

The Invisible Minority: The situation of the LGBT community in Bangladesh



Protecting
human rights
for over
10 years



Table of Contents

Global Human Rights Defence (GHRD)	iv
Acknowledgements	iv
Executive Summary	1
Map	2
1. Gender, Sexuality, and LGBT Rights	3
2. Situation in Bangladesh	7
2.1 LGBT Community in Bangladesh	7
2.2 Government’s Stance on LGBT Community in Bangladesh	9
2.2.1 Criminalisation of Same-sex Relations – Section 377	12
2.2.2 Harassment by Law Enforcement – Code of Criminal Procedure	13
2.3 Summary	14
3. LGBT Research	15
3.1 Aims of the Research	15
3.2 Data Collection and Analysis	15
3.3 Outcomes of the Research	16
3.3.1 Experience of Gender and Sexual Minorities	16
3.3.1.1 Expressing one’s sexual orientation and gender identity to other people	16
3.3.1.2 Low self-esteem among LGBT people	18
3.3.1.3 Violence, harassment and bullying against LGBT community	19
3.3.1.4 Access to justice	20
3.3.2 Addressing Section 377	20
3.3.2.1 Raising awareness about section 377	20
3.3.2.3 International support to repeal section 377	22
3.3.3 Strengthening the LGBT Community	22
3.3.3.1 Establishing a well-structured LGBT network	22
3.3.3.2 Participating in activities for LGBT people	22
3.3.3.3 Inclusive sex education for younger people	23
3.4 Discussion	23
4. Concluding Remarks and Recommendations	25
To the Government of Bangladesh:	25
To the local organisations:	26
To the international community:	26
Annex	27

Acknowledgements

This report has been produced with the financial assistance of the Ministry of Foreign Affairs of the Netherlands. The contents of this report are the sole responsibility of Global Human Rights Defence and can under no circumstances be regarded as reflecting the position of the Ministry of Foreign Affairs of the Netherlands.

This report would not have been possible without the support of our local partners in Bangladesh.

Global Human Rights Defence

GHRD is international human rights organisations dedicated to promoting and protecting the rights of minorities. GHRD aims to specifically address those areas and populations in the world where severe and extensive human rights violations of certain indigenous people, sexual and religious minorities have taken place for long periods, and where structural help and global attention of the international media have proven to be absent or insufficient.

Our activities are focused on human rights monitoring, advocacy, education and empowerment.

GHRD operates in several South Asian countries, namely: Bangladesh, India, Nepal and Pakistan, as well as in Europe, including the Netherlands.

Boys of Bangladesh

Boys of Bangladesh (BOB) is the oldest network of self-identified Bangladeshi gay men and women. It is a non-registered and informal group run by dedicated volunteers who endeavour to provide a safe space for like-minded people.

It is essential for BOB to have a strong united LGBT community before actually striving for acceptance and equality. Thus mobilising the community and building capacity is an important priority for BOB.

© Global Human Rights Defence 2015

All rights reserved

Printed in the Netherlands

Material from this publication may be reproduced only for teaching or other non-commercial purposes. No part of it may be reproduced in any form for commercial purposes without the prior express permission of GHRD. For further information please contact GHRD.

Executive Summary

The situation of the LGBT community in Bangladesh is of paramount concern. Bangladesh still criminalises same-sex relations under section 377 of the Penal Code, a particular provision that the Government refuses to repeal. The Government's negative stance on LGBT rights, combined with Bangladeshi society's cultural and religious beliefs contribute to the strictly binary conceptualisation of sexual orientation and gender identity. The LGBT community is currently severely disenfranchised, facing discrimination, violence, and social exclusion. This research, jointly conducted by Global Human Rights Defence and Boys of Bangladesh, highlights the particular issues faced by the LGBT community in Bangladesh. The study was based on 50 interviews with individuals from the LGBT community (including community leaders). The purpose of the research was to conduct a needs analysis, aimed at examining the experience of the LGBT community in relation to the violations and social exclusion they face, the acceptance of diverse sexual orientation and gender identity within close social circles and access to networks and services for community development. The needs analysis has also enabled the LGBT community leaders to identify the needs of their movement and the larger LGBT community in Bangladesh to further develop a road map for their activities. The results of the study are highlighted in this report through personal stories of discrimination, violence and repression. The LGBT community in Bangladesh needs a strong LGBT network and movement. As the current report demonstrates, this movement should adopt a bottom-up approach to enable community development. The utilisation of raising awareness on sexual orientation and gender identities, creating LGBT networks to support the community and building alliances with the non-LGBT communities have been identified as the most effective methods of achieving this goal. The findings provide a basis for creating future strategies to improve the rights of LGBT people, both domestically within Bangladesh and in co-operation with the international community.

Key words: gay, bisexual, lesbian, transgender, human rights, section 377, stigma, sexual orientation, gender identity

Map





1. Gender, Sexuality, and LGBT Rights

Gender and sexuality are essential facets within the global human rights discourse, as individuals experience diverse genders and sexualities. In other words, “all citizenship is sexual citizenship, in that the foundational tenets of being citizen are all inflected by sexualities.”¹ One’s sexual orientation and gender identity can vary in expression due to different cultural and historical aspects. Gender identity particularly cannot be reduced to any fundamental biological dichotomy.² However, the relationship between human rights and sexual orientation is defined by the heteronormative³ perception of identities, cultural customs and religious beliefs. The fixed natural physical differences are used to articulate rights. The binary⁴ conceptualising of sex and gender excludes the recognition of individual differences and desires that make up the notion of pluralism in sex and gender rights. Thus, the current definitions for gender identity and sexual orientation do not aspire to pluralism in a way that illustrates that gender and sex are interchangeable, might be singular or multiple or defy fixed definitions.⁵

Sexual orientation reflects sexual desires, emotions, identification and practices. The sexual orientation of a person can be attributed to opposite, same or both sexes (lesbian, gay, bisexual and heterosexual

1 David Bell and Jon Binne, *The Sexual Citizen: Queer Politics and Beyond*, Polity Press Oxford 2000, p 10.

2 Tom Dreyfus, *Half-Invention of Gender Identity in International Human Rights Law: From Cedaw to the Yogyakarta Principles*, Australian Feminist Law Journal 2013, p 36.

3 Heteronormativity was defined by queer theorists Lauren Berlant and Michael Warner. Heteronormativity is the norms that comply with heterosexuality. A heteronormative society asserts heterosexuality and related gender roles, which perpetuates patriarchal stereotypes, as the norm. Heteronormativity can be conveyed in a society through institutions, laws, cultural values and media. Such a society set expectations and constraints that can marginalise people who do not conform to the heterosexual standards.

4 Binary conceptualising of sex and gender is based on two rigid gender roles in the form of masculinity and femininity and is grounded in a person’s physical anatomy and conforms to heterosexuality.

5 Matthew Waites, *Critique of ‘sexual orientation’ and ‘gender identity’ in human rights discourse: global queer politics beyond the Yogyakarta Principles*, Contemporary politics 2009.

orientation).⁶ Gender identity refers to a person's subjective and private experience and deeply held sense of their gender. Gender identity can involve different gender roles which are diverse indicators of masculinity and femininity, or go beyond the so-called "traditional" rigid and static categories (as in the case of transgender).⁷

Every person has a sexual orientation and a gender identity. Everyone's desired self-identification ought to be respected. One should not conclude another person's sexual orientation and gender identity based on their appearance. However, individuals who are identifying themselves with plural sex and gender characteristics, which are not part of top-down rigid categories established by the majority, are at risk of being discriminated against, targeted or abused.

The discussion on sexual orientation and gender identity under international human rights law is relatively new. Since 2002, the United Nations (UN) General Assembly has passed six resolutions that called on member states to protect the right to life of all persons and thoroughly investigate cases that are committed for discriminatory reasons, including a victim's sexual orientation.⁸ However, the resolutions did not include reference to gender identity. The first ever statement on sexual orientation and gender identity at the General Assembly was made in December 2008, and signed by 66 of the UN member states.⁹ The Statement on Human Rights, Sexual Orientation and Gender Identity condemned the human right violations faced by sexual and gender minorities and urged states to address these violations, while reaffirming the universal application of non-discriminatory principles to all people, regardless of sexual orientation and gender identity.¹⁰

In June 2011, the Human Rights Council became the first UN body to adopt a resolution on sexual orientation and gender identity.¹¹ The 2011 resolution expressed grave concerns over the occurrence of attacks and discrimination based on sexual orientation and gender identity and affirmed the universality of human rights.¹² It requested the UN High Commissioner for Human Rights to commission a study on documenting discriminatory laws and practices and violence against individuals based on their sexual orientation and gender identity from around the world, and how international human rights law could

6 American Psychological Association, *Sexual orientation, homosexuality and bisexuality*, 2013.

7 Dreyfus, *Half-Invention of Gender Identity*, 2013.

8 General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 20 December 2012), 15 March 2013, UN Doc A/RES/67/168; General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 21 December 2010), 30 March 2011, UN Doc A/RES/65/208; General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 18 December 2008), 16 March 2009, UN Doc A/RES/63/182; General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 19 December 2006), 1 March 2007, UN Doc A/RES/61/173; General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 20 December 2004), 10 March 2005, UN Doc A/RES/59/197; General Assembly Resolution, Extrajudicial, summary or arbitrary executions (adopted 18 December 2002), 25 February 2003, UN Doc A/RES/57/214.

9 Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly (annexing Statement), 22 December 2008, UN Doc A/63/635.

10 Ibid.

11 Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 17 June 2011), 14 July 2011, UN Doc A/HRC/RES/17/19.

12 Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 17 June 2011), 14 July 2011, UN Doc A/HRC/RES/17/19, preamble.

be used to end violence and related human rights violations based on sexual orientation and gender identity.¹³ The Human Rights Council also decided to convene a panel to discuss the matters found after the publication of the report.¹⁴ In November 2011, the High Commissioner submitted her report, which found that, in all regions of the world, people experienced violence and discrimination because of their sexual orientation or gender identity.¹⁵ The report traversed a number of matters, including international standards and obligations, violence (including killings, rape, and torture), discriminatory laws (including laws criminalising same-sex relations and the death penalty) and discriminatory practices (including in employment, health care, and in the family and community).¹⁶ The High Commissioner made a number of recommendations to member states, including to investigate all reported killings and violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, repeal laws that criminalise consensual same-sex activity, enact comprehensive anti-discrimination legislation, implement sensitisation and training for law enforcement personnel and facilitate legal recognition of the preferred gender for transgender individuals.¹⁷ In March 2012, the panel discussion on violence and discrimination against individuals based on their sexual orientation and gender identity was held at the Human Rights Council.¹⁸ The panel discussion was marked as being the first formal intergovernmental debate on violence and discrimination against individuals based on their sexual orientation and gender identity.

In September 2014, the Human Rights Council adopted its second resolution in relation to sexual orientation and gender identity. The 2014 resolution requested an update of the 2011 report with a view to sharing good practices and ways to overcome violence and discrimination.¹⁹ In May 2015, the updated report was submitted to the Human Rights Council.²⁰ The recommendations included enacting hate crime laws that establish homophobia and transphobia as aggravating factors in sentencing (in criminal cases), prohibiting medically unnecessary procedures on intersex children, integrating analysis of violations based on sexual orientation and gender identity in national plans of action and ensuring housing policies do not discriminate against tenants based on sexual orientation and gender identity.²¹ The report also noted that:

13 Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 17 June 2011), 14 July 2011, UN Doc A/HRC/RES/17/19, para 1.

14 Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 17 June 2011), 14 July 2011, UN Doc A/HRC/RES/17/19, paras 2-3.

15 Human Rights Council, Report of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, UN Doc A/HRC/19/41, para 1.

16 Human Rights Council, Report of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, UN Doc A/HRC/19/41.

17 Human Rights Council, Report of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, UN Doc A/HRC/19/41, para 84.

18 Human Rights Council, Panel discussion on ending violence and discrimination against individuals based on their sexual orientation and gender identity, 7 March 2012, <http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/SummaryHRC19Panel.pdf>.

19 Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 26 September 2014), 2 October 2014, UN Doc A/HRC/RES/27/32, para 2.

20 Human Rights Council, Report of the High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, 4 May 2015, UN Doc A/HRC/29/23.

21 Human Rights Council, Report of the High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, 4 May 2015, UN Doc A/HRC/29/23, para 78-79.

While some progress has been made since the first study in 2011, the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate. There is as yet no dedicated human rights mechanism at the international level that has a systematic and comprehensive approach to the human rights situation of LGBT and intersex persons.²²

The UN International Conference on Population and Development (ICPD) in 1994 marked a new chapter in the international dialogue on population and development, by placing the central focus of development on human beings. The new perspective of a rights-based development framework focused on the interrelationship between population, human rights, sustained economic growth, and sustainable development.²³ The Programme of Action, agreed upon by consensus, emphasised the importance of increasing access to health and education, and the importance of protecting human rights, especially those of women and adolescents, including their sexual and reproductive health and rights. The Programme of Action was adopted by the 179 UN member states that attended the ICPD, including Bangladesh.²⁴

Twenty years later, the ICPD Beyond 2014 Review reviewed the progress of the commitments made in 1994. It also identified gaps in fulfilling the human rights principles of equality and non-discrimination affirmed by the ICPD. Principal among the groups identified as suffering from inequality and discrimination were persons of diverse sexual orientation or gender identity.²⁵ The Secretary-General's report contained recommendations to rectify the inequality and discrimination, including:

States and the international community should express grave concern at acts of, discrimination and hate crimes committed against individuals on the grounds of their sexual orientation and gender identity. National leaders should advocate for the rights of all persons, without distinction of any kind.²⁶

[...]

States should adapt necessary legal frameworks and formulate policies, with the full participation of those who are discriminated against, including women, adolescents, older persons, persons with disabilities, indigenous persons, ethnic and racial minorities, migrants, persons living with HIV, persons of diverse sexual orientations and gender identities and sex workers, and with the participation of civil society throughout the process of design, implementation evaluation of those policies.²⁷

22 Human Rights Council, Report of the High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, 4 May 2015, UN Doc A/HRC/29/23, para 76.

23 UN Secretary-General, *Recurrent themes and key elements identified during the sessions of the Commission on Population and Development*, 15 July 2014, UN Doc A/69/122, para 3.

24 Ibid.

25 UN Secretary-General, *Framework of Actions for the follow-up to the Programme of Action of the ICPD Beyond 2014*, 12 February 2014, UN Doc A/69/62, paras 44, 259-260, 780, and 785.

26 UN Secretary-General, *Framework of Actions for the follow-up to the Programme of Action of the ICPD Beyond 2014*, 12 February 2014, UN Doc A/69/62, para 260.

27 UN Secretary-General, *Framework of Actions for the follow-up to the Programme of Action of the ICPD Beyond 2014*, 12



2. Situation in Bangladesh

2.1 LGBT Community in Bangladesh

Bangladesh's gender and sexual minorities (LGBT) often feel insecure about their gender identity and sexual orientation for a number of reasons, including the persistent stigmatisation due to religion and cultural norms, a societal and institutional denial about the existence and validity of such diversity and the criminalisation of same-sex relations. The existing traditional conservatism in Bangladesh does not allow expression of sexual and gender plurality in the country. The socio-cultural and religious taboos in Bangladesh make LGBT groups vulnerable to discrimination and violence. The application of fundamentalist values and social and cultural practices have created an environment whereby the LGBT community is suppressed and prevented from living freely. There is also a lack of confidence among the LGBT community members stemming from societal pressure, as they are forced to live with a non-existent sexual orientation and gender identity.

Hijras²⁸ and Kothis are two communities specific to Bangladesh. The Hijra community consists of members who were assigned male at birth, but do not identify with being male. Some Hijras identify with being female, while other Hijras do not identify with any gender and instead prefer to only identify as being Hijra. Hijras have enjoyed a rich tradition in South Asian culture for thousands of years. Due to cultural and religious beliefs, Hijras are recognised as semi-sacred individuals who can bestow fertility, prosperity and health upon a newborn and its family. Unfortunately, this status has an insidious aspect: it dehumanises Hijras by removing all other aspects of their identity, leading to Hijras being subjected to violence, discrimination and inequality. Hijras are treated as outcasts and are often targets of human rights

February 2014, UN Doc A/69/62, para 286.

28 Hijras can be identified as one of the transgender communities in Bangladesh.

violations. Many do not have access to a proper source of income and cannot hold mainstream jobs due to social stigma and the lack of access to education. As a consequence of the marginalisation faced, Hijras are largely a closed community.

Kothi is a Bangladeshi term used for effeminate men. The Kothi community consists of effeminate men who have sex with other men. The sexual relationship of person who identifies himself as a Kothi occurs in a heterosexual context, where the parties can adopt the dynamics of a heterosexual relationship. As such, gay men do not consider themselves as Kothis.²⁹

Visibility³⁰ in relation to the LGBT community refers to an individual's recognised presence in public areas due to external manifestation of gender. In most cases, the visibility of a person in society depends on gender expression³¹ not gender identity or sexual orientation. In Bangladesh, this visibility differs from one's ability to publically express their sexual orientation and gender identity, which takes courage for LGBT individuals since they feel enormous pressure from their families and society to stay hidden. LGBT individuals do not publicly express their sexual orientation, even to their close circles such as family and friends, and thus continue to be an invisible minority. However, for some, visibility occurs almost by default due to non-conforming gender expressions including outward behaviours and presentations which are visible to everyone. The transgender community, particularly Hijras and Kothis, have a higher visibility than rest of the LGBT people in the society since they have a non-conforming gender expression that is visible to people around them. Visibility, particularly in countries like Bangladesh, can be life-threatening and isolating due to social stigma, religious beliefs and family values that create a hostile environment for LGBT individuals.³²

Men having sex with men (MSM) is a term used by the Bangladesh Government and civil society organisations to refer to men who engage in sexual activity with other men. The MSM term is primarily used in the fields of development and sexual health where the focus is only on the sexual acts. Given the Government's extensive HIV/AIDS programme for MSM and Hijras, organisations have tended to address issues surrounding sexual orientation and gender identity through sexual health programs, in order to stay within the mainstream practices. However, this leads to the exclusion of certain groups within gender and sexual minority communities. The term MSM is also viewed as insufficient in describing gay men as it reduces same-sex relations to a one dimensional aspect: a sexual act without any emotions. For this reason, men who identify themselves as gay do not want to be associated with the term MSM.³³ There are also socio-economic differences between MSM and gay men. Gay men tend to be from the middle and upper

29 Bandhu Social Welfare Society, "LGBT/Sexual Minorities in Bangladesh", <http://www.bandhu-bd.org/lgbt.html>.

30 Visibility in this context cannot be compared to the act of "coming out". Coming out can be a lifelong process during which a person goes through a difficult stage before accepting and appreciating their sexual orientation or gender identity. Publically expressing one's sexual orientation and gender identity does not have to part of the process of coming out. Visibility in the Bangladeshi context does not refer to one's freedom to express their sexuality or gender identity.

31 Gender expression indicates how individuals externally communicate their gender identity to others. The ways of communication can include behaviour, the voice of the person and appearance, including hair style and clothing.

32 Bandhu Social Welfare Society, "Same-sex Love in A Difficult Climate", June 2011, <http://www.bandhu-bd.org/report/Chapter-%201%20&%202.pdf>.

33 Shuchi Karim, *Negotiating Heteronormativity in Bangladesh*, Institute of Social Studies, December 2012, p 8.

classes and consider themselves as being part of a wider gay community that extends beyond national borders. Whereas, the MSM community tend to come from a lower socio-economic background.³⁴

Bangladeshi organisations working in the field of LGBT rights activism are trying to raise awareness regarding LGBT issues in the country. Social media and online forums are indispensable means to disseminate information to the public and advocate rights of sexual minorities. LGBT community leaders also organise panel discussions and workshops to discuss the relationship between culture, norms, conservatism, gender roles and sexuality. However, being part of the LGBT community or advocating for LGBT rights is a risky endeavour in a country like Bangladesh.³⁵ Despite the Bangladesh Constitution guaranteeing fundamental rights³⁶ to all Bangladeshi citizens, including equality before the law³⁷ and protection of the law,³⁸ the reality is that the LGBT community are not afforded the ability to enjoy those rights.

2.2 Government's Stance on LGBT Community in Bangladesh

Homosexuality is considered an issue that does not fit into the social, religious and cultural fabric of Bangladesh society. This stance has created a hostile and restrictive environment for the LGBT community to exercise their rights to sexual freedom and gender identity. The Government of Bangladesh does not engage in constructive public political debates in relation to the LGBT community. A common trend is to see LGBT rights issues appearing on the Government's agenda only when Bangladesh is engaging with the UN (for instance the Universal Periodic Review (UPR)). Outside of UN attention on Bangladesh, the Government does not proactively discuss issues relating to the LGBT community, including LGBT rights.

At the UN level, Bangladesh has made its negative stance on recognising LGBT rights clear since 2008: Bangladesh was one of the countries that did not support the Statement on Human Rights, Sexual Orientation and Gender Identity,³⁹ and instead signed the counter-statement.⁴⁰ In June 2011, Bangladesh voted against the first UN resolution on sexual orientation and gender identity.⁴¹

During Bangladesh's first cycle of UPR in 2009, Bangladesh was recommended to: provide human rights

³⁴ Ibid.

³⁵ For instance, Islamic groups affiliated with the Government called for nationwide protests against Muhammad Yunus, Nobel Laureate Professor, over his comments in 2012 for supporting LGBT rights.

³⁶ Constitution of the People's Republic of Bangladesh, 4 November 1972, part III Fundamental Rights (articles 26-47).

³⁷ Constitution of the People's Republic of Bangladesh, 4 November 1972, art 27.

³⁸ Constitution of the People's Republic of Bangladesh, 4 November 1972, art 31.

³⁹ Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly (annexing Statement), 22 December 2008, UN Doc A/63/635. Discussed in Chapter 1.

⁴⁰ Response to SOGI Human Rights Statement, read by Syria on 18 December 2008, accessed from IGLHRC website <http://iglhrc.org/content/united-nations-general-assembly-statement-affirming-human-rights-protections-include-sexual>.

⁴¹ Human Rights Council Resolution, *Human rights, sexual orientation and gender identity* (adopted 17 June 2011), 14 July 2011, UN Doc A/HRC/RES/17/19, p 2. Bangladesh was not a member of the Human Rights Council when the 2014 Resolution was adopted. Bangladesh is currently a member for the term 2015-2017.

training to law enforcement and judicial officers with a specific focus on the protection of the rights of women, children, and persons of minority sexual orientation or gender identity and adopt further measures to ensure the protections of those persons against violence and abuse; abolish section 377 of the Penal Code; decriminalise same-sex activity between consenting adults; and adopt further measures to promote tolerance of the issue.⁴² Bangladesh accepted the recommendation in relation to human rights training of judicial officers, and said judicial officers were being trained on the issues of rights of women, children, and minorities.⁴³ However, it provided the following rejection:

[...] the specific recommendation on sexual orientation cannot be accepted. Bangladesh is a society with strong traditional and cultural values. Same-sex activity is not an acceptable norm to any community in the country. Indeed, sexual orientation is not an issue in Bangladesh. There has been no concern expressed by any quarter in the country on this. Therefore, the recommendation is out of context.⁴⁴

During Bangladesh's second cycle of UPR in 2013, the Government's view of LGBT issues was further emphasised. On the matter of repealing section 377 of the Penal Code, Bangladesh provided the following comment:

“[...] the Minister underscored that laws in the country should be in harmony with social and religious mores, and that the Government did not condone discrimination against any individual on any pretext.”⁴⁵

The National Human Rights Commission's⁴⁶ (NHRC) 2013 UPR submission noted that the Government had not accepted the 2009 recommendations with respect to sexual minorities and stated that it was now time to ensure that all groups, including those who are transgender, intersex or a sexual minority, are protected from discrimination.⁴⁷

Bangladesh was again recommended to repeal section 377⁴⁸ and again the recommendation was rejected:

42 Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 5 October 2009, UN Doc A/HRC/11/18, paras 41 (recommendation of Chile) and 64 (recommendation of Czech Republic), and Recommendation 27.

43 Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 9 June 2009, UN Doc A/HRC/11/18/Add.1, p 5.

44 Ibid.

45 Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 8 July 2013, UN Doc A/HRC/24/12, para 70 (the Minister referred to was Her Excellency Ms Dipu Moni, Minister of Foreign Affairs) .

46 The NHRC was established by the National Human Rights Commission Act 2009 as an independent body to take on various functions to protect and promote human rights in Bangladesh. One of the functions is to inquire into individual complaints from people whose human rights are affected. Individuals can use NHRC's online complaint system to send their cases. See more at <http://www.nhrc.org.bd/hr.html>.

47 National Human Rights Commission Bangladesh, *Stakeholder Report Universal Periodic Review – 2nd Cycle*, para 2.7.5.

48 Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 8 July 2013, UN Doc A/HRC/24/12, para 131.2 (recommendation of Chile).

Bangladesh considers that the laws of the land should be in conformity with the prevalent socio-cultural norms and values of the country. Activities subject to the concerned Article in the Penal Code are not a generally accepted norm in the country.⁴⁹

The national reports submitted as part of the two UPR cycles addressed issues relating to religious and ethnic minorities⁵⁰ but not sexual orientation and gender identity minorities. In fact, neither report even mention the words sexual orientation, gender identity, nor section 377. The exclusion of sexual orientation and gender identity issues in the national reports is despite the Government stating that it had consulted with stakeholder Bangladeshi organisations. Included in the list of stakeholder organisations the Government consulted were a number of organisations who worked, and continue to work, on sexual orientation and gender identity issues.⁵¹

Bangladesh's position on LGBT rights is further illustrated through the Sixth Asian and Pacific Population Conference held in September 2013. The conference adopted a Ministerial Declaration which served as the Asia-Pacific input to the Special Session of the UN General Assembly on the ICPD Beyond 2014.⁵² Bangladesh voted in favour of the draft declaration, but expressed their reservations on two paragraphs:⁵³

However, we note that the declaration before us falls short of our expectations. It contains references to concepts such as “sexual orientation and gender identity” and “sexual rights”, which Bangladesh does not subscribe to nationally; neither is there a consensus on these regionally or globally. Hence, they are not acceptable to us. Bangladesh does not wish to stand in the way of the adoption of the declaration, but would like to express its reservations specifically on paragraphs 8 and 84 of the declaration and to all such relevant parts of the declaration which contain references to the concepts mentioned in the preceding paragraphs.⁵⁴

In November 2013, the Government made a statement saying that it had decided to formally accept Hijras

49 Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 8 July 2013, UN Doc A/HRC/24/12/Add.1, p 6; Concluding remarks of Her Excellency Ms Dipu Moni, Minister of Foreign Affairs, 2 May 2013, <http://webtv.un.org/meetings-events/human-rights-council/universal-periodic-review/16th-upr/watch/bangladesh-upr-adoption-16th-session-of-universal-periodic-review/2346320423001#full-text>.

50 Human Rights Council, *Bangladesh national report*, 19 November 2008, UN Doc A/HRW/WG.6/4/BGD/1, paras 29-31; Human Rights Council, *Bangladesh national report*, 7 February 2013, UN Doc A/HRW.6/16/BGD/1, paras 103-106 and 107-108.

51 Human Rights Council, *Bangladesh national report*, 19 November 2008, UN Doc A/HRW/WG.6/4/BGD/1, Annex; Human Rights Council, *Bangladesh national report*, 7 February 2013, UN Doc A/HRW.6/16/BGD/1, Annex B.

52 UN Population Fund, “Sixth Asian and Pacific Population Conference”, http://asiapacific.unfpa.org/public/asia_events/pid/14840. The special session of the General Assembly was held on 22 September 2014 and was convened to discuss the follow-up to the Programme of Action of the ICPD beyond 2014.

53 Asian and Pacific Ministerial Declaration on Population and Development, para 8 – Expressing grave concern at acts of violence and discrimination committed against individuals on the grounds of their sexual orientation and gender identity; para 84 – Work to reduce vulnerability and eliminate discrimination based on sex, gender, age, race, caste, class, migrant status, disability, HIV status and sexual orientation and gender identity, or other status, contained in Economic and Social Commission for Asia and the Pacific, *Report of the Sixth Asian and Pacific Population Conference*, 18 November 2013, UN Doc E/ESCAP/APPC(6)/3, pp 2-27.

54 Economic and Social Commission for Asia and the Pacific, *Report of the Sixth Asian and Pacific Population Conference*, 18 November 2013, UN Doc E/ESCAP/APPC(6)/3, p 48.

as a “third gender” in Bangladesh.⁵⁵ However, to date, legislation that would implement this statement has not been introduced.

2.2.1 CRIMINALISATION OF SAME-SEX RELATIONS – SECTION 377

The current Penal Code of Bangladesh has its origins in the codification of criminal law in British India. The foundations of criminal law in British India were laid by the Indian Penal Code (Act XLV of 1860) and Criminal Procedure Code (Act V of 1898). After the partition of India and Pakistan in 1947, the Pakistan Government adopted the Indian Penal Code and only changed the title to Pakistan Penal Code. After Bangladesh declared independence from Pakistan in 1971, the Pakistan Penal Code was adopted by Bangladesh and became part of Bangladeshi law.

Section 377 of the Penal Code states:

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 may extend to 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.*⁵⁶

Section 377 is an outdated provision that was imported from British Colonial rule. The ambiguity of the wording is such that it could include various sexual acts, including heterosexual sexual acts. To date, there has been no judicial interpretation of the provision. However, the Government’s stance on the matter is clear: section 377 cannot be repealed since same-sex activity is not an acceptable norm and this section is in harmony with social and cultural values of the country.⁵⁷

The mere existence of section 377 is a breach of LGBT rights. Section 377 has been used as a tool to harass, threaten and extort LGBT people who are visible in public spaces, such as Hijras and Kothis. It has also impeded the LGBT community’s access to justice and ability to seek protection from law enforcement, due to the threats of prosecution under section 377.

While section 377 is notorious within human rights circles, many people, including a number of government officials, are not even aware of the existence of such a legal provision. This lack of awareness is a further barrier to effecting change for the LGBT community. The Government of Bangladesh continues to reject

55 Bandhu Social Welfare Society, “Third gender is not a word, it is a gender”, 7 June 2015, <http://www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender/>; Bdnews24.com, “Third gender gets state recognition”, 11 November 2013, <http://bdnews24.com/bangladesh/2013/11/11/third-gender-gets-state-recognition>; Daily Star, “Cabinet approves Hijra identity”, 11 November 2013, <http://archive.thedailystar.net/beta2/news/cabinet-approves-hijra-identity/>.

56 Penal Code 1860 (Act XLV of 1860), s 377. The Penal Code (Amendment) Ordinance 1985 (Ordinance XLI of 1985) modified section 377 by substituting the word “transportation” with “imprisonment”.

57 See Chapter 2.2.

calls from civil society members and other UN member states to repeal section 377. This recurrent negative response particularly resurfaces during the review of human rights records of Bangladesh at the UPR.

2.2.2 HARASSMENT BY LAW ENFORCEMENT – CODE OF CRIMINAL PROCEDURE

Section 377 of the Penal Code is used in conjunction with sections 54 and 55 of the Code of Criminal Procedure (CCP), which allow law enforcement agencies to arrest without a warrant, to harass the LGBT community.⁵⁸ Sections 54 and 55 of CCP are enforced as a so-called “preventative measure”: any police officer in charge can arrest individuals whom he/she has a probable cause or reasonable suspicion that the individual will commit a “cognisable offence”.⁵⁹

The High Court Division of the Supreme Court of Bangladesh has issued detailed guidelines on the enforcement of section 54 of CCP.⁶⁰ These guidelines were issued to limit the abuse of section 54 and provide regulation on arrest without cause, imprisonment and handling of suspects by law enforcement agencies.⁶¹ While the usage of section 54 for arbitrary arrests might have decreased, similar legal provisions still exist under various Metropolitan Police Ordinances⁶². For example, section 86 of the Dhaka Metropolitan Police Ordinance, relating to the penalty for being found under suspicious circumstances between sunset and sunrise,⁶³ is also used to harass and intimidate LGBT people using public spaces.⁶⁴ LGBT individuals who have access to public cruising areas are physically assaulted and forcefully removed from public spaces by law enforcement agencies.⁶⁵

Another piece of legislation used to make arbitrary arrests is the Vagrants and Shelterless Persons (Rehabilitation) Act 2011. The law enforcement agencies were given the authority to arrest “vagrants” and hold them for up to two years in rehabilitation centres where the detainees are required to join a rehabilitation program. However, the legislation is instead used to carry out arbitrary arrests targeted at sex workers and MSM.⁶⁶

58 Code of Criminal Procedure 1898 (Act V of 1898), ss 54-55.

59 Shahidul Islam and Golam Moula, *The Right of Getting Bail of an Arrested Person in Bangladesh—A Legal Study of Theories and Practice*, Dhaka 2014.

60 Bangladesh Legal Aid and Services Trust, “Ensuring Effective Policing: Bangladesh High Court’s Guidelines on Arrest without Warrant, <http://www.blast.org.bd/news/news-reports/91-nipsa>.”

61 Bangladesh Legal Aid and Services Trust, “Ensuring Effective Policing: Bangladesh High Court’s Guidelines on Arrest without Warrant, <http://www.blast.org.bd/news/news-reports/91-nipsa>.”

62 National Consultation on Punitive Laws Hindering the AIDS Response in Bangladesh, May 2013, p 17, <http://www.unescap.org/sites/default/files/SDD-EGM-HIV-Law-Bangladesh-National-Consultation-on-Punitive-Laws-Hindering-the-AIDS-Response.PDF>.

63 Dhaka Metropolitan Police Ordinance 1976 (Ordinance III of 1976), s 86.

64 Ain o Salish Kendra, *Human Rights in Bangladesh 2008*, p 243.

65 Ibid.

66 Vagrant and Shelterless Persons (Rehabilitation) Act 2011, National Consultation on Punitive Laws Hindering the AIDS Response in Bangladesh, May 2013, p 17, <http://www.unescap.org/sites/default/files/SDD-EGM-HIV-Law-Bangladesh-National-Consultation-on-Punitive-Laws-Hindering-the-AIDS-Response.PDF>.

2.3 Summary

The issues faced by the LGBT community in Bangladesh are systemic and sanctioned. The social and cultural resistance against the acceptance of diverse sexual orientations and gender identities leads to an atmosphere of fear, exclusion and stigma for the LGBT community. The disenfranchisement of the LGBT community in Bangladesh is built upon social exclusion and the rejection of LGBT people, the legal barrier contained in section 377 (criminalising same-sex relations) and the persistent refusal to repeal the provision. The mere existence of the provision is a threat to the LGBT community. It is also a blatant sign to the LGBT community that they are not considered as equal citizens of Bangladesh. The stigma and discrimination faced by the LGBT community results in isolation and a lack of support from family and social structures as well as institutionalised discrimination in access to justice and public spaces.



3. LGBT Research

3.1 Aims of the Research

Global Human Rights Defence (GHRD) and Boys of Bangladesh (BOB)⁶⁷ conducted a field research on the LGBT situation in Bangladesh. The purpose of the field research was to: (1) conduct a needs analysis which examined the experience of the LGBT community, in particular the violations they faced and their needs in relation to social exclusion, family relations and access to support services such as community development; and (2) enable those working in the field of LGBT rights in Bangladesh to recognise and acknowledge the needs of the LGBT movement and community and utilise the research results to develop a road map for future activities.

3.2 Data Collection and Analysis

The research was based on a qualitative and descriptive exploratory study. The participants for the research were selected on the advice of BOB, given their extensive networks in the LGBT community in Bangladesh. The sample consisted of individuals from LGBT organisations as well as independent LGBT activists. The participants came from different socio-economic backgrounds. The interviews were conducted between November 2013 and May 2014.

Interviews were semi-structured and conducted face to face to collect data. The data sought in the interviews related to background information of the organisations, their activities, most pressing issues faced by LGBT community and future recommendations. An interview guide with a set of questions was used for each

⁶⁷ Boys of Bangladesh (BOB) is a non-registered, non-funded and non-formal platform for the self-identified Bangladeshi gay men based in Dhaka, <http://www.boysofbangladesh.org/>.

interview. Open-ended questions were chosen for this research as they better responded to the research aims. The interviews were recorded via speaker phone and transcribed verbatim. The interviews were conducted in Bangla (Bengali) and translated into English after transcription.

The first phase of the research consisted of 15 interviews with leaders in the LGBT community. Questions included: Can you tell me about your organisations? Can you provide your input on how to strengthen the LGBT community in Bangladesh? What do you think about section 377? Should it be abolished? How has your organisation been involved in section 377 in Bangladesh?

The second phase of the research consisted of 35 interviews with LGBT community people. Questions included: What kind of difficulties do you face in your personal life? Have you ever faced harassment, discrimination or any other violations because of your sexual orientation or gender or gender identity? What is the most urgent issue that needs to be addressed in the LGBT community? What do you know about section 377 and have you ever faced any problems regarding this section?

Data collection and analysis were done in a qualitative descriptive framework. Transcripts were analysed by standard procedures of qualitative analysis, including coding, finding themes, clustering and identifying patterns and meaning. The coded meanings, determined by the words and phrases the participants used, were grouped together in order to identify trends and reflect the relationship between clustered interest of the participants.⁶⁸ The following themes arose by clustering the various trending data: (1) the experience of gender and sexual minorities; (2) strengthening the LGBT community; and (3) addressing section 377.

3.3 Outcomes of the Research

3.3.1 EXPERIENCE OF GENDER AND SEXUAL MINORITIES

3.3.1.1 Expressing one's sexual orientation and gender identity to other people

Among the 35 LGBT individuals who were interviewed in the second phase, 66% were not able to freely express their sexual orientation to anybody⁶⁹ and 27% of this group felt like their families knew about their sexual orientation but they did not openly talk about it (it was described as a don't ask don't tell situation). Also, this group did not include any transgender individuals. Only 11% were able to express their sexual orientation and gender identity within their close social circles (their families and friends were aware of their sexual orientation and gender identity). The Hijra participants not only had visibility within their close social circles but also within the society. This larger visibility also caused a backlash against the family members of Hijras. A participant said her family members were verbally abused because she was a self-identified Hijra:

⁶⁸ Denzin K Norman, *An Introduction to Qualitative Research*, University of Illinois, Sage Publications 2009.

⁶⁹ The group that did not have visibility in their close social circles did not include any transgender minority groups.

All my family members and relatives know about me. I left home when I was on the 8th grade. Everyone used to make fun of me because I was different from the others. My family used to get harassed because of me, neighbours and relatives used to throw comments which were very hard to process for my family members, for me as well.⁷⁰

The participants who identified themselves as Kothis said their parents were aware of their sexual identity but it was not openly talked about. A self-identified Kothi said:

With my family it's really not hidden, they know everything. It's almost like don't ask, don't tell policy with my family. They know everything about me but don't bother asking me or even talk to me about this. All my friends know about me too, and also the people I work with. And they accept me for who I am. Though I can't talk about my sexuality because everybody knows about it has made my life much easier.⁷¹

Yeah, all my family and friends knows about me. I am very open with myself, every person of my family and relatives knows about me and my orientation. Everyone knows that I have a boyfriend, and I am in a relationship with him. Even though I am very open about all this, I don't talk about these things. I only talk if someone asks me, because all my family and friends knows about me, I really don't need to talk about these things very often.⁷²

A young self-identified gay man talked about his perception of visibility:

I haven't come out to any of my family members yet. I don't feel like they will ever understand what I am going through or how I feel. My family they are very traditional and religious in their own way. They can't think out of the box. For example, they cannot even imagine two men can fall in love and live happily together. They think only heterosexual couples can stay together happily.⁷³

Some participants who tried to discuss their sexual orientation with their families faced negative reactions. These reactions from the families included remaining in denial about their sexual orientation and labelling it as a mental health problem. The families also asked them to see a doctor. Two lesbian women said:

[...] they refused to believe that it's something normal and they were like dear you are still very young and you have a lot to learn and experience. Then they wanted me to go to the doctors, they said that it's a mental pressure and if treated well and with a few days resting everything will be back to normal in no time.⁷⁴

70 Self-identified Hijra, age 24, Sylhet Division.

71 Self-identified Kothi, age 30, Chittagong Division.

72 Self-identified Hijra, age 38, Chittagong Division.

73 Self-identified gay men, age 22, Chittagong Division.

74 Self-identified lesbian women, age 25, Dhaka Division.

[...] they think it is some kind of mental condition that I have and if I am treated properly, it will get better. And I did tell my friends the ones I am comfortable with and the ones I can trust. And they are very open and supportive regarding me being a lesbian.⁷⁵

Participants highlighted the importance of financial independence in enabling someone to discuss their sexual orientation with their family. Some of the participants were waiting to become economically independent to express their sexual orientation to their families. They said that once they got their financial independence, they could be open about their sexual orientation. Also, a number of participants stated said their families were pushing them to get married, which put a lot of pressure on them.

Most of the participants were afraid to express their sexual orientation in their close social circles due to fear of abandonment and rejection from their loved ones who were conservative in nature and lacked awareness about the LGBT community.

3.3.1.2 Low self-esteem among LGBT people

Participants highlighted feelings of insecurity due to societal pressure and stigma. Most of the participants were pushed to hide their sexual orientation and it was difficult for them to accept and be proud of it when surrounded by hostility and prejudice projected on them, even by their families. This situation affected their self-esteem and some participants felt depressed due to the fact that they had to hide who they were:

Well the problem that I have to face is not being able to talk to people about my sexuality, not being able to express my feelings, always hiding from everyone else so that no one can find out about my sexual orientation. Always trying to keep up my shield sometimes makes me very tired. I become frustrated and depressed from time to time. I lose concentration on my work and studies.⁷⁶

The role of the family and their acceptance played a big role in developing the LGBT participants' self-esteem. A participant who was able to come out to her family and find acceptance said she did not have to face major difficulties because her family support meant that she had a safe environment. Another participant, a self-identified Hijra, said:

Because my family protected me and sheltered me, I never had to face any sorts of problems when I was growing up. I was always treated like a normal person like the rest of my family. I would say that I am very lucky because the chances that I was given from my family are not given to other people like from families. I grew up and got the chance to study. I now am a... student. So, I do think that I am lucky. But I do feel sad sometime because I cannot be myself, I have to dress up like a man even though I feel different.⁷⁷

Although, she still needed to hide and avoid expressing her gender identity in order to stay in school.

⁷⁵ Self-identified lesbian women, age 19, Dhaka Division.

⁷⁶ Self-identified Kothi, age 25, Chittagong Division.

⁷⁷ Self-identified Hijra, age 22, Chittagong Division.

The common trend of considering homosexuality as a mental illness also affected the participants' self-esteem:

We have to trust ourselves first, which we rarely do. We don't have faith in ourselves, we are not confident enough to believe we are who we are and there is nothing wrong with it. We are not mentally sick or anything.⁷⁸

Participants suggested that it was important to create support groups, organising open discussions and media campaigns that can create a feeling of solidarity between LGBT groups. Another suggestion was to incorporate sex education in schools in order to create awareness among LGBT and non-LGBT communities on sexuality and gender identity.

3.3.1.3 Violence, harassment and bullying against LGBT community

According to participants, gender and sexual minorities faced bullying, harassment and violence in schools. Participants who would not conform to heteronormative expectations and ideals were harassed and bullied in school:

I used to get bullied at the school by my classmates...sometimes even by the teachers. They used to call me names, they said I acted like a girl. Then I had to change my way of talking, walking and laughing which was very hurtful. Because that wasn't me anymore, I felt like I was someone else. These did affect me mentally and I used to get so depressed from time to time.⁷⁹

Other stories were shared by participants, including forced marriages and marital rape involving a minor. A lesbian participant shared her story:

I have faced a lot of difficulties in my life. When I was 14 years old my father's family (my grandmother, uncle's and aunties) kidnapped me from my mom's house and got me married to a man, who was twice my age. I was completely torn away from my family and there was no way for me to contact my mother or any other family members. And then I became pregnant after 2 months of my marriage, which I was not aware of. I was only 14 years old.⁸⁰

She was forced to have an abortion by her husband. Following the abortion she was again raped by her husband.

