

# Report on Respecting, Protecting and Fulfilling the Right to Freedom of Thought

**\*not for public circulation**

## Hashtag Generation<sup>1</sup>

The freedom of thought is enshrined within the Constitution of Sri Lanka. Article 10 of the Constitution provides that every person is “entitled to freedom of thought, conscience, and religion, including the freedom to have or to adopt a religion or belief of his choice.” Article 14 (1) (a) provides the freedom of speech and expression including publication, the freedom of peaceful assembly and the freedom of association. Article 14(1)(e) of the Constitution gives citizens “the right either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice, and teaching. However, Article 15 provides for restrictions that are permitted to the rights enshrined in Article 14(1) on the basis of racial or religious harmony, contempt of court, defamation or incitement to an offence, the economy or in relation to parliamentary privilege.

This right to the freedom of thought has been explored in relation to the entitlements of members of political parties. In *Abeywardene v Abeywardene*, the “cog in the wheel theory” was looked at by Sharvananda C.J, whereby a party member’s right to freedom of thought, conscience, speech and expression, guaranteed by the Constitution, was said to be surrenderable to the party caucus. However, subsequent cases have moved away from this position.<sup>2</sup>

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<sup>1</sup>Hashtag Generation is an organization led and run by a group of young tech-savvy Sri Lankans advocating for meaningful civic and political participation of youth, especially young women and youth from minority groups. The group adopts a non-partisan approach and works with the strong conviction that decision-making at all levels should remain transparent and inclusive in order to remain sustainable and build lasting peace in Sri Lanka. We mobilize social and new media tools to raise awareness and catalyse dialogue on important social issues. Our work has ranged from advocating for youth participation in decision-making, strengthening women’s civic and political engagement, advocacy for the rights of ethnic, religious and sexual minorities and raising awareness on the importance of cyber security and countering misinformation and online hate speech. Hashtag Generation also has an on-going social media monitoring exercise where online harmful speech, including hate speech, disinformation, harassment and organized advocacy of violence are flagged, archived and analysed. This submission is informed by (among other things) the findings of this monitoring exercise.

<sup>2</sup> Tilak Karunaratne v Mrs. Bandaranaike and Others S.C. (Special) No. 3/93, Dissanayake and Others v Kaleel and Others S.C. (Special) Nos 4-11/91/SC Minutes of 3.12.91 and Gooneratne and Others v Premachandra and Others 1994

The freedom of thought is inextricably linked with the freedom of religion or belief and the freedom of speech and expression. In *Premalal Perera v Wijesuriya and Others*<sup>3</sup> it was held that, “the fundamental right of freedom of thought, conscience and religion is by our Constitution cast in absolute terms and it will have to give way only to any law, written or unwritten, which was in force at the time the Constitution came into operation but only to the extent of any inconsistency as between them and that beliefs rooted in religion are protected. A religious belief need not be logical, acceptable, consistent or comprehensible in order to be protected. Unless the claim is bizarre and clearly non-religious in motivation, it is not within the judicial function and judicial competence to inquire whether the person seeking protection has correctly perceived the commands of his particular faith. The courts are not the arbiters of scriptural interpretation and should not undertake to dissect religious beliefs.”

In the landmark case of *Fernando v The Sri Lanka Broadcasting Corporation and Others*<sup>4</sup> it was held that “Article 14(1)(a) of the Constitution<sup>5</sup> is not to be interpreted narrowly. Not only does it include every form of expression, but its protection may be invoked in combination with other express guarantees (such as the right to equality<sup>6</sup>); and it extends to and includes implied guarantees necessary to make the express guarantees meaningful.”

### **Freedom to have or to adopt a religion or belief of his choice**

The freedom to adopt, change, or renounce a religion or belief and the right to manifest one’s religion or belief is incorporated within this fundamental freedom. The state is obliged to respect the rights of individuals to exercise their freedom of religion or belief within the law and to protect these rights against infringement by third parties or non-state actors<sup>7</sup>. However, one of the main challenges to the enjoyment of the right to freedom of religion or belief is posed by dangerous speech online.

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<sup>3</sup> <https://www.lawnet.gov.lk/premalal-perera-v-weerasuriya-and-others/>

<sup>4</sup> <https://www.lawnet.gov.lk/fernando-v-the-sri-lanka-broadcasting-corporation-and-others/>

<sup>5</sup> Article 14 (1) (a) of the Constitution provides that every citizen is entitled to the freedom of speech and expression including publication

<sup>6</sup> Article 12 of the Constitution: Article 12. (1) provides that “All persons are equal before the law and are entitled to the equal protection of the law” and Article 12 (2) provides that “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”

<sup>7</sup> Report of the Special Rapporteur on freedom of religion or belief, 2020, Human Rights Council

Dangerous Speech is a practice that has an undue influence on the freedom of thought. Whether in the form of hate speech, mis/disinformation, harassment or violent extremism, such speech can incite violence, attack individuals and particular groups of people and/or call for exclusion/boycotts. The use of social media for the dissemination of false and hateful messages has intensified the spread of such content at a quicker pace and across international borders.

Hashtag Generation constantly engages in regular analysis of social media content in English, Sinhala and Tamil on social media platforms. This analysis has revealed the volume of dangerous speech online and trends in the dissemination of dangerous speech narratives in Sri Lanka. The pages and public groups monitored include the following: pages of political parties and those affiliated with political parties, politicians, news outlets, ethnonationalist pages, “gossip”<sup>8</sup> pages and meme pages. These pages were selected based on two criteria: pages that have high levels of reach among Sri Lankan internet users and pages that have a history of circulating and disseminating dangerous speech narratives (there is significant overlap between the two). The data captured is disaggregated where possible, based on the demographic data of the type of actor engaging in this type of speech (only possible where this information is publicly available). A repository of perpetrators of such speech is maintained and harmful reports are reported to Facebook and Youtube if these are believed to be in violation of their Community Standards/Guidelines.

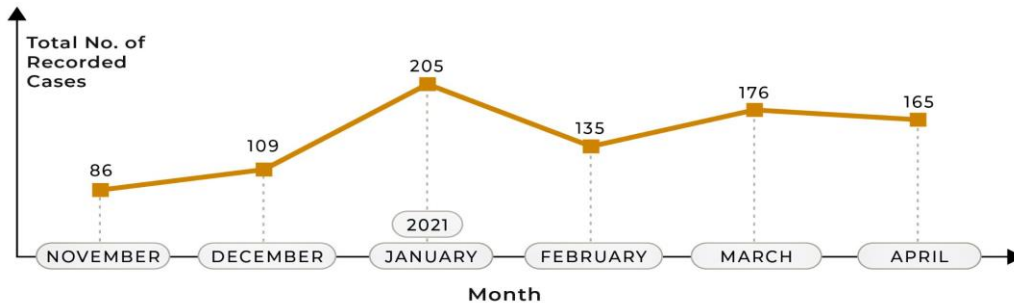
Findings for the first quarter of 2021 revealed that there were 205 cases of dangerous speech recorded in January 2021. This reduced to 135 cases by February and then rose to 176 cases by March, with a marginal decrease in April to 165/6<sup>9</sup>.

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<sup>8</sup>Gossip pages are a type on online tabloid websites which are extremely popular in Sri Lanka

