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Bangladesh

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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I. Introduction

This Country Report on human rights violations of LGBT persons in Bangladesh is intended to provide a comprehensive and up to date survey of relevant legislation, case law, scholarship, and documentation from governmental agencies, nongovernmental organizations, and the media. This report reveals a general consensus that there is widespread social stigma and discrimination against homosexuals in Bangladesh.

Sexuality in Bangladesh does not conform to standard Western notions of sexuality. *Hijras* (or *hizras*) are a third gender category of men who live as what Westerners would perceive to be women, but they are not considered women in Bangladesh (nor men). Sex between married men and male prostitutes or between married men and *hijras* is normal, but not seen as inconsistent with a heterosexual lifestyle (See below: Gary W. Dowsett, “HIV/AIDS and Homophobia: Subtle Hatreds, Severe Consequences and the Question of Origins”). Though to the Western eye this may imply a widespread acceptance of homosexuality, this is not the case. There are severe consequences for those who come out as gay. Out gay men face social ostracization, unemployment, and violence and intimidation from the police, *mastans* (thugs), their families and their communities (See below: Human Rights Watch, *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*; The Naz Foundation International, *From the Front Line: Impact of Social, Legal and Judicial Impediments to Sexual Health Promotion, and HIV and AIDS Related Care and Support for Males Who Have Sex With Males in Bangladesh and India*). The prevailing traditional interpretation of Islam, the predominant religion in Bangladesh, is a main obstacle to equal rights for LGBT people (See below: International Lesbian and Gay Association. *Homophobic Tendencies Still Abound in South Asia*).

While Section 377 of the Bangladesh *Penal Code* effectively criminalizes homosexual intercourse, it is not regularly enforced. Instead it is used, in conjunction with Section 54 of the *Code of Criminal Procedure* (which allows police officers to arrest without a warrant), as a specter of intimidation and blackmail (See below: Dina M. Siddiqi, “Summary Report: To Act or Not to Act? Section 377 of the Bangladesh Penal code”). Homosexual men are subjected to abuse (both sexual and non-sexual) by the police (See below: Home Office: Research, Development and Statistics, *Country of Origin Information Report: Bangladesh*). There is no legislation or government agency on which LGBT people can rely for protection and as a result the LGBT community is driven to secrecy (See below: International Lesbian and Gay Association. *Homophobic Tendencies Still Abound in South Asia*).

II. Legislation

To access full text of Bangladeshi legislation: <http://bdlaws.minlaw.gov.bd/index.php>

To access the full text of the *Constitution of the People’s Republic of Bangladesh, 2004*:
<http://www.commonlii.org/bd/legis/const/2004/index.html>

1. *The Penal Code, 1860, Act No. XLV, s. 377*, online:
<http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11&vol=1&search=penal>.

- **Section 377 effectively criminalizes homosexual intercourse**

Under the heading, “Unnatural Offences,” Section 377 states, “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.”

2. *Territorial Force Act, 1950, Act no. L, s.6(1)*, online:
<http://bdlaws.minlaw.gov.bd/sections_detail.php?id=238§ions_id=6467>.

- **There is no evidence that there is legislation preventing homosexual people from serving in the military**

Section 6(1) states, “Any person who is a citizen of Bangladesh may offer himself for enrolment in the Bangladesh Territorial Force, and any such person who satisfies the prescribed conditions may be enrolled in the prescribed manner for such period, not exceeding six years, as may be prescribed.”

3. *The Code of Criminal Procedure, 1898, Act no. V, s.54*, online:
<http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14518>.

- **Section 54(1) gives police officers the power to arrest without a warrant**

A police officer can arrest without warrant, “any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.” This provision, combined with Section 377 of the *Penal Code*, is the main tool of intimidation used by police against LGBT persons (See below: Dina M. Siddiqi, “Summary Report: To Act or Not to Act? Section 377 of the Bangladesh Penal code”).

Extent of the Enforcement of s.377

4. United States Department of State, *Country Report on Human Rights Practices 2008* (25 February 2009), online: <<http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119132.htm>>.

- **“Homosexual acts remained illegal; in practice the law is rarely invoked.”**

Section 377 is still on the books but the law is rarely invoked.

5. Craig Young, “Bangladesh and its Section 377,” *gaynz.com* (29 September 2009) online:
<<http://gaynz.com/blog/redqueen/archives/733>>.

- **Section 377 extends to LGBT organisational membership**

6. Dina M. Siddiqi, "Summary Report: To Act or Not to Act? Section 377 of the Bangladesh Penal code" (October 2009) online: < http://www.dfid.gov.uk/r4d/PDF/Outputs/SexReproRights_RPC/Monograph-Series-14.pdf>.

- **The study showed that s.54 of the *Code of Criminal Procedure* played a greater role in facilitating the harassment of homosexual men in Bangladesh, than s.377 of the *Penal Code***

Relevant Articles from the Constitution

Article 11: "The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured."

Article 28: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth."

- **Sexual orientation is not an enumerated ground of prohibited discrimination**

Article 31: "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

- **No information could be found on civil law or criminal law remedies for discrimination on the basis of sexual orientation**
- **No evidence of a Bangladeshi Human Rights Code could be found**

Evidence of law reform

7. *Law Commission of Bangladesh*, online: <<http://www.lawcommissionbangladesh.org/reports.htm>>.

- **From 1998 until 2011, the Law Commission of Bangladesh has produced no reports recommending changes to legislation relating to gay rights, including changes to the *Penal Code* or to the Constitution.**

III. Jurisprudence

Immigration and Refugee Board

1. *N. (K.U.) (Re)*, [1991] C.R.D.D. No. 1140.

Claim allowed

- **This was the only reported Canadian case that could be found of a Bangladeshi claimant making a claim on the basis of sexual orientation**
- **The board accepted the claimant's evidence that he was homosexual and concluded that he would face persecution because of his sexual orientation should he be forced to return to Bangladesh**

A homosexual claimant had faced harassment and threats from police officers in Bangladesh after being discovered engaging in a homosexual act. He had left Bangladesh in fear of persecution. The documentary evidence that Bangladesh is a Muslim country and that the Quran advocates violent punishment of homosexuality, in addition to the claimant's testimony that homosexuals are subjected to indiscriminate violence in Bangladeshi society, led the court to conclude that there was a reasonable chance that the claimant would face "severe excessive punishment" as a homosexual.

2. *Y.F.S. (Re)*, [2006] R.P.D.D. No. 167. (Pakistani Claimant)

Claim denied

- **This case may be of interest because of the countries' shared history and because the claimant also came to Canada as a student**
- **Claim was denied on the basis that the claimant was not credible or trustworthy with respect to his evidence regarding his sexual orientation**

The claimant had come to Canada on a study permit. He had a wife and children in Pakistan. He claimed that he had always had homosexual desires but that he never acted on them due to fear of his strict Muslim father. Once in Canada he developed a friendship with a gay man and attended gay bars with him. A member of the Pakistani community saw him exiting a gay bar with his friend and informed the claimant's family in Pakistan. Over the phone his father told him that a fatwa had been issued to kill him. However, the board did not find his evidence convincing. The board concluded that he was not homosexual, that therefore he would not face persecution if forced to return to Pakistan, and that the true reason for his application was to sponsor his wife and children in also immigrating to Canada.

IV. Governmental Reports

Canada

1. Immigration and Refugee Board of Canada, *Bangladesh: Treatment of homosexuals including legislation, availability of state protection and support service* (19 July 2010), online: < http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453051&l=e>.
 - **Homosexual acts are illegal according to s. 377 of the *Penal Code* of Bangladesh and can be punished by "deportation, fines, prison sentences of up to 10 years or life imprisonment"**
 - **Records show that physical assault was the primary form of violence experienced by MSMs ("men who have sex with men"), followed by rape and forced eviction from public spaces; the main perpetrators of this violence are local thugs, followed closely by members of the police**
 - **There have been reports of "harassment by vigilante groups and the issuance of local fatwas against the LGBT community"**
 - **Homosexuals encounter discrimination and ostracism; social barriers and stigma result in many homosexuals being unable to obtain employment and reduced to prostitution**
 - **In December 2008, Bangladesh was one of 57 countries to sign a counter-statement to a United Nations declaration affirming that international human rights included sexual orientation and gender identity; the counter-declaration expressed concerns about granting rights to "certain persons on the grounds of their sexual interest and behaviours" and,**

among other things, suggested that protection of sexual orientation could lead to the normalization of paedophilia

The 2010 Response to Information Request on the treatment of homosexuals in Bangladesh found that discrimination was widespread. Limited state protection exists and the report details the difficulty in collecting data on incidences of violence against LGBT persons due limited available information.

United States of America

2. Bureau of Democracy, Human Rights, and Labour, *2009 Human Rights Report: Bangladesh* (11 March 2010),
online: < <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136085.htm> >.

