

## RIGHTS OF SEXUAL MINORITIES

*It is difficult to assess the extent of rights violations against sexual minorities and of state and non-state responses in any year, given the paucity of reliable information. This chapter therefore begins to articulate the rights of sexual minorities in Bangladesh in mainstream human rights discourse by mapping some of the problems faced by the MSM and Hijra communities. As will be clear from the text below, the nature of available data is not only limited but also highly gendered, the focus has been almost entirely on male to male relations.*

### Overview

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, information on sexual minorities in Bangladesh is quite limited. For that matter, most human rights organizations, until very recently, have not considered the subject of sexual rights to be an obvious part of their mandate.

Problems of categorization complicate matters further. Non-normative sexual practices and identities tend to be quite fluid, existing within a diverse continuum of sexualities, rather than being discrete sources of identity.<sup>1</sup> Sexuality may not be the defining feature of identity; non-normative sexualities tend to exist without being recognized openly or sanctioned culturally (that is, they are accommodated but not necessarily named by the dominant culture), and without being associated with a distinct community or group. With the exception of self-identified *hijras* (trans-gender or trans-sexual persons), social identity and sexual practice do not necessarily coincide.

Paradoxically, the global HIV/AIDS pandemic in the 1980s, and related anxieties about “high-risk” groups, opened up spaces for discussion and activism around matters of sexuality. Although the discourse tends to be somewhat medicalised, it has increased both visibility and opportunities for mobilization.

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<sup>1</sup> See Adnan Hossain, *Bangladesh Sexual Minorities Encyclopaedia* entry and Sharful Islam Khan et al, “MSM’s Sexual Relations with Women in Bangladesh” in *Culture, Health and Sexuality*, March 2005 7(2) 159-169.

### **Legal/Constitutional Protections**

There is no express legal or constitutional recognition of non-normative sexualities in Bangladesh nor any specific protection against discrimination for example on grounds of sexual orientation. Section 377 of the Penal Code introduced by the British in 1860, continues to be in force and provides punishment for “carnal intercourse against the order of nature,” a phrase widely interpreted as criminalizing sodomy. Ostensibly gender-neutral, it is usually assumed to refer to men.

Notably, Bangladesh has a fairly progressive National Policy on HIV/AIDs. Issued in 1997, the document upholds the protection of the rights of persons affected with HIV/AIDs, including rights to confidentiality and non-discrimination in health care access and treatment.

### **Recognition of Identities**

It can be argued that legal invisibility allows for a degree of flexibility for sexual minorities. At the same time, for some groups, legal non-recognition can be highly problematic at an everyday level. *Badhon*, a community based organization representing *hijras*, has demanded state recognition as a third gender, and Government issued identity cards to affirm their separate identity. Not being able to ‘prove’ a clear cut gender meant they were not able to stand in either the male or female queues during elections or for any other purpose. They also faced problems with inheritance, as under personal laws, the shares for men and women differ: as *Hijras* are not perceived to be either male or female, and therefore neither son nor daughter, complications arise with determining their share of inheritance.

### **Arbitrary Arrest and Detention**

Although there has been only one reported case involving section 377 in the four decades since the independence of Bangladesh, the existence of this offence is reportedly used by law enforcing agencies and others to threaten and harass individuals, and thus inhibit their free exercise of expression and behaviour.<sup>2</sup> In fact, none of the cases reported by or to Bandhu (see below) involved Section 377 directly, although the threat of arrest under this law may have been invoked. More significant is the abuse of

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<sup>2</sup> Najrana Imaan and ATM Morshed Alam, Review Paper Analysing the Existing Legal and Policy Provisions and Practices with respect to Human Rights in relation to People Living with HIV/AIDs in Bangladesh, Unpublished paper, ASK 2008.

Section 54 of Criminal Procedure Code and Section 86 of the Dhaka Metropolitan Police Ordinance (and related provisions in the police ordinances applicable to other Metropolitan cities) which are commonly used to harass persons using public spaces. Indeed, this situation is not very different from that of sex workers and other socially marginalized groups detained under Section 54 without being shown any cause. And yet, while lawyers and human rights groups are vocal about the perils of Sections 54 and 86, they have tended to be silent about the specific effects of these provisions on this community.

#### **Incidents of Violence and Harassment of MSM and Hijras**

Table XXII, drawn from data collected by Bandhu, a support service organization, indicates the nature of violence and harassment faced by the MSM (and *hijra*) population. Under-reporting of such matters is widespread and, presumably, actual figures are much higher.

**Table XXII:1 Harassment and Violence on MSM of 2008 (till 16 July)**

Perpetrator \ Type of Violence	Police	RAB	<i>Mastan/</i> Gangster	Others	Family Member	Total
Beating	5	-	9	7	-	21
Beating and Snatching	-	-	4	-	-	4
Forced eviction from public spaces	3	1	1	-	-	5
Forced sex	1	-	1	-	-	2
Suicide	-	-	-	-	1	1
<b>Total</b>	<b>9</b>	<b>1</b>	<b>15</b>	<b>7</b>	<b>1</b>	<b>33</b>

Bandhu's records show that physical assault or beating was the primary form of violence experienced by MSM. Second to physical violence was rape/forced sex, followed by forced eviction from public spaces. The main perpetrators of violence are local thugs or *mastans*, followed closely by members of law-enforcement agencies, primarily the police. Harassment by the local population is relatively less common though not entirely absent. In one reported incident, the taunts and reprimands of family members resulted in the suicide of an individual.

The justifications for violence directed at the MSM population signal the dangers MSM, *hijras* and others face on a daily basis. An overwhelming majority were attacked for their "feminized" behavior, that is, simply for challenging socially acceptable norms of masculinity. Simultaneously, this also apparently invited and legitimized forced sex or rape – refusing sexual offers was the second most common reason given for assaults on

MSM. MSM and *hijras* are in a bind; for once they acknowledge their sexuality, they appear to lose their right to refuse sexual offers by overtly “heterosexual” men who feel entitled to the formers’ sexual services. Extortion and intra-community violence over the receipts of sex-work is also commonly reported. *Hijras*, who are the most openly feminized, face considerable discrimination in employment opportunities and for many, sex-work is the most viable source of income since the barriers to entry are minimal. Social, institutional and legal support for MSM and *hijras* are inadequate at best.<sup>3</sup>

**BOX XXII.1: Harassment and Extortion (Names have been changed to protect the identity of the persons involved)**

Anjan had inherited two decimals of land. His older brother, Amjad, put pressure on Anjan to sell this land to him. Anjan refused at first but was eventually coerced into signing away the land. After about a month, Amjad came to Anjan’s house with a group of thugs and evicted his younger brother and their mother from the premises. When they started to throw out the furniture as well, local people gathered and protested the action.

Anjan came to Bandhu hoping it would be able to take legal steps to void the agreement which he signed under duress. Bandhu offered to help Anjan file a General Diary at the local police station. However, upon hearing of Anjan’s contact with Bandhu, his older brother retracted from his original position. He arranged for a mediation session facilitated by local elites. In a written agreement handed over to his younger brother, Amjad promised he would no longer pressure Anjan for the land.

While this is not a case of overt legal or social discrimination, it appears that Amjad felt entitled to his brother’s land because the latter was “feminized” and therefore not entitled to his legal rights as a male offspring

**Conclusion**

There is no research on the incidence of discrimination among people with non-normative gender/sexual identities. Other than *hijras*, the discrimination remains invisible and unstated.

<sup>3</sup> See reports on file at ASK received from Bandhu indicating that such requests for legal assistance involved issues such as violence by a sexual partner, inheritance claims and pressures for forced marriage.