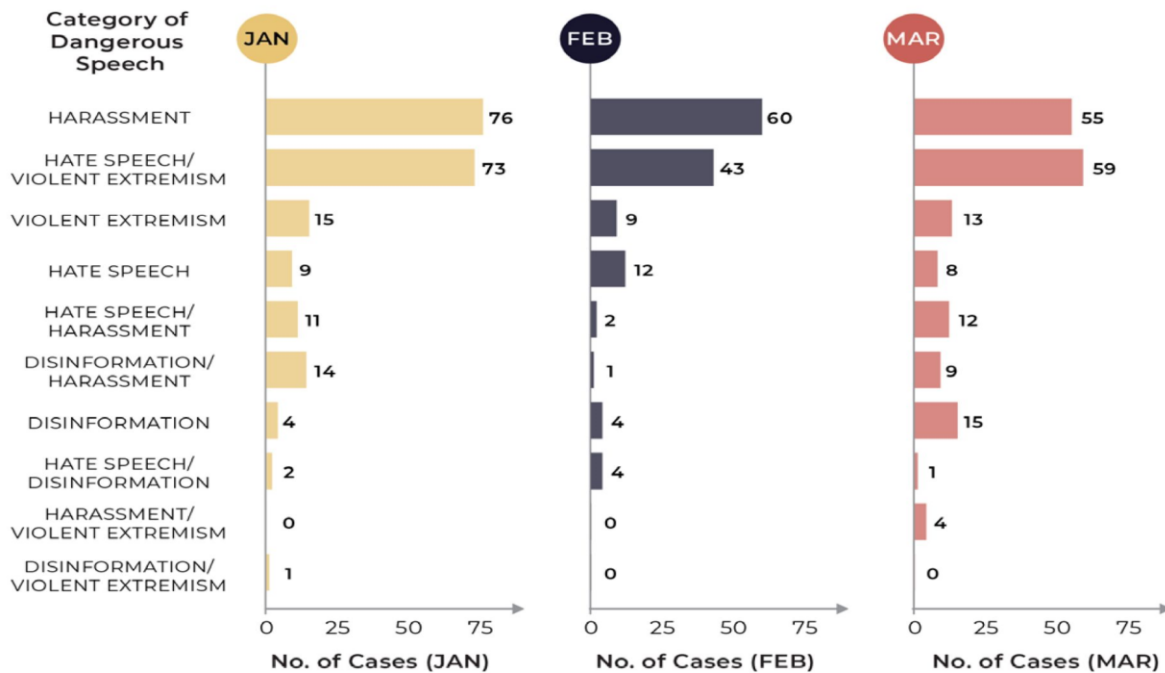
<sup>9</sup> The increase in the volume of content recorded from January 2021 is largely attributable to an increase in the number and capacity (through the use of additional tools etc.) of social media analysts engaging in the monitoring exercise from the 1st of January 2021.

## Drivers of Dangerous Speech



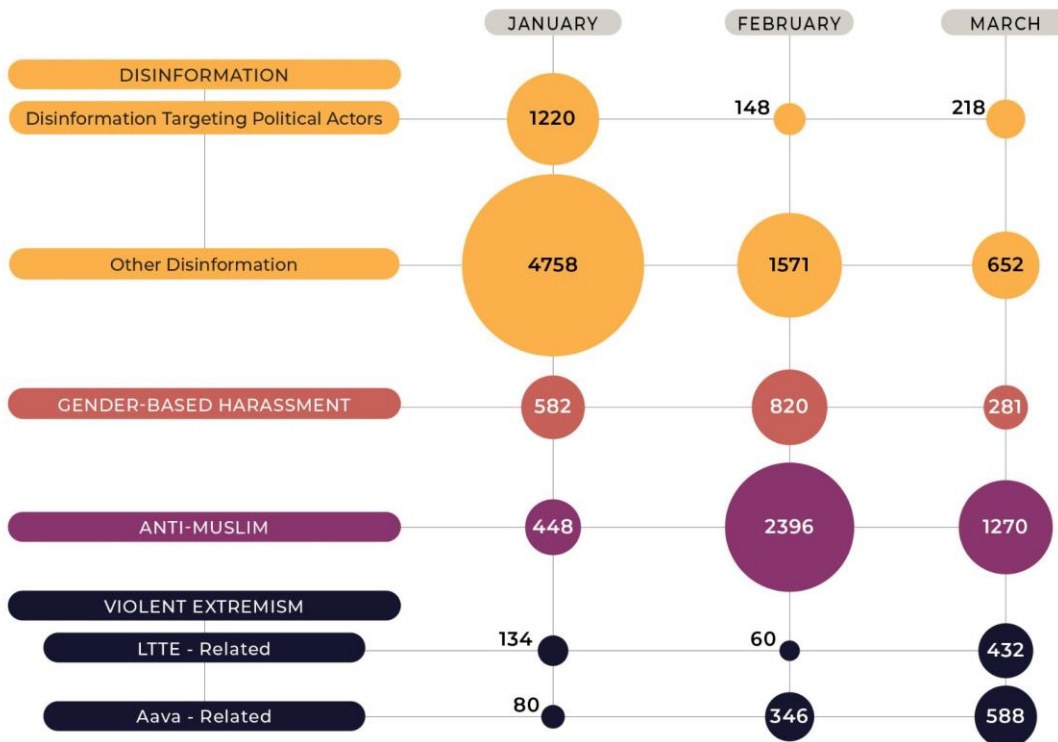
The graphs below show the categories of dangerous speech recorded throughout 2020 and the first Quarter of 2021 (January - March 2021). Content observed is categorised as violent extremism, hate speech, harassment and/or disinformation. Content can be captured across up to two categories, for example, a post classified as Hate Speech and Disinformation is reflected in both data columns.