Another sexual violence incident happened to a gay man when he was a minor:

I was very young back then, fifteen I guess. I had a tutor who used to come to my home and help me with my studies....my dad went on a official tour for a few days and my mom had to go

78 Self-identified Bisexual, age 28, Chittagong Division.

79 Self-identified Kothi, age 30, Chittagong Division.

80 Self-identified lesbian, Dhaka Division.

to my grandmas for some reason ... I couldn't join them. And thinking I cannot stay alone my mom and dad asked my tutor to come and stay with me for a few days and he agreed to do so. And after he came to stay, one day he forced me to have sex with him and because I was very young and there was no one to help me out, I had to do what he asked me to do. But even after my parents got back I couldn't talk to them about this. I was so ashamed of the whole thing, till this day no one in my family knows about this.⁸¹

Hijras who used to be sex workers also faced sexual violence, as well as being socially excluded and marginalised:

Because I am a 'hijra', I have no freedom. That's how I feel. We are blocked in each and every step of my life. I cannot live freely, I cannot dress up the way I want to because people says dirty things when I dress up as a girl. I am not able to live with my family, because the neighbours and relatives say hurtful things to my family members. People keep harassing me when I go out on the road or to work, calling names, saying dirty jokes, etc. I can't go to movies, tickets are not sold to us because I am a 'hijra' and we are told that no one else will buy tickets or come to the movie theatre if I am there. It's very hard to rent a house for us, because no one wants us to be in their houses, saying that they will not get anyone else to rent their house or simply that we have bad reputation and they don't want to become part of it. I feel left out of the society, neglected, unappreciated and unloved, and all these makes me very sad, depressed.⁸²

The visibility in public spaces, to a certain extent, had affected the violations faced by each group within the LGBT community. Self-identified Hijra participants, who were involved in sex work, were actively present in public spaces to look for work and came in contact with police more often than other groups. This was not only because of sex work, but also due to their gender expressions and their cultural visibility in Bangladesh. Thus, their experience with police involved harassment, sexual violence and extortion.

3.3.1.4 Access to justice

All of the participants from the LGB community said that when they were subjected to violence based on their sexual orientation they did not report the incidents to the police due to the fear of having to reveal their sexual orientation. Similarly, the transgender community represented by Hijras were facing grave challenges in accessing justice as they were harassed by the police and some Hijra participants, who used to be sex workers, said they were also raped by the police.

In addition, the participants said they did not have the ability to seek remedies since they did not have access to legal services and there was a lack of legal awareness among the community. Participants suggested that the LGBT community must become aware of their rights and also have access to legal aid or counsel.

81 Self-identified gay man, age 21, Sylhet Division.

82 Self-identified Hijra, age 19, Dhaka Division.

3.3.2 ADDRESSING SECTION 377

3.3.2.1 Raising awareness about section 377

Most of the participants said that during their work on LGBT rights they had not come in contact with section 377 of Bangladeshi Penal Code. According to some of the participants, the public and law enforcement officials were not even aware of the existence of such an “anti-sodomy law”.

[...] people of various gender orientation and sexual expression are often detained, persecuted, beaten up and raped, by law enforcing agencies. But Law 377 generally not involved [...] ⁸³

Participants who were more familiar with the LGBT movement in Bangladesh and their activities were more aware of section 377 than their peers who did not have any access to LGBT organisations. Participants particularly identified section 377 as “a law that criminalises homosexuality”. Although, the ones who were part of the LGB group said they had not faced any issues regarding section 377 nor had they come in contact with the provision:

Sorry, no I haven't. Actually this is the first time I have heard of this. Maybe the reason is because in general we don't have a lot of knowledge about law of our country...I haven't faced any problems regarding this section. ⁸⁴

I barely know about this section, all I know is that homosexuality is a crime under its act. No, I never had to face any problems, as I have said I barely know about it, so not many people knows about it either. ⁸⁵

However, participants who were self-identified Hijras, particularly the ones who were involved in sex work, were aware about the section and said they were harassed by the police who used this section as a tool for extortion:

Yes I know about this law, that this is the law under which any kind of unnatural sex is a punishable crime. And yes I did face problems because of this law...I do want this law to be withdrawn, so that the police cannot harass me or people like me anymore. ⁸⁶

Yes I know about this section. This is the law under any kind of unnatural sex is a punishable crime. I did face it few times but when the police arrested me, they asked for money to let me go and I did and then they let me go. Even though they did not harm me but I want this law to be repelled. So in the future, no one has to fall under it and suffer. ⁸⁷

83 LGBT activist, age 36, Dhaka Division.

84 Self-identified gay men, age 27, Chittagong Division.

85 Self-identified gay men, age 21, Chittagong Division.

86 Self-identified Hijra, age 19, Sylhet Division.

87 Self-identified Hijra, age 24, Sylhet Division. The interviewee did not disclose further details about the arrests or which provisions of the Penal Code were used.

Participants agreed that even if it was not enforced, it still underpinned stigma and public contempt against the LGBT community, making its members vulnerable to discrimination and violence. Participants believed that repealing the law was a necessary step in order to prevent marginalisation of the LGBT movement in the country.

3.3.2.3 International support to repeal section 377

Participants were divided on the need for international support to repeal section 377. Some participants said the Government was not engaging in any national discussion on section 377 and the debate on section 377 only appeared on the Government's agenda when it was addressed in international settings, like the UN. Some participants said that international pressure was needed in order to keep the debate going on repealing this section. Another view put forward was that given the lack of awareness about the section, the ongoing debates on the international level might channel unnecessary attention to section 377 domestically.

3.3.3 STRENGTHENING THE LGBT COMMUNITY

3.3.3.1 Establishing a well-structured LGBT network

The participants referred to the Bangladeshi LGBT movement as being “weak” and said the absence of a well-established LGBT network led to the lack of awareness and knowledge about violations. The participants described the problem as a “communication gap”. The need for a better organised LGBT movement was highlighted by most participants.

[...] we have to build up a very strong social network amongst the LGBT community in order to support ourselves and others like us [...] ⁸⁸

In my view, I would say that we need a very strong and effective network for the LGBT community here in Chittagong. ⁸⁹

Many of the participants said the LGB community (lesbians, gays and bisexuals) lacked knowledge about transgender people. The transgender individuals who were interviewed, the Hijras, said they were often neglected by the public, so felt more comfortable among other Hijras.

Participants living in other divisions outside of Dhaka said they lacked proper LGBT networks in their areas. Compared to other parts of the country, Dhaka was seen as the centre for the LGBT movement, creating a supportive environment for LGBT people living in Dhaka. Participants outside of Dhaka felt isolated from what was happening in Dhaka on the LGBT movement, since they did not have any networks in their areas which could connect them to the LGBT people in Dhaka.

3.3.3.2 Participating in activities for LGBT people

⁸⁸ Self-identified gay man, age 26, Dhaka Division.

⁸⁹ Self-identified bisexual man, age 23, Chittagong.

Most of the participants based in Dhaka were involved in activities organised by LGBT organisations in the city. Some participants from outside of Dhaka said that such organisations or networks did not exist where they lived, and so they were not able to join activities organised by LGBT organisations which addressed violations faced by the community. However, they expressed their interest in participating in such activities in the future:

No, I have never gotten involved in any such activities. To be honest I haven't had the chance to get involved in any such activities because there are none here in Shylet. If there are any such activities here in the future, I definitely will take part.⁹⁰

No, I don't because there are no activities or any such civil society groups or LGBT movements here in Chittagong to get involved in. Whereas in Dhaka, there is always something going on the community for example, parties...human rights day and many other special days, seminars, film screening, open discussion etc. Even though there are very few organizations that actually works for the LGBT community these things goes on in Dhaka but here in Chittagong there is nothing, ever. So I think, if there are steps like these taken in the future here in Chittagong, definitely me and many others like me of the community will be willing to work for them.⁹¹

3.3.3.3 Inclusive sex education for younger people

Participants said that young people in Bangladesh were in need of inclusive sex education which could foster healthy consensual relationships and safer sex practices. According to the participants, sexuality was not something that was explored and well understood by people, since it was always presented as part of married life. It was suggested that inclusive sex education for young people would help to create safer and healthier relationships among LGBT people by raising awareness on LGBT issues.

