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**Clouds over the Rainbow:  
LGBT Communities in Bangladesh**

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In the last years Bangladesh has increasingly been in the focus of international media and academic debates. Mostly due to the volatile political situation combined with a dramatic rise of Islamic fundamentalism, and related attacks on and suppression of marginalized groups. Some of the most affected groups are sexual minorities, foremost Lesbians, Gays, Bisexuals, Transgender, Hijras and Kothis, or in brief LGBT communities. This is sadly gaining momentum, since there is already a tremendous amount of private and public pressure on people which identify themselves as part of sexual minorities. Bangladesh, although historically a relatively tolerant and open-minded Muslim majority country, remains conservative on sexual matters. Therefore, large sections of Bangladesh's society seem to reject each sexual orientation which is perceived as "non-traditional" and portrays heterosexuality as the only accepted cultural norm. In consequence, homosexuality is becoming criminalized to such an extent that not only cultural values and societal norms but also national laws are in serious conflict with internationally accepted human, gender, and sexual rights.

Having this in mind, one should shed light on following questions: What is the current situation in Bangladesh regarding the LGBT community as well as the general political context? What is the government of Bangladesh's approach towards LGBT rights? How are equality and inclusiveness,

some of the core principles of Good Governance and Democracy, implemented in relation to the LGBT community? And last but not least how can the European Union (EU) make a difference in protecting LGBT rights in Bangladesh?

Generally one must state, that LGBT people are subjected to a high degree of violence and discrimination. In addition sexual minorities are also regularly losing several inter-related rights such as freedom of opinion and expression, personal security, peaceful assembly and association participation in public and cultural life, right to work, right to found a family. In addition, there are numerous social barriers, ostracism like employment and housing as well as difficulties in getting health care treatment among many other hurdles.

There are numerous reasons why this is happening. To begin with, there is an unfortunate political culture which is determined by a high degree of polarisation, hostility, and politics of revenge between the major political parties. Political actors see democracy as a zero-sum game marked by a destructive tit-for-tat strategy. By internalising such a notion of 'democratic behaviour' it does not astonish observers that the achievement of partisan objectives is prioritized over national concerns. In this context, not only political institutions and society are highly politicised but also the whole governmental machinery. Appointments in politics and administration

are based more on loyalty and kinship, instead on performance and skills. In consequence, many of the state agencies remain ineffective and absence in rural and certain urban areas which leads to a deterioration of the already poor governance, thus also enhancing endemic corruption. Additionally the undemocratic nature and unprofessional practice of political parties contribute as well. Political parties possess a weak organizational structure, lacking internal democracy and a code of ethics. They suffer from a high degree of party factional feuds and rivalries, which have led to numerous fissions and fusions in the past. Excessive personal leadership cult, dynastic rule, patron-clientelism, and politics of patronage constitute another negative trait of the country's polity. At the same time, criminalization of politics, coercion as an acceptable mode of governance and widespread use of violence are the modus operandi within the political landscape. Subsequently politicians, relying on musclemen, so called mastaans or goondas, to achieve goals in an unrestricted struggle for power has become a feature of Bangladeshi politics. This is especially alarming since there is a well-established culture of impunity for extralegal and extrajudicial activities. Another important feature of Bangladesh's uncertain political climate is the tense civil-military relationship which led to indirect militarization of politics and direct military rule. Especially under military rule, like in Pakistan, the country

experienced a process of Islamisation. It does not come by surprise, that there is a lack of confidence of the people in the political leadership which implemented a highly centralized and personalised decision-making style extending the power distance between politicians and general public. Latter is just seen as an instrument to outbid the political enemy. This is noteworthy, since there is no constructive working relationship between the government and opposition. In result, the parliament as a place for political debate to deal with issues concerning the opposition and the people is paralysed and/or side-lined. Instead, in order to ventilate grievances, politics were moved to the streets, especially by calling hartals, a South Asia term for general strikes, with detrimental ramifications for the already deteriorating socio-economic conditions. However, besides the increasing international awareness of these unfortunate trajectories, the situation of millions of Bangladesh's LGBT citizens is rarely reflected. Nevertheless, the extraordinary discriminating legal, political and social conditions of LGBT make it mandatory to put it on our agenda today.

Legally LGBT Rights are not recognized and homosexual acts are seen as an offense. Responsible for this legal stigmatization is Section 377 of the Penal Code of Bangladesh, which is a resilient relict of the British jurisdiction from the days of the colonial rule in South Asia. In brief,

this provision declares same-sex-sexual-activities as ‘against the order of the nature’. Regarding this rationale, it also does not recognize “a marriage, civil union or domestic partnership between adults of the same sex“. Interpreted as ‘unnatural offences’, the legal system understood homosexuality as an act which includes sodomy. Subsequently, any kind of homosexual activities are classified by state and society as unacceptable and as such punishable with deportation, fines and up to 10 years life imprisonment. In this context one should recognize that Section 377, as interpreted by the British, was solely directed against a certain sexual practice. However, in today’s Bangladesh the scