

Keynote Paper
On
Decriminalising Homosexuality: Situation in Bangladesh

Shankor Paul
Communities and Minorities Expert
Human Rights Programme, UNDP-Bangladesh

I. Bangladesh Context:

Bangladesh has an estimated population of 163 million¹. Muslims constitute 89.1%, Hindu 10% and other religions (including Buddhist and Christian) make up the remaining 0.9% of the population. But there is no authentic data available on LGBTI or Hijra population in Bangladesh. It is estimated that around 10,000 Hijra (trans-gender) population in Bangladesh². Bangladesh's society is conservative and driven by religious beliefs, where the LGBT people face diverse discriminations at both family and social spheres. Discrimination starts at a young age – many LGBT persons are unable to finish their schooling as they report both physical and verbal abuse from their classmates and school teachers. LGBT people are often reluctant to open about their sexuality due to compliance with societal norms and fear of discrimination and/or violence. Even the LGBT persons, who experience societal ill treatment do not report their incidents to the police due to a fear of having to reveal their sexual orientation.

The equal treatment for LGBT community is a basic Human Right. The Universal Declaration of Human Rights (UDHR, 1948) strategically sets common standard of fundamental human rights for all peoples and all nations in the world. Article-1 of UDHR noted that ‘*all human beings are born free and equal in dignity and rights*’. Article-2 also refers that ‘*everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*’.

As member state, the Constitution of Bangladesh has adopted several provisions of UDHR, which are applicable to LGBT citizens:

- ✓ Part II Article 19: Guarantees equal opportunity for all citizens;
- ✓ Part III Article 27: Promises equality before the law for all citizens;
- ✓ Part III Article 28: Promises of non-discriminations on grounds only of religion, race, caste, sex or place of birth;
- ✓ Part III Article 39: Promises for freedom of speech and expression; and the press but subject to restrictions based on "decency or morality".

But the reality is different for LGBT community in Bangladesh. Bangladesh is still denying to accept UN General Assembly declaration for LGBT rights, 2011 and UPR recommendations (3rd cycle, May 2018) particularly on LGBT rights issues. On anti-discrimination issues, Bangladesh received 20 UPR recommendations of which only 8 were supported but a considerable portion of the noted UPR recommendations were on violence and sexual harassment against the LGBTI community, including repeal of section 377 of the penal code, eliminating barriers to their employment and protecting the dignity and recognition of hijra in all spheres (see Annex-1).

¹ <http://worldpopulationreview.com/countries/bangladesh-population/>

² The Survey Report of Department of Social Welfare, GoB, 2013

There are no laws in Bangladesh prohibiting discrimination on the basis of sexual orientation or gender identity. The existing laws in Bangladesh reveals that ‘‘same sex acts are still illegal’’ under the Section 377³ of 1860 Penal Code. Besides, there are certain other legal provisions, such as Section 86 of the Dhaka Metropolitan Police Ordinance⁴, Section 290 of the Penal Code⁵ and Article 54 of the Code of Penal Procedure⁶, have reportedly sometimes been used by police as a pretext to harass and intimidate LGBT persons in Bangladesh. The laws reveal some concerns, such as:

➤ Same sex sexual activity	✗
➤ Recognition of same sex union	✗
➤ Same sex marriage	✗
➤ Adoption by same sex couples	✗
➤ LGB people allowed to serve openly in military?	✗
➤ Anti-discrimination laws concerning sexual orientation	✗
➤ Legal recognition concerning gender identity/expression	✓

The Facts and findings:

- The Australia’s Department for Foreign Affairs and Trade (DFAT) in July 2016 on LGBT persons in Bangladesh, stating that ‘... LGBTI individuals – particularly gay men face a high risk of societal discrimination in Bangladesh because widespread traditional views about sexuality and gender continue to restrict their participation in the community and workforce. Visible gay men face a high risk of violence, including being killed⁷
- The Global Human Rights Defence (GHRD) 2015 report reveals that due to cultural and religious beliefs, Hijras are being subjected to violence, discrimination, inequality and social exclusion in Bangladesh.
- ILGA⁸ noted in its 2017 report that ‘in February 2015 Avijit Roy, the author of Bangladesh’s first scientific book (2010) on same-sex sexual identity, was savagely murdered on the streets of Dhaka, seemingly by religious fundamentalists. Another incidence was also reported on murder of 2 gay rights activists, Xulhaz Mannan and Mahbub Tonoy in Dhaka on 25 April 2016 by fundamentalist group. Xulhaz Mannan was a USAID official and editor of Bangladesh’s first LGBT magazine ‘‘Roopban’’.