## Category Distribution of the Quarter (Q1 of 2021)



The graph below shows the interaction rates of main narratives<sup>10</sup> over the first quarter of 2021:

### Interaction Rates of Main Themes of Dangerous Speech in Q1 of 2021



#### Anti-Muslim dangerous speech

A notable trend is the increase in hate speech and mis/disinformation targeting the Muslim community in Sri Lanka over the last few years. This content has influenced the perceptions regarding the Muslim community and has shaped the violence against this community online and offline. The increasing normalization of anti-Muslim sentiment as well as the widespread circulation of rumours and conspiracies against the Muslim community strengthened the accusations against the community during the COVID-19 pandemic as well.

By the end of the first week of April 2020 alone, there were 4800 posts on facebook around various themes based on anti-Muslim keywords including that of the statements made on the

<sup>10</sup> The interaction rate is the average number of interactions (such as likes, shares and comments) per post and is an important indicator of the amount of traction (this could be both positive and negative reactions) that a particular issue gains online.

compulsory burials<sup>11</sup> and Muslims being categorized as bio-terrorists<sup>12</sup> and “super spreaders”<sup>13</sup> of the virus. These posts garnered 292,500 interactions in total. In comparison to the figures from the last week of March (2400 posts, 234000 interactions), there was a relatively high number on both posts and interactions in April. 84.7% of all recorded dangerous speech content collated by Hashtag Generation between March and December 2020 was targeted at the Muslim community. This continued into 2021, and during January to March 2021, Muslims were the most targeted ethno-religious group in the whole quarter, receiving 64.6% of all dangerous speech directed at a particular ethno-religious group.

A mandatory cremation policy<sup>14</sup> that was introduced for all victims of the corona virus infection has been at the center of anti-Muslim narratives related to the Covid-19 Pandemic. This policy was taken by the state<sup>15</sup> in contrary to protests from the Muslim community that cremation was a violation of Islamic burial practice and the despite the fact that best practices stipulated by the World Health Organisation permitted either burials or cremations for those who have died from corona virus infection.<sup>16</sup>

These narratives exist within growing sentiment over the last few years that is rooted in dis/mis-information that there was an ‘Islamic invasion’ in Sri Lanka with the Muslim Community seeking to establish a demographic majority within the island through the ‘sterilisation’<sup>17</sup> and an increase in the Muslim population so as to outnumber the Sinhalese in

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<sup>11</sup> Arjuna Ranawana, “Hakeem Calls Cremation of Muslim COVID19 Victim “Reprehensible,” *EconomyNext*, March 31, 2020 <https://economynext.com/hakeem-calls-cremation-of-muslim-covid19-victim-reprehensible-63220/>

<sup>12</sup> “කැකිරාවහිමිනමකබදාගෙනමුණටකැස්සපුද්ගලයාපිළිබඳපොලිසියවිපරම්කරයි”, *NewsNow*, April 25, 2020, <https://www.newsnow.lk/%E0%B6%9A%E0%B7%90%E0%B6%9A%E0%B7%92%E0%B6%BB%E0%B7%8F%E0%B7%80-%E0%B7%84%E0%B7%92%E0%B6%B8%E0%B7%92%E0%B6%B1%E0%B6%B8%E0%B6%9A-%E0%B6%B6%E0%B6%AF%E0%B7%8F%E0%B6%9C%E0%B7%99%E0%B6%B1-%E0%B6%B8/>

