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IDENTITY**

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Joint Submission by;

**Boys of Bangladesh (BoB)**

[www.boysofbangladesh.org](http://www.boysofbangladesh.org)

**Creating Resources through Empowerment and Action (CREA)**

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**Key Words: Sexual Orientation, Gender Identity, Violence, Stigma, Hijra, Kothi, Transgender, Discrimination**

## **Introduction**

1. This report is jointly submitted by **Boys of Bangladesh<sup>1</sup>, CREA<sup>2</sup> and Sexual Rights Initiative<sup>3</sup>**. It focuses on the discrimination and violence faced in Bangladesh by persons due to their real or perceived sexual orientation and gender identity. The report highlights the collective denial of the Bangladeshi society and government to recognize the presence of gender non-conforming persons and persons with non-normative sexualities. This collective denial and the legal regime in Bangladesh force many people to live in fear of stigma and face violence which is unaddressed. The report finally presents recommendation for the Government of Bangladesh to end discrimination and also to conform to their international obligations.

## **Implementation of UPR I in Bangladesh**

2. Bangladesh in its response to UPR Recommendation 27 rejected the recommendation on abolition of section 377 based on traditional and cultural values. It has further stated that same sex activity is not acceptable norm in any community in the country and that sexual orientation is not an issue in Bangladesh and that there were no concern expressed by any quarter in the country on this. However the government accepted recommendation on training law enforcement and judicial officers with a specific focus on the protection of women, children minorities.<sup>4</sup>

Recommendations: Abolition of article 377 of the Penal Code, which criminalizes sexuality against the ‘order of nature’ and “decriminalize same-sex activity between consenting adults and adopt further measures to promote tolerance in this

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<sup>1</sup> Boys of Bangladesh (BoB) is a non-registered, non-funded and non-formal platform for the self-identified Bangladeshi gay men based in Dhaka.

<sup>2</sup> Creating Resources for Empowerment in Action (CREA) is a feminist human rights organization based in New Delhi, India.

<sup>3</sup> The Sexual Rights Initiative is a coalition including Action Canada for Population and Development (Canada), CREA (India), Federation for Women and Family Planning (Poland), Egyptian Initiative for Personal Rights (Egypt), Akahata (Argentina).

<sup>4</sup> Bangladesh response to the recommendations made in UPR 2009 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/56/PDF/G0913956.pdf?OpenElement>

regard”. To further provide human rights training to law enforcement and judicial officers, with a specific focus on the protection on the rights of women, children and persons of minority sexual orientation or gender identity.<sup>5</sup>

3. It is a double standard since the government denies the existence of the sexual and gender minorities and then accepts a recommendation to train its law enforcers on SOGI. However, there has been no step taken to train the law enforcers on SOGI issues. Further, it is not true to state that there has been no concern expressed by any quarter. The Bangladesh Government does not accept the existence persons living with non-normative sexualities and gender non- confirming.

### **Socio-economic conditions in Bangladesh**

4. There is a culture of collective denial about the existence of sexual and gender minorities in the country. The conservative Muslim dominated patriarchal social structure allows same-sex relationships (as friends/close friends) as long as they are platonic. In the country of 160 million people (world’s most densely populated country) sex is considered a taboo (and a very private matter). There is no public discourse on sex/sexuality, not even under the subtle pretext of HIV/AIDS. Hence anything overtly sexual is frowned upon by the society.<sup>6</sup> Non-normative gender and sexual behavior is considered immoral, sinful, disgusting and absolutely unacceptable. As a result, same-sex relationships flourish and thrive in secrecy forcing people to be invisible and non-existent. This forced invisibility is a gross violation of basic human rights such as freedom of expression and association as enshrined in Universal Declaration of Human Rights.
5. One universal and constant truth about the Bangladeshi society is the marriage institution. Every person be it, male, female, gay, lesbian, Kothi, Hindu, Christian, disabled etc, must get married at one point of time. Marriage is seen as the only recognition of sexuality, wealth distribution, as production unit, legality of future generation and a binding string of moral fabrics based on religious beliefs. Hence it is very common for an LGBT person to succumb to social pressure and get married to an opposite sex.