II. Challenges on Decriminalising Homosexuality in Bangladesh:

- Treatment of ‘same sex acts are illegal’’ under the Section-377 of the penal code (by the police);
- Social exclusion and discriminations on the ground of sexual orientation/identity;

³ According to **Section 377** of the penal code, voluntary carnal intercourse against “the order of nature with any man, woman or animal” is punishable with imprisonment for life or with imprisonment which may extend to ten years and fines.

⁴ Section-86 of the Dhaka Metropolitan Police Ordinance: Penalty for being found under suspicious circumstances between sunset and sunrise.

⁵ Section 290 of the Penal Code: Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred taka.

⁶ Section-54 of CrPC, 1898 gives wide power to the police to make an arrest without warrant in certain circumstances.

⁷ Australian Government, Department of Foreign Affairs and Trade, ‘DFAT Country Information Report Bangladesh’, (paragraph 3.82), 5 July 2016, <http://dfat.gov.au/aboutus/publications/Documents/country-information-report-bangladesh.pdf>. Accessed: 6 September 2017

⁸ LIGA means International Lesbian, Gay, Bisexual, Trans and Intersex Association.

- Increasing threats/pressure of religious groups;
- Traditional social norms and religious believes;
- Lack of people's awareness on LGBTI rights;
- Persecution, exploitation and abuses based on sexual orientation and gender identity;
- HIV and AIDS Social Stigma;
- Discrimination with Respect to Employment and Occupation of LGBT community.
- Isolation and ill-treatment to LGBT people.
- Hostile environment for LGBT individuals.

III. Bangladesh Government Efforts:

- The Government of Bangladesh **officially recognised the hijra** population as a **‘third gender’** on passports and other official government document in 2013. On 16 January 2014 the government issued a Gazette notification to this effect.
- The Election Commission (EC) added ‘‘Hijra’’ as gender identity by amending the **Voter List Act, 2009** and the **Voter List Rules, 2012**.
Ref: A third gender person (Sadia Akhter Pinky) wins upazila election as Vice Chairman on 14th Oct. 2029 in Jhenaidah.
- On 19 May 2015, the Cabinet committee on Social Safety net has decided to **recruit Hijra population as Traffic Police Officials**.
- Since the 2012, the government has allocated about **\$1.15 million** to the hijra skills development program⁹.
- ‘The High Court Division of the Supreme Court of Bangladesh has issued detailed guidelines on the enforcement of section 54 of CCP. These guidelines were issued to limit the abuse of section 54...by law enforcement agencies.

IV. UNDP Efforts

Human Rights Programme (HRP), UNDP has taken initiatives to apply two-pronged approach on the rights of gender-diverse communities focusing on Hijra community.

1. Short term advocacy to reduce barriers faced by members belonging and claiming be part of this community
2. Long term advocacy to make the society more inclusive and tolerant towards gender diversity

Short term efforts include;

- Community-oriented awareness sessions
- Facilitated discussions with the State service providers (National legal aid organization, social welfare ministry) and members of this community to exchange information build mutually understanding and in the long term trust
- Para-legal training provided to community volunteers to help with any legal needs this community may have – particularly in surmounting barriers they face in accessing services ‘
- Sensitisation programmes on gender diversity for state service providers
- ‘Rupantorito Manusher Golpo’’
- – a coffee table book – will be used an advocacy material – widely disseminated to state and non – state service providers and the community at large

⁹ <https://www.pri.org/stories/2015-05-31/bangladesh-wants-third-gender-hijras-serve-traffic-police>

Long term efforts include

- A '**Hijra Shabdokosh**' has been prepared and disseminated in order to standardize the use of terminology, words and phrases used either to describe or interact with the gender diverse communities in Bangladesh.

In this efforts, HRP-UNDP partners with Bandhu Social Welfare Society along with two community-based organization: i) Setu Bandhan Kollayan Songho; and ii) Agragami Samajik Unnoyon Songho) and Faria Lara Foundation.