- **Attacks on lesbians and gay men occur, but offenses are difficult to track because victims do not report these instances out of a desire for confidentiality**
- **Sexual orientation is a heavily stigmatized subject in Bangladeshi society and discussion about it is repressed**
- **Local human rights groups do not monitor the problem and there are few studies on homosexuality in the country**

The USA Department of State Found that significant societal discrimination exists in Bangladesh against homosexuals. The 2009 Human Rights Report found that openly gay individuals are often ostracized by their families and local communities. The report also found that statistics regarding discrimination against homosexuals in Bangladesh are difficult to come by because of the strong social stigma against homosexuality and the resultant lack of individuals who openly identify their sexual orientation.

United Kingdom

3. Home Office: Research, Development and Statistics, *Country of Origin Information Report: Bangladesh* (20 August 2010),
online: < <http://www.homeoffice.gov.uk/rds/pdfs10/bangladesh-260810.doc> >.

- **Male-to-male sexual activity is illegal and there are no non-discrimination laws or regulations that protect men who have sex with men**
- **The perception by the police and by society that men who have sex with men are inherently criminal fuels attacks on their dignity and the denial of their equality before the law**
- **Laws against homosexuality are used by the police to victimize, extort and blackmail gay and bisexual men caught in public areas**
- **Gay men have reported that they were regularly subjected to extortion by both the police and *mastans* (powerful, criminal thugs); men who engaged in homosexual prostitution said that their clients were also subject to extortion**
- **Many men who have sex with men reported being raped, gang raped and beaten frequently by police and by *mastans***
- **The police also sometimes harass, beat, and arrest men engaging in HIV/AIDS outreach work**
- **Information on sexual minorities in Bangladesh is quite limited for a number of reasons, including cultural invisibility, a general reluctance to discuss sexuality in the public sphere, and the stigma attached to non-normative sexualities**
- **In a BBC News report of 21 June 2005, Roland Buerk wrote, “Non-traditional sexuality of any kind is deeply frowned upon in Bangladesh which, although a relatively tolerant**

Muslim country, remains conservative in sexual matters... The condemnation from society of anyone found to be gay is deterrent enough for most to remain very firmly shut in the closet.”

In what is perhaps the most comprehensive governmental report on the status of LGBT rights and homosexuality in Bangladesh, the United Kingdom Home Office found that there is significant ill-treatment by police towards male homosexuals, limited legal rights and governmental protection, and that harassment, including blackmail and extortion, often occurs. Societal treatment and attitudes towards homosexuality are resoundingly negative. The report further found that, due to a number of reasons, including “cultural invisibility, a general reluctance to discuss sexuality in the public sphere, and the stigma attached to non-normative sexualities,” comprehensive information and statistics regarding sexual minorities in Bangladesh were limited.

V. Non-Governmental Reports

Human Rights Watch

1. Human Rights Watch, *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*, (20 August 2003), online:
<<http://www.unhcr.org/refworld/topic,459d17822,45b61f642,3f4f593a1,0.html>>.

- **“Men who have sex with men” encompasses a range of gender identities: *hijras* (take on feminine behaviour and dress and live in distinct communities); *kothis* (adopt feminine mannerisms but do not live in distinct communities); *panthis* (take on a masculine demeanour)**
- **Broadly-held societal attitudes stigmatize men who have sex with men**
- **Men who have sex with men are ostracized by their family and community and are denied access to education, employment, housing, and health care**
- ***Kothis* are frequently forced into sex work**
- **Violent abuse by the police of men who have sex with men is well known and there are regular abductions, rapes, gang-rapes, beatings, and extortion by police and *mastans***
- **Attempts to make official complaints are largely ignored or ridiculed**
- **Most arrests of men who have sex with men occur under Section 54 of the Bangladesh Code of Criminal Procedure (which allows for arrest without a warrant), rather than Section 377 of the Penal Code (which effectively criminalizes homosexual sex)**

Broad social attitudes stigmatize men who have sex with men, and they are frequently ostracized by family and community, and discriminated against in the job and housing markets, schools, and health care. Due to discrimination-related inability to find work, *kothis* are frequently forced into sex work. Numerous MSMs interviewed by Human Rights watch reported having been raped, gang-raped, beaten, and subject to extortion by police and *mastans* (powerful thugs who sometimes act as musclemen for political parties). For instance, one man who identified as an MSM had been raped by *mastans* four to five times in the months prior to meeting with Human Rights Watch and had also been raped by four police officers at police barracks. Official complaints made by men who have sex with men are largely ignored or ridiculed. While few MSMs are arrested under Section 377 of the *Penal Code*, they are vulnerable to arrest under Section 54 of the Bangladesh *Code of Civil Procedure*.

2. Human Rights Watch, *World Report 2011: Bangladesh* (24 January 2011), online: <<http://www.hrw.org/en/world-report-2011/bangladesh>>.

- **Section 377 of Bangladesh’s criminal code punishes consensual homosexual conduct**

Section 377 of Bangladesh’s *Penal Code* punishes consensual homosexual conduct with penalties up to life imprisonment.

The Naz Foundation International

3. The Naz Foundation International, *From the Front Line: Impact of Social, Legal and Judicial Impediments to Sexual Health Promotion, and HIV and AIDS Related Care and Support for Males Who Have Sex With Males in Bangladesh and India* (31 December 2006), online: <<http://www.asylumlaw.org/docs/sexualminorities/BangladeshPukaarHIV12:30:06.pdf.pdf> >.

- **High levels of abuse, violence, and rape of men who have sex with men**
- **Feminisation (not only non-normative sexual practice) leads to abuse – *kothis* are particularly stigmatized**
- **Feminine males are frequently subjected to discrimination and sexual abuse within the family**
- **Feminine males and men who have sex with men face harassment from religious leaders**
- **Many marry to fulfill a social duty and obligation to their family**
- **The social, legal, and judicial environment in the country has had a detrimental impact on sexual health interventions**

In the Naz Foundation International’s study of five cities in India and one in Bangladesh (Dhaka), 42% of respondents reported having been sexually assaulted or raped by policemen; 60% reported having been sexually assaulted or raped by thugs; and almost 75% of those reporting rape or assault attributed the abuse to their effeminacy. 70% of respondents reported facing harassment (from extortion to beatings) from police. 33% of respondents in Dhaka had faced harassment from religious leaders due to their sexuality. Feminized men (*kothis*) are especially vulnerable to abuse, including within their families by powerful male relatives. Advancement in educational and economic standing is frequently impeded due to harassment and discrimination, and many are forced into sex work out of economic necessity. *Kothis* are particularly stigmatized because they defy highly gendered, deeply entrenched notions of masculinity. Many (34%) marry to fulfill familial expectations and social duty. “Unnatural” acts of penetration (even if consensual) are criminalized in Section 377 of the *Penal Code*, which prevents men who have sex with men from reporting abuse. Section 377 also undermines HIV/AIDS interventions, since outreach workers are often members of men who have sex with men networks.

International Lesbian and Gay Association

4. International Lesbian and Gay Association. *Homophobic Tendencies Still Abound in South Asia* (11 February 2011), online: <<http://ilga.org/ilga/en/article/mQA910J1Qp>>.

- **Section 377 of the colonial Penal Code was recently repealed in India, but is still on the books in Bangladesh**
- **Prosecutions under Section 377 are rare, but it does force the LGBT community into secrecy**
- **Relationships between heterosexual males are traditionally very intimate**
- **Coming out may have wide range of detrimental consequences**

- **Organization Boys of Bangladesh central forum for gay and bisexual men**
- **Religion is the most persistent obstacle for LGBT rights**

Section 377 of the colonial *Penal Code* – which effectively criminalizes homosexual sex – was recently repealed in India, sparking hope for progress on the LGBT rights front in Bangladesh. However, homosexual sex is still illegal in Bangladesh. Even though prosecutions are rare, this forces the LGBT community into secrecy and silences their voices in the public sphere. Relationships between heterosexual males are traditionally very close in Bangladesh, and so men may engage in intimate behaviour with each other without casting doubt on their presumed heterosexual identities. However, coming out may be dangerous, with some individuals subjected to electric shock therapy to “cure” them of homosexuality. The group Boys of Bangladesh started as an online organization in 2002, and has become a central forum for gay and bisexual men (with more than 2000 registered members). Traditional interpretations of Islam remain the most persistent barrier to LGBT rights in Bangladesh.

VI. Media

1. Delwar Hussain, “Gay, straight or MSM?” *The Guardian* (6 August 2009), online: <<http://www.guardian.co.uk/commentisfree/2009/aug/06/bangladesh-gay-sexuality>>.

- **Police regularly stop, harass and even arrest working-class MSMs although Bangladesh’s anti-sodomy law (section 377 of criminal code) has fallen into disuse**

This article discusses how socioeconomic standing affects an individual’s self-identification of sexual orientation in Bangladesh. While MSMs are generally poorer than those who identify as “gay,” both groups face harassment from the police even though Bangladesh’s anti-sodomy law has fallen into disuse.