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<sup>5</sup> Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Bangladesh [http://www.upr-info.org/IMG/pdf/Recommendations\\_to\\_Bangladesh\\_2009.pdf](http://www.upr-info.org/IMG/pdf/Recommendations_to_Bangladesh_2009.pdf) recommendation 27.

<sup>6</sup> Bondyopadhyay Aditya and Ahmed Shale, *Same-Sex Love in a Difficult Climate* (A study into the life situation of Sexual Minority (Lesbian, Gay, Bisexual, Kothi and Transgender) persons in Bangladesh

6. Just as any other communities of the country, the diverse gender and sexual communities also represent various class structures of the society. One's background/class indeed plays an important role on how one faces discrimination, violation, abuse and denial of basic rights.<sup>7</sup> A *Hijra*<sup>8</sup>/*Kothi*<sup>9</sup> identified people suffer extreme discrimination due to their gender expression, whereas gay identified male, who are mostly 'straight acting' can pass through the mainstream. Therefore it is easier for gay/bisexual men to lead a dual life and not come out. Such discreetness reaffirms the claim of the society that sexual minorities are non-existent and homosexuality is a western concept.
7. Education and economic status play a big role in building up and portraying gender identity and sexual orientation of a person. The self-identified gay/bisexual men are mostly from the middle/upper class with access to internet and westernized idea of sexuality and genders; whereas the *Kothi*, Men who have sex with men, and *Hijra* identified persons mostly belong to the less educated and underprivileged class. In other words, class plays a significant role in how the identities are constructed and understood.<sup>10</sup>
8. Till very recently, *Kothi/Hijra/MSM* communities were more or less disconnected from the self-identified LGB population. But initiatives are on to merge these various groups to identify common issues for furthering the movement of sexual and gender minorities. As a result there is a better understanding of each other leading to a stronger collaboration. There is exactly the kind of cooperation that is needed to take the nascent sexual rights movement forward: practical skills of the gay/lesbian community to demand political, social and legal reformation and the sheer number of visible *Hijra/Kothi* communities.<sup>11</sup>

## **Discrimination and Violence based on sexual orientation and gender identity**

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<sup>7</sup> Bondyopadhyay Aditya and Ahmed Shale, *Same-Sex Love in a Difficult Climate* (A study into the life situation of Sexual Minority (Lesbian, Gay, Bisexual, Kothi and Transgender) persons in Bangladesh

<sup>8</sup> Hijra is a socio-cultural construct in which a transgender person who is biologically male takes on the gender role of a female.

<sup>9</sup> Kothi in the South Asian context is a male homosexual who is feminized and takes a passive/receptive role in sex.

<sup>10</sup> Bondyopadhyay Aditya and Ahmed Shale, *Same-Sex Love in a Difficult Climate* (A study into the life situation of Sexual Minority (Lesbian, Gay, Bisexual, Kothi and Transgender) persons in Bangladesh

<sup>11</sup> Creating a public space and dialogue on sexuality and rights: a case study from Bangladesh by Sabina Faiz Rashid (<http://www.health-policy-systems.com/content/9/S1/S12>); [http://groups.yahoo.com/group/lgbtcoalition\\_bangladesh](http://groups.yahoo.com/group/lgbtcoalition_bangladesh)

9. Gross violations of rights have often been reported in the forms of abduction, arbitrary arrests, detention, beatings and gang rape by the law enforcing agencies and local thugs. Particularly Hijra, Kothi and other ‘effeminate’ males are often vulnerable to these forms of violence. There are also extensive reports of physical and psychological molestation of ‘effeminate’ males in academic institutions and workplaces. Most Hijra and Kothi-identified persons who attended schools cite bullying as one of the preeminent reasons for dropout from state sponsored primary schools. Many are reported to have turned suicidal and experienced acute psychological trauma. Left with no options, many turn to prostitution and drugs.
10. Lesbian women have also reported violence from their family members and society. Society exerts great pressure on them to get married. On resisting many of the women face violence from their family when they refuse to marry or are suspected to be in same-sex relationships<sup>12</sup>. There is immense stigma and fear within women. As a result their relationships are always in secrecy because of the fear of stigma, discrimination and rejection in society.