Besides, some CSOs and platforms working on LGBT rights issues/concerns in Bangladesh, such as:

CSOs and CBOs	<ul style="list-style-type: none">➤ Bandhu Social Welfare Society (BSWS), an NGO working on sexual minorities in Bangladesh.➤ About 40 CBOs lead by third-gender people working on gender diverse communities in Bangladesh
Platforms	<ul style="list-style-type: none">➤ ‘‘Boyes of Bangladesh (BoB)’’ a largest platform for self-identified gay men in Bangladesh;
Online Groups	<ul style="list-style-type: none">➤ ‘‘Sakhiyani’’, an online group for lesbians and bisexual women➤ ‘‘Shustha Jibon’’, an online platform for transgender people in Bangladesh➤ Roopbaan, an online lesbian network in Bangladesh

V. Way Forward for Decriminalizing of Homosexuality in Bangladesh:

- Adopt and enforce the **anti-discrimination law** (by the State) with special focus on discriminations on the grounds of ethnicity, religion, gender identity, sexual orientation and any other status of people in Bangladesh;
- **Effective protection** against discrimination, harassment and violence against sexual minorities in Bangladesh;
- Need **state acknowledgement** on the existence of sexual and gender minorities in the country, and special measures to abolish the section 377 of the Criminal Code for decriminalisation of consensual sexual acts of adults;
- Take necessary measures to **reduce all forms of threats and violence** against LGBTI rights defenders in the country;
- **Mass awareness campaign and rights advocacy** to eliminate all forms of social stigma, violence and discriminations against the LGBTI people;
- Special actions for **changing the mind** set of social, ethnic and religious leaders to uphold the rights and protection for the LGBTI people;
- **More sensitization** on SOGI (sexual orientation and gender identity) issues to reduce the conceptual gaps between general people and LGBTI people in the society.

Concluding Remarks:

Finally, it is necessary to change the mind set of people and policy makers for better promotion and protection of LGBTI rights in Bangladesh. In this case, recent resolution¹⁰ of the United Nations Human Rights Council for protection against violence and discrimination based on sexual orientation and gender identity may added value. UN SOGI Expert (Victor Madrigal-Borloz) urges End to Criminalization of Same Sex Relations by 2030. Regarding this, more interactions and engagement of diverse group of people is needed for reducing the conceptual gaps on SOGI issues.

¹⁰ The UN resolution was adopted in 2019 by a vote of 27 in favour, with 12 voting against and 7 abstentions.

Annex-1:

Noted UPR (3rd Cycle) Recommendations on LGBT rights issues:

- Adopt without delay, a new non-discrimination legislation with view of promoting gender equality and that it, without discrimination on the basis of ethnicity, religion or any other status, criminalize all forms of violence against women and girls, including marital rape irrespective of the age of the victim, domestic violence and all forms of sexual abuse and harassment, ensuring also security and justice to the victims (Finland);
- Take measures to fight violence against LGBTI persons (Brazil);
- Take effective steps to include LGBTI persons in human rights legislation recognizing the many dangers and challenges faced by the community, including the hijra (Canada);
- Establish effective protection against discrimination, harassment and violence against sexual minorities (Norway);
- Acknowledge the existence of sexual and gender minorities in the country, and furthermore abolish the section 377 of the Criminal Code and thus decriminalize consensual sexual acts between same-sex couples (Slovenia);
- Repeal section 377 of the criminal code and include sexual orientation and gender identity as a protected category in the new anti-discrimination law (Chile);
- Protect and promote the rights of LGBTI persons through a broad legal framework, that includes the revision of laws that may be discriminatory, such as section 377 of the Penal Code (Mexico);
- Take the necessary measures to repeal from its legislation the criminalization of consensual sexual acts between people of the same sex (Argentina);
- Decriminalise in the criminal code relations between same-sex adults (Honduras);
- Ensure that threats and violence against human rights defenders, and in particular women defenders and LGBTI defenders, because of their work or perceived or actual gender identity, are effectively prosecuted and do not go unpunished (Belgium);
- Take further steps to fight all forms of violence and discrimination, in particular against women, children and LGBTI persons (Italy);

The Committee on Economic, Social and Cultural Rights:

The Committee recommends that the State party expedite the adoption of comprehensive anti-discrimination legislation that prohibits direct, indirect and multiple forms of discrimination on an open list of grounds and that provides for effective remedies for victims of discrimination, including in judicial and administrative proceedings. It also recommends that [the State party decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness regarding, and combat discrimination based on, sexual orientation and gender identity.](#)