<sup>13</sup> Meenakshi Ganguly, “Sri Lankan Officials Stoke Covid-19 Communal Hate,” *Human Rights Watch*, May 19, 2020, <https://www.hrw.org/news/2020/05/19/sri-lankan-officials-stoke-covid-19-communal-hate>

<sup>14</sup> Office of the High Commissioner for Human Rights, OHCHR | Sri Lanka: Compulsory Cremation of COVID-19 Bodies Cannot Continue, say UN Experts, Press release, January 25, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26686&LangID=E>

<sup>15</sup> “Sri Lanka Makes Cremations Compulsory for Coronavirus Deaths,” *Al Jazeera*, April 12, 2020 <https://www.aljazeera.com/news/2020/4/12/sri-lanka-makes-cremations-compulsory-for-coronavirus-deaths>

<sup>16</sup> “Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19”, World Health Organization, 2020, <https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC-DBMgmt-2020.1-eng.pdf>

<sup>17</sup> “When The Uneducated Are... Nourished on A Diet of Myths And ‘Infertility Pills,” *Daily Mirror*, March 23 2018, <http://www.dailymirror.lk/expose/When-the-uneducated-are-Nourished-on-a-diet-of-myths-and-infertility-pills/333-147668> and “Women’s Bodies, Masculinities and Economic Insecurities,” *Daily FT*, 22 March 2018, <http://www.ft.lk/columns/Women-s-bodies--masculinities-and-economic-insecurities/4-651751>

the Sinhala motherland.<sup>18</sup> In a 2019 report, Hashtag Generation noted<sup>19</sup> that “the combination of misleading information and hate speech within ethno-nationalist pages...potentially endangers social cohesion in Sri Lanka.” The highest volume of disinformation was recorded in March 2021 and also centred around the mandatory cremation policy.<sup>20</sup>

### Coordinated inauthentic behaviour

Coordinated inauthentic behaviour, is where several pages are seen to be amplifying a single narrative, by the publication of the same or related posts at the same time. The prevalence of such behaviour on social media platforms has also been a notable trend in recent times. The content is focused on key political issues and such targeted and well-coordinated campaigns which amplify and spread inauthentic content can severely distort public perceptions. Individuals, such as state actors, are also targeted in a pattern of coordinated inauthentic behaviour. In addition to coordinated posts, bots (applications that perform automated tasks) and inauthentic accounts are also used to fuel ethnic tensions.

On the 12th of January 2021, a number of Facebook pages, including Thambapanni, which has close to 60,000 followers and is administered from Sri Lanka, Australia and the United Arab Emirates began circulating an image alleging that the current Minister of Justice in Sri Lanka President’s Counsel Ali Sabry is beginning a “Jihad police” in Sri Lanka. Within hours, several individual Facebook profiles began to reshare this image on Facebook groups with a large number of members. Later, the same day many ethnonationalist pages including Jana (41,000 followers and managed by administrators based in Italy and Sri Lanka) and Sinha Handa (62,000 followers and administered from Sri Lanka) also reshared the same image.

### **Freedom of expression**

#### Elections

The right to express one’s thoughts, ideas and information and the right to know the thoughts of others and receive information from them ensures healthy public debate and participation in

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<sup>18</sup>Srinivas Mazumdaru, “anti-Muslim Narratives’ Inflamm Sri Lanka Communal Tensions,” *Deutsche Welle* (DW), March 7, 2018 <https://www.dw.com/en/anti-Muslim-narratives-inflamm-sri-lanka-communal-tensions/a-42868563>

<sup>19</sup> “Social Media Analysis What Facebook Tells Us About Social Cohesion In Sri Lanka,” Briefing Paper 97 February 2019, *Democracy Reporting International*, <https://bit.ly/3v95V8N>

<sup>20</sup> BBC News. Covid-19: Sri Lanka chooses remote island for burials. 2nd March 2021. <https://www.bbc.com/news/world-asia-56249805>

the electoral process. However, where there is the mass dissemination of false information this affects the legitimacy of this process.

Dis/misinformation with the potential to cause racial tension, hate speech/derogatory speech from ethnonationalist sources and coordinated disinformation campaigns were prevalent online during the Presidential election in 2019 and the Parliamentary election in 2020 in Sri Lanka.