*“I had to be very careful in maintaining this kind of relationship—out of my concern for ‘shomaj’ (society), ‘paribarik shomman’ (family honour), and to protect myself from ‘lok lojja’ (public shame). I always find this insulting. Besides, in most cases, whenever the families of my lovers became aware of our relationships, they always tortured my lovers physically and mentally. In most cases, even if I wanted it with all my heart, I could never develop a long-term relationship. Each time, I wanted to be steady. But, social barriers destroyed each of my relationships.” (Lesbian Woman interviewed in CREA Count Me In! Research)<sup>13</sup>*

## **Response of the State**

11. No political party has acknowledged the existence of sexual minority group officially.

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<sup>12</sup> CREA (2011), Count Me In! research on violence against marginalised women in South Asia. Executive Summary of this research is available at <http://web.creaworld.org/ResearchSummary-F-2.pdf>

<sup>13</sup> CREA (2011), Count Me In! research on violence against marginalised women in South Asia

12. In the general election of 2008, Hijras were allowed to vote for the first time, but either as a male or a female. They were also issued national ID card which does not mention sex because it can be commonly understood from the name and photo.<sup>14</sup>
13. The passport issuance form includes an ‘Other’ category in the sex area, although it is not known whether anybody has applied and attained a passport under that category.<sup>15</sup>
14. In a rather positive approach, six government officials at the deputy secretary level undertook a pilot project titled “Integration of the Transgender (*Hijra*) Population into Mainstream Society.” Approved by the Ministry of Public Administration, the project was implemented through funding from Ministry of Education’s “Skills Development Project.” 30 *hijra* members were given a one and a half month long skills development training course on IT, sewing and beautification. The project has also initiated a mass awareness raising programme to change the negative views of people against the *hijra* community.<sup>16</sup>
15. The National Human Rights Commission in Bangladesh although aware of the issues of sexual and gender minorities is yet to take any practical measures to address the issues. Moreover, in a recent UPR draft sharing meeting, NHRC Chairman dismissed the issue saying ‘the society is not ready yet and the time is not right’.<sup>17</sup>
16. Bangladesh has ratified the International Covenants on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities.
17. However, very few strides have been adopted to inject the spirit of these treaties into the sphere of the domestic laws. Moreover the state also failed to submit its periodic reports on measures taken to materialize human rights. The initial report to the UN Committee

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<sup>14</sup> <http://www.pinknews.co.uk/2008/12/29/transgender-bangladeshis-to-vote-today>

<sup>15</sup> <http://www.dip.gov.bd/sites/default/files/MRP%20Application%20Form-combined1%2028-10-10.pdf>;  
[http://newagebd.com/newspaper1/archive\\_details.php?date=2011-05-23&nid=19880](http://newagebd.com/newspaper1/archive_details.php?date=2011-05-23&nid=19880)

<sup>16</sup> <http://www.thedailystar.net/magazine/2011/10/03/special.htm>;

<http://www.ucepbd.org/Transgender.pdf>

<sup>17</sup> Live broadcast of the speech was posted here <http://bambuser.com/node/3074119>

on Torture was due in 1999 and to the Committees on ICESR and ICCPR in 2000 and 2001. So far Bangladesh has only managed to report systematically to CEDAW and CRC but implementation of their recommendations has been poor.