We need sex education very badly, none of us, whether it's the LGBT community people or the heterosexuals, no one in this country has a general idea about safe sex or any information or about sex education except for the doctors. So I would like to ask the government through the civil society to introduce sex education in the study system, so that every student can learn about it and grow up with a good knowledge.⁹²

3.4 Discussion

The experience of gender and sexual minorities painted a picture of an unfair and oppressive environment, where the LGBT community is subjected to discrimination, violence and harassment. LGBT individuals were unable to express their sexual orientation and gender identity freely and were forced to hide their identities. Bangladeshi society does not accommodate the concept of fluidity in sexual orientation and gender identity and allow people with diverse sexual orientations and gender identities to exist and live

90 Self-identified gay man, age 21, Sylhet Division.

91 Self-identified gay man, age 27, Chittagong Division.

92 Self-identified trans-man, age 26, Dhaka Division.

freely. The LGBT group interviewed had different visibility stories given their differing visibility experiences in society. The transgender community, in particular Hijras, were more visible in the society due to their gender expressions and cultural role in the society, whereas the LGB group were able to hide their identities. On the one hand the LGB community suffered due to their hidden identities, yet on the other hand, the transgender community faced backlash due to this visibility. In addition, participants were concerned that violations, forced abduction and marriages, rape and harassment went unpunished. The knowledge and experience with section 377 differed among the LGBT group interviewed. LGBT people who were involved in the LGBT movement and LGBT activities were aware of section 377, although they had not personally faced issues regarding this provision. The importance of repealing section 377 was shared by participants, irrespective of whether they were personally affected by it. A bottom-up approach was identified as the means necessary to address the issues faced by the LGBT community in Bangladesh, both domestically and with international co-operation.



4. Concluding Remarks and Recommendations

The Bangladeshi Government continues to state that sexual orientation is not an issue in Bangladesh and refuses to decriminalise same-sex relations. Fearing persecution, the LGBT community remains mainly invisible in society and continue to be marginalised and subjected to discrimination and violence.

TO THE GOVERNMENT OF BANGLADESH:

- Repeal section 377 of the Bangladesh Penal Code so that same-sex relations are no longer criminal acts and acknowledge the existence of LGBT people in Bangladesh;
- Introduce legislation to protect and promote the rights of LGBT people, in particular anti-discrimination legislation that guarantees equality in public and private spheres;
- Accept the recommendations of ICPD Beyond 2014 to protect and fulfil the rights of persons of diverse sexual orientation or gender identity and provide comprehensive sexuality education to young people;
- Sensitise law enforcement agencies on LGBT issues and rights of LGBT people to curb the harassment of Hijras and Kothis who are visible in public spaces;
- Ensure the independence of the NHRC and provide an adequate budget to enable the complaint mechanism process to be a proper avenue for the LGBT community to report the violations they face.

TO THE LOCAL ORGANISATIONS:

- Organise awareness raising events and campaigns for the general public to build alliances with non-LGBT communities to support the LGBT community;
- Build a nationwide network by strengthening the LGBT movement in the areas outside of Dhaka so that other divisions can connect with the movement in Dhaka;
- Improve legal protection and legal awareness by setting up legal help centres for LGBT individuals facing violence or harassment;
- Improve the self-confidence of the LGBT community by creating support groups that can provide counselling to LGBT people;
- Build alliances with the Government and in Parliament to start a dialogue on LGBT issues in Bangladesh;
- Increase the capacity of LGBT organisations in conducting fact-findings to document the human rights violations committed against LGBT people and disseminate the findings internationally, while protecting the privacy of the victims;
- Raise awareness among LGBT people on the complaint mechanisms of the NHRC and other legal services, and how to file a complaint in order to increase the documentation of human rights violations against LGBT people and provide support to those affected.

TO THE INTERNATIONAL COMMUNITY:

- Prioritise community development and building of alliances for the LGBT movement in Bangladesh;
- In conjunction with prioritising community development and building alliances, engage in discussions with the Government of Bangladesh, in consultation with the local LGBT movement and community to address the issue of repealing section 377;
- Show solidarity to LGBT organisations by attending their events, supporting them on social media or raising their issues on the international level (such as the UN or European Union) and with the embassies in Dhaka;
- Build a bridge between the LGBT movement and community and the Government of Bangladesh to start a constructive dialogue on LGBT rights in Bangladesh;
- Advocate for LGBT rights in Bangladesh while working with local organisations to provide information on the situation of LGBT people to the NHRC and Ministry of Law.

Annex

The table below highlights some of the issues faced by the LGBT community and how the issue is addressed in Bangladesh. A number of issues are not addressed at all and there is no discussion as same-sex activities are criminalised.

Issue in LGBT discourse/faced by LGBT community	How is issue dealt with in Bangladesh?
Consensual same-sex activity	Criminalised under s 377 of the Penal Code (“Unnatural Offences”).
Death penalty as punishment for same-sex activity	Not applicable. The penalty under s 377 is life imprisonment or imprisonment up to 10 years, and a fine.
Marriage equality/official recognition of same-sex relationships	Does not exist. Legal recognition/prohibition is not specifically addressed as same-sex activity is criminalised.
Age of consent	Does not exist. Legal age of consent is not specifically addressed as same-sex activity is criminalised.
Same-sex adoption	Does not exist. Legal recognition/prohibition is not specifically addressed as same-sex activity is criminalised.
Custody of children	Does not exist. Legal recognition/prohibition is not specifically addressed as same-sex activity is criminalised.
Military service	Does not exist. Legal recognition/prohibition is not specifically addressed as same-sex activity is criminalised.
Legal recognition of preferred gender status/right to change legal gender	Individuals are not permitted to be identified by their preferred gender.
Rape	Not criminalised. Rape under s 375 of the Penal Code is not gender neutral: it can only be committed by a man against a woman.
Hate crimes based on gender/sexual orientation	No specific legislation prohibiting such acts.
Suicide/depression/mental health issues	No specific anti-discrimination legislation protecting LGBT community.
Equal treatment under law/anti-discrimination laws (including relating to employment, housing, and health)	No specific anti-discrimination legislation protecting LGBT community.
Access to gender reassignment surgery and other medical treatment relating to gender reassignment (including hormone therapy)	No specific legislation to provide for or regulate medical treatment.
Access to government services (including reporting crimes to police)	No specific anti-discrimination legislation protecting LGBT community.
Sex education	No reproductive health/sex education as part of the formal school curriculum.

Committed to the development of human rights

This report was created by Global Human Rights Defence
All rights are reserved to GHRD

CONTACT GHRD

Laan Van Meerdervoort 70
2517 AN The Hague
The Netherlands
+31 (0)70 34 50 692
info@ghrd.org

SUPPORT GHRD

Chamber of Commerce: 2726163
ABN AMRO Bank: 417 943 024
BIC: ABNANL2A
IBAN: NL69ABNA0417943024

For more information, please visit our website.

www.ghrd.org