In the run up to the 2019 Presidential election, false news updates were amplified, using paid advertising on Facebook<sup>21</sup>. Some of these narratives also had the potential to cause racial tensions. In the run up to the Parliamentary election of 2020, the content and nature of the false news narratives disseminated were more diverse than at the Presidential election of 2019<sup>22</sup>. Such false news narratives focused on discrediting the National Elections Commission (NEC) and targeting opposing parties and candidates. Analysis of the "creators" of false news based on the data captured shows that an overwhelming majority of false news originated from supporters of the Sri Lanka Podujana Peramuna accounting for nearly 72% of the total incidents recorded.

### **Infringement of the freedom of thought**

The freedom of thought covers in practice the freedom not to be penalised for one's thoughts, beliefs and the expression of it. There are several instances where the freedom not to be penalised for one's thoughts and thus be able to freely express such thoughts has been infringed upon by the state. The interpretation and application of the ICCPR Act is one such instance.<sup>23</sup> The Human Rights Commission of Sri Lanka (HRCSL), in a letter to the Acting Inspector General

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<sup>21</sup> 'Findings from the Social Media Monitoring Exercise during the 2019 Sri Lankan Presidential Election', Hashtag Generation, 2019, at <https://hashtaggeneration.org/wp-content/uploads/2020/01/social-media-monitoring-report.pdf>

<sup>22</sup> 'Sri Lanka: Social Media and Electoral Integrity', Hashtag Generation, 2020, at [https://drive.google.com/file/d/1qQKubeK1HtAtom3J5v2BKoQ5hToH9ma\\_/view](https://drive.google.com/file/d/1qQKubeK1HtAtom3J5v2BKoQ5hToH9ma_/view)

<sup>23</sup> "Abuse of ICCPR has 'chilling effect' on fundamental rights", Sunday Observer, 16 June, 2019, at <http://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-%E2%80%98chilling-effect%E2%80%99-fundamental-freedoms> and "A case of selective enforcement", The Morning, July 15, 2019, at <https://www.themorning.lk/a-case-of-selective-enforcement/>



of Police (IGP),<sup>24</sup> has commented that the enforcement of the ICCPR has not been done in ‘a consistent and even-handed manner’.

The purpose of Section 3(1) of the ICCPR Act in a diverse ethno-religious society such as Sri Lanka is to prevent the incitement of hatred and violence against all ethnic and religious groups. However, the application of the ICCPR in the arrest of the author and poet Shakthika Sathkumara in April 2019,<sup>25</sup> the arrest of Abdul Raheem Masaheena in May 2019<sup>26</sup> and the arrest of Ramzy Razeek in April 2020<sup>27</sup> raises concerns over the interpretation of the advocacy of hatred that incites violence.

Author and poet Shakthika Sathkumara’s fictional short story ‘Ardha’, was on sexual abuse involving a member of the Buddhist clergy. Sathkumara was arrested following a complaint filed by a group of monks from the Buddhist Information Centre. Mr. Sathkumara was arrested under Section 3 of the ICCPR Act and section 291 of the Penal Code, and held in remand for 130 days<sup>28</sup>. Abdul Raheem Masaheena was arrested under section 3 of the ICCPR Act for wearing a dress with a logo that was said to resemble a sacred Buddhist symbol (*Dharmachakraya*). Ramzy Razeek, was arrested under the ICCPR Act and Computer Crimes Act for posting on his private Facebook account on the importance of an ‘ideological jihad’ in the context of hate spread against Muslims on social media. Razeek had complained to the police about death threats he received in relation to this post and this complaint led to his arrest. He was released on bail but the case is currently ongoing.

