban on the film *Joyland*,⁵⁵ reveals the sustained influence of colonial laws in Pakistan despite anthropological research indicating the celebrated status and tolerance towards queer identities and sexualities. With conservative political party leaders abetting discrimination through bigoted public statements,⁵⁶ the lives of marginalised identities are under constant threat in a post-colonial, independent country.

At the intersection of SOGI and disability lies the isolation of individuals like UMBER GHOURI, a Pakistani Muslim, queer, disabled person.⁵⁷ With a lack of step-free access, ramps, transport facilities, etc., an exclusionary environment is perpetrated within the LGBT+ community. Additionally, the religious

⁵¹ With one of the highest rates of suicides in the country, Pakistan's gay community faces a constant threat within their households, let alone the outside world. There is a fear of not being understood, along with an everlasting battle from the internal incongruence. Saad *The flickering edge of hope: Pakistan's LGBTQ+ community battles prejudice and discrimination*, (2021) *The Diplomat*, Available at - https://thediplomat.com/2021/04/the-flickering-edge-of-hope-pakistans-lgbtq-community-battles-prejudice-and-discrimination/#!#_edn1 (Accessed: 24 May 2023)

⁵² Samina, a 28-year-old self-identifying non-binary person living in Lahore about the decriminalisation of homosexuality in India. "You still can't say the word 'gay' here, my parents might just kill me in the name of religion. Saad (2021) *The flickering edge of hope: Pakistan's LGBTQ+ community battles prejudice and discrimination*, – *The Diplomat*. *Id.*

⁵³ Married LGBTQ+ men and women live and accept a lie for the entirety of their lives, while the non-binary and trans people have little choice but to be imprisoned in bodies or clothes that reject them. Mobeen Azhar (2013) *Gay Pakistan: Where sex is available and relationships are difficult*, *BBC News*. Available at - <https://www.bbc.com/news/23811826> (Accessed: 24 May 2023)

⁵⁴ *International transgender day of visibility: End impunity for attacks against transgender people* (2022) International Commission of Jurists. Available at - <https://www.icj.org/international-transgender-day-of-visibility-end-impunity-for-attacks-against-transgender-people/> (Accessed: 24 May 2023)

⁵⁵ Patricia Gossman (2022) *Pakistan province bans film about trans character*, *Human Rights Watch*. Available at - <https://www.hrw.org/news/2022/11/29/pakistan-province-bans-film-about-trans-character> (Accessed: 23 May 2023)

⁵⁶ Senator Mushtaq Ahmad Khan, a member of the conservative political party Jamat-e-Islami, stated that he does not believe "fully male" or "fully female" persons should be given the right to choose their gender if their gender perception does not match their physical or sexual anatomy. He said the law should only encompass those who cannot be categorised as male or female at birth based on their sexual or reproductive anatomy. His proposed amendments to the 2018 law include establishing medical boards that conduct detailed exams and then advise what gender a person should be. Sarah Zaman (2022) *Pakistan's progressive transgender law faces opposition 4 years later*, *VOA*. Available at - <https://www.voanews.com/a/pakistan-s-progressive-transgender-law-faces-opposition-4-years-later-/6768168.html> (Accessed: 23 May 2023)

⁵⁷ Disabled LGBT+ persons become even smaller identities, experiencing more isolation, outside of the LGBTQ+ community, and within it. LGBT+ initiatives often have little funding, so step-free access can seem like a luxury. But for people who require step-free access, it is a necessity. Even if a space has step-free access, there may not be accessible transport available – and it doesn't stop there. LGBTQ+ communities have been built around nightlife and activism, and for disabled persons, protests, marches, and club nights are not usually accessible. These spaces, therefore, become, more often than not, disappointingly exclusive. Women are often excluded from LGBTQ+ spaces, as they are generally catered to gay men. People of colour are excluded when white people are at the top of the hierarchy, accessing most of the funding and networks in place for LGBTQ+ people. Inclusion is an issue that most of the LGBTQ+ community faces. The marginalised seem to be the majority, but remain an afterthought. UMBER GHOURI (2018) *Queer, disabled people like me are excluded from LGBTQ+ spaces – it is dividing our community*, *The Independent*. Available at - <https://www.independent.co.uk/voices/coming-out-lgbt-gay-queer-disabled-disability-twice-sexuality-open-family-friends-a8212431.html> (Accessed: 24 May 2023)

segregation perpetuated by the British colonial government has led to further marginalisation of LGBT+ persons from minority religious communities in the country.⁵⁸

No law, policy or psycho-social support has been enacted or made accessible to LGBT+ persons to recognise and provide reparation and redress for the legacy of colonialism.⁵⁹

RECOMMENDATIONS TO ADDRESS THE IMPACT OF COLONIAL LAWS ON SEXUAL ORIENTATION AND GENDER IDENTITY

This submission sets out how colonialism has had a lasting impact on the lives of LGBT+ persons in Pakistan. To address this, we recommend the following:

1. The Government of Pakistan must make consistent efforts to destigmatise LGBT+ persons and encourage their integration into public life in Pakistan. This includes policy on access to justice, housing, education, physical and mental health services, and violence prevention.
2. The Government and media must work together to urgently curb hate speech against the LBGT+ community in Pakistan.
3. High-quality research must be commissioned and disseminated to evidence how colonial law is used to persecute LGBT+ persons in Pakistan.
4. National legislation and policy which enables the persecution of LGBT+ persons in Pakistan must be revisited and clarified.
5. Legislation and policies must be enacted to protect and promote the rights of lesbians, gays, bisexuals, and other sexuality-diverse populations.
6. Monetary reparations should be available on a case-by-case basis to secure a life of dignity for historically persecuted LGBT+ communities.
7. An intersectional approach towards sexual and gender-based violence to redress the trauma inflicted upon the LGBT+ community must be taught and encouraged amongst key stakeholders, including the police and government bodies.
8. Civil society actors must deliver regular capacity building and sensitisation around SOGI issues for policymakers.

⁵⁸ Haroon Khalid (2023) "How Colonialism Eroded Pakistan's History Of Religious Fluidity". Aljazeera.Com, available at - <https://www.aljazeera.com/features/2021/4/13/how-colonialism-eroded-pakistans-history-of-religious-fluidity> (Accessed: 26 May 2023)

⁵⁹ There are no laws prohibiting discrimination based on sexual orientation. Consensual same-sex sexual acts are prohibited as are same-sex civil unions or marriages, and same-sex couples cannot adopt children.