## Legal Status

18. As a postcolonial nation-state Bangladesh retains the infamous British anti-sodomy law known as Section 377. It says “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.”<sup>18</sup>
19. Interestingly there has not been any case tried or filed under this section in the history of Bangladesh. Nonetheless ‘377’ is said to have been invoked by the law enforcing agencies to bully *Hijra, Kothi* and LGBT-identified communities. Since there is no separate law for Child Sexual Abuse, many argue section 377 to be retained for that purpose.
20. The national AIDS policy acknowledges the existence of male to male sexual (MSM) practices. Yet paradoxically homosexuality remains criminalized. Male Sex Workers (MSW) is also a recognized category in the national AIDS policy. There is still no legal framework to protect the rights of people living with HIV/AIDS.
21. There is also no law to penalize ‘male to male’ rape. Rape is still conceptualized within a peno-vaginal framework and is understood to be an exclusively heterosexual phenomenon both culturally and legally.<sup>19</sup>
22. Law enforcers often use Section 54 of the Criminal Procedure 1898 to harass Hijra, Kothi and LGBT-identified communities. According to section 54, police can arrest people without any warrant if he or she is suspicious, committed any cognizable offense or try to create obstacle in any work. In most of the cases this section is randomly violated or misused by political benefit or by persuading own benefit.<sup>20</sup>

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<sup>18</sup> Section 377 of Penal Code 1860 [http://bdlaws.minlaw.gov.bd/pdf/11\\_XVI\\_.pdf](http://bdlaws.minlaw.gov.bd/pdf/11_XVI_.pdf)

<sup>19</sup> Section 365 of Penal Code 1860 [http://bdlaws.minlaw.gov.bd/pdf/11\\_XVI\\_.pdf](http://bdlaws.minlaw.gov.bd/pdf/11_XVI_.pdf)

<sup>20</sup> Bondyopadhyay, Aditya and Khan, Shivananda: *Against the odds: The impact of legal socio-cultural, legislative and socio-economic impediments to effective HIV/AIDS intervention with males who have sex with males in Bangladesh*. Naz Foundation International and Bondu Social Welfare Society.

23. Section 74 of DMP<sup>21</sup> ordinance is also frequently used to harass male sex workers and cross-dressers.
24. Though there has not been any case of denial for registering an LGBT organization by the government (because there has not been any application for registration from any LGBT organization), it is widely accepted that such an organization may not be allowed to register because of the existing laws. Once consulted with Barrister Sara Hossain<sup>22</sup>, she also expressed the same view.

## Recommendations

25. To acknowledge and accept the existence of the sexual and gender minorities community in the country.
26. To conduct a study into the human rights violations of the sexual and gender minorities as proposed by the UN resolution HRC-Res-17-19.
27. To de-criminalize consensual same sex sexuality between adults by abolishing penal code 377, in accordance with international human rights obligations to which Bangladesh is a signatory (such as the International Covenant on Civil and Political Rights)
28. To formulate a separate law if necessary to address the issue of male rape or to broaden the juridical constituency of extant rape laws to include male to male rape.
29. To incorporate the issues related to sexual and gender minority community into the national AIDS policy and strategic plans for HIV and AIDS prevention.
30. To allow LGBT focused organizations to register without any harassment and legal impediments.
31. To incorporate comprehensive sex education in the national curriculum and raise awareness on sexuality and gender issues.
32. To train up and sensitize the law enforcing agencies so that the AIDS/STD-preventive activities do not get interrupted.
33. To introduce provisions for 'sex reaffirmation/reassignment surgery' for those (grown up transsexuals) willing to transition and to stop non-consensual sex assignment at birth.

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<sup>21</sup> The Dhaka Metropolitan Police (DMP) Ordinance 1976, [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=511](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=511)

<sup>22</sup> Barrister Sara Hossain was addressing a crowd during Under the Rainbow III festival at Goethe Institute in 2011

34. To generate employment opportunities for the *Hijra*, *Kothi* and other low-income sexually marginal groups.