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<sup>24</sup>Human Rights Commission of Sri Lanka, “Letter to the Acting Inspector General of Police”, 23 May 2019, at <https://srilankabrief.org/wp-content/uploads/2019/09/HRCSL-letter-to-Acting-Inspector-General-of-Police.pdf>

<sup>25</sup> “Sri Lanka: Charges Against Author Shakthika Sathkumara Are Dropped”, Freedom Now, Feb 9, 2021, at <https://www.freedom-now.org/sri-lanka-charges-against-author-shakthika-sathkumara-are-dropped/>

<sup>26</sup> “Sri Lanka: Muslims Face Threats, Attacks Authorities Should Act Against Incitement by Buddhist Nationalists”, Human Rights Watch, July 3, 2019, at <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks#:~:text=Abdul%20Raheem%20Masaheena%2C%20a%2047,Buddhist%20sacred%20symbol%2C%20the%20dharmachakra.&text=Such%20police%20abuses%20have%20long,Lanka%20but%20have%20remained%20unaddressed>

<sup>27</sup> <sup>1</sup><sub>SEP</sub> “Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a Police arrest”, Daily FT, Saturday, 9 May 2020, at <http://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917>

<sup>28</sup> <https://economynext.com/amnesty-declares-writer-shakthika-a-prisoner-of-conscience-43906/> and <https://www.amnesty.org/en/documents/asa37/0998/2019/en/>

On the other hand, there have been no convictions for the propagation of hatred and violence in Aluthgama in 2014, following a speech inciting violence against Muslims, by Ven. Galagoda Aththe Gnanasara Thera of the Bodu Bala Sena<sup>29</sup>. This is similar to the situations of Anti-Muslim violence in Gintota in 2017 where there were reports of arrests made<sup>30</sup> but not convictions, attacks against Muslims in Ampara in 2018<sup>31</sup> and violence in Digana and Teldeniya in 2018<sup>32</sup> where there were no arrests of the perpetrators of the violence under the ICCPR Act.<sup>33</sup>

### **Girls, women and LGBTIQ+ persons**

The use of social media platforms to instigate sexual and gender-based violence, including intimate partner violence, can severely affect the freedom of thought (the freedom to share beliefs and express themselves) of girls, women and LGBTIQ+ persons.

Content that harassed women was recorded throughout the first quarter of 2021 with women being targeted in 149 posts this quarter<sup>34</sup>. Furthermore, over 500 interactions per post in January and February of 2021 with regard to this content was also recorded. This sexual and gender-based violence includes the non-consensual dissemination of intimate images as well as cyber sexual harassment. Some pages on social media platforms appear to have been exclusively created to share non-consensual private images. The followers of these pages/ groups were encouraged to share non-consensual images of their intimate partners with other members of these “communities” pointing to how intimate partner violence manifests on social media

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<sup>29</sup> Ministry of Foreign Affairs, *Right of Reply Sri Lanka 26<sup>th</sup> Session of the Human Rights Council Agenda Item 4*, at [https://www.mfa.gov.lk/images/stories/pdfs/ROR\\_on\\_Aluthgama\\_incident.pdf](https://www.mfa.gov.lk/images/stories/pdfs/ROR_on_Aluthgama_incident.pdf) (last accessed on 19 August 2020) and Gehan Gunatilleke, *The Chronic and the Entrenched: Ethno-religious Violence in Sri Lanka*, ICES, 2018, For an account of the incident see, *Where Have All the Neighbours Gone?* (Law & Society Trust 2014), *op. cit.*, p. 1-6.

<sup>30</sup> “Suspects charged under Int’l Covenant on Civil and Political Rights Act”, *The Island*, December 3, 2017, at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=176019](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=176019) [last accessed 28 March 2020].

<sup>31</sup> “Tension in Ampara After Fake ‘Sterilization Pills’ Controversy”, *Sunday Observer*, March 4, 2018, at <http://www.sundayobserver.lk/2018/03/04/news/tension-ampara-after-fake-%E2%80%98sterilization-pills%E2%80%99-controversy>