2. Peter Hackney, “In Search of Sanctuary” *SX News* (25 January 2007), online: <<http://www.asylumlaw.org/docs/sexualminorities/Bangladesh012507.pdf>>.

- **Gay activist subjected to threats, kidnapping and beatings after delivering a speech at a university in Dhaka**

This article describes the experiences a Bangladeshi gay activist faced in Australia when he applied for refugee status. He gave a speech at a university in Dhaka about gay rights, and was subsequently subjected to threats, kidnapping and beatings. He left Bangladesh to pursue further studies in Australia, at which point he applied for refugee status.

3. David Fickling, “Victimised gay couple contest refugee refusal” *The Guardian* (25 January 2007), online: <<http://www.guardian.co.uk/world/2003/apr/09/gayrights.australia>>.

- **Gay couple seeking asylum in Australia fears discrimination if sent back to Bangladesh; claims that they were stoned and whipped and that a local cleric issued a fatwa calling for their deaths**

A Bangladeshi gay couple appeared before the Australian High Court to appeal the decision by the refugee appeal tribunal rejecting their refugee application. The couple claimed that they had lived together for four years in Bangladesh, but were stoned and whipped when this was discovered. A local cleric issued a fatwa calling for a death sentence against them.

4. Arshad Mahmud, “Dhaka forced to face sex taboos” *South China Morning Post* (21 September 1999), online: <<http://www.guardian.co.uk/world/2003/apr/09/gayrights.australia>>.

- **Police arrested fifteen gay sex workers, describing them as “perverts” instead of “homosexual” on their charge sheets**
- **A member of a gay rights non-governmental organization, the Bandhu Social Welfare Society, was arrested and accused by the police of pandering to the gay sex trade**

This article describes the Bangladeshi police’s targeting of gay sex workers. The police explained that they were curbing “a growing menace”. The sex workers were charged with causing a “public nuisance” and were fined.

5. Rainer Ebert and Mahmudul Hoque Moni, “LGBT Community Calls for the Repeal of Section 377,” *Blitz* (2 February, 2011) online: <<http://www.weeklyblitz.net/1258/lgbt-community-calls-for-the-repeal-of-section-377>>.

- **Prosecutions under s. 377 are extremely rare**
- **An Indian court decriminalized homosexual intercourse by repealing s.377 of the Indian Criminal Code in July 2009, holding that the treatment of certain forms of consensual sex between adults as a crime is a violation of fundamental human rights**

Due to the societal condemnation of homosexuality most homosexuals hide their sexual orientation. The consequences of coming out are severe: “Some gay men who inform their families about their sexual orientation are forced into a heterosexual marriage. Other parents consider homosexuality a mental illness and subject their gay sons to religious brainwashing or psychiatric treatment.” There were also cases where “electric shocks were applied to homosexual men in an effort to ‘cure’ them from their supposed psychiatric condition.”

V. Scholarship

1. “Australia’s High Court Revives Refugee Asylum Claim by Gay Bangladeshi Couple” *Lesbian -- Gay Law Notes* (January 2004) 3, online: qrd.org <<http://www.qrd.org/qrd/www/legal/lgl/01.2004.pdf>>.

- **Conditions in Bangladesh are such that gay people can only avoid official persecution if they keep their sexual orientation a secret.**

In *Appellant S395/2002 and Minister for Immigration and Multicultural Affairs*, [2003] HCA 71 (Dec. 9, 2003), Australia’s High Court reversed a decision of the lower courts and the Refugee Review Tribunal, which had ruled that a gay couple from Bangladesh could safely return if they were discrete about their relationship. This finding of fact suggested that if the couple were to be openly gay in Bangladesh, they would be at risk of persecution.

2. Gary W. Dowsett, “HIV/AIDS and Homophobia: Subtle Hatreds, Severe Consequences and the Question of Origins” (2003) 5:2 *Culture, Health & Sexuality* 121.

- **In Bangladesh sex between men does not conform to Western categories of sexuality, however, widespread sex between men does not equate to widespread acceptance of homosexuality.**

In Bangladesh sexuality does not conform to Western categories or standards. It is somewhat common for men to have sex with men or boys, but they do not often self-identify as gay. Sexual encounters between men and young male prostitutes or between men and *hizras* (a third gender category) are common. However, these encounters are not seen as incompatible with a heterosexual lifestyle.

End of report