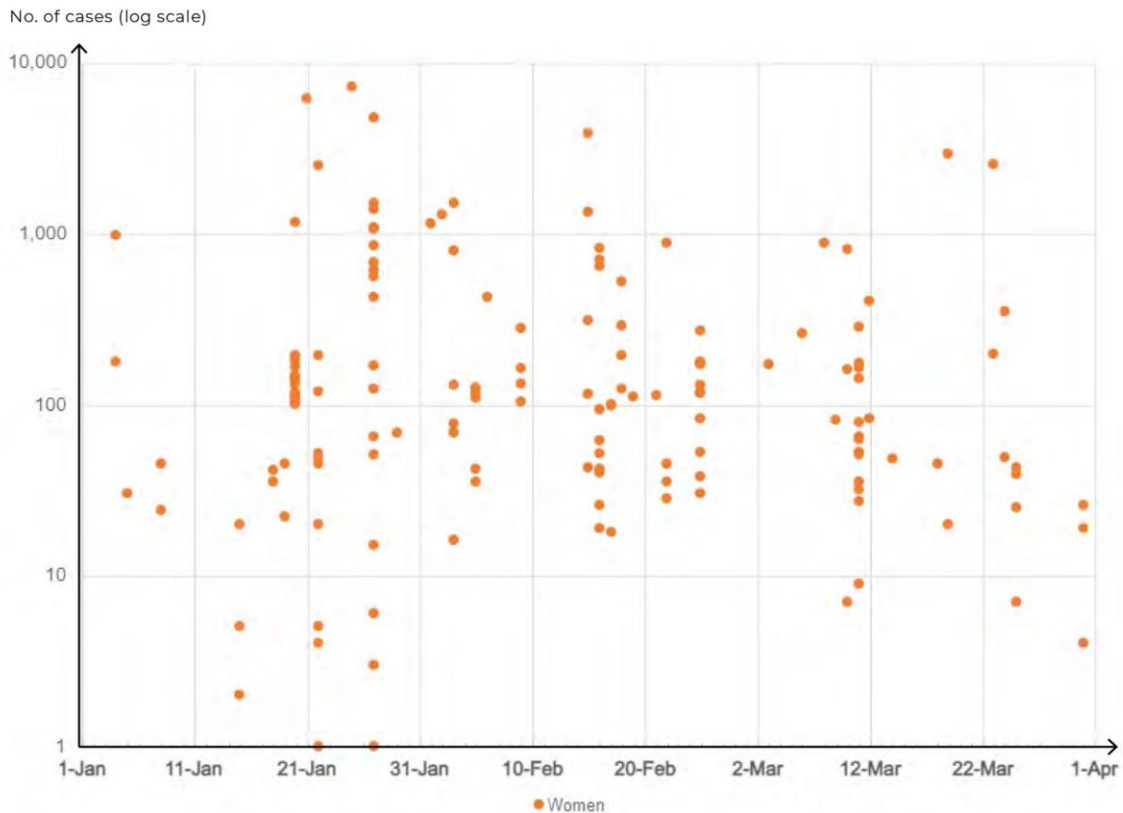
<sup>32</sup> “Digana Turns Divisive!”, *Daily FT*, March 6, 2018, at <http://www.ft.lk/top-story/Digana-turns-divisive-/26-650661>

<sup>33</sup> One of the main suspects involved in instigating the violence, Mahason Balakaya leader Amith Weerasinghe, and several others were arrested in relation to the violence but not under the ICCPR Act.

<sup>34</sup> While the number of posts targeting women recorded in Q1(2021) is higher than the cumulative total of similar content targeting women recorded throughout Q2 of 2020, Q3 (Jul-Sep 2020) and Q4(Oct-Dec 2020), this is largely due to the increase in the number of social media analysts specifically focusing on gender-based harassment in Q1 of 2021 (Jan-March 2021).

platforms<sup>35</sup>. 34 public groups and pages dedicated to sharing and disseminating non-consensual intimate images of women and girls were also recorded.

### Incidence of content targeting “Women” in Q1 of 2021



Higher levels of gendered and sexualised attacks are also observed against women in the public sphere, especially those holding or contesting for public office from across the political divide. Such harmful abuse is a hindrance to women’s full and active participation in the democratic processes of the country. For instance, in October 2020, 1 in 5 cases of dangerous speech recorded were those relating to online harassment against women. Furthermore, within the harassment category, 36.4% of all content recorded was directed at women. The majority of attacks targeted women occupying positions in the public sphere, particularly women Members of Parliament.

<sup>35</sup> In the latter part of the first quarter of 2021, there was widespread online harassment of a homicide victim, whose decapitated body was stuffed in a traveling bag and found in Colombo. Images of the victim, the decapitated body, comments about a purported sexual relationship between the murderer and the victim, as well as memes including travelling bags and other references to the murder were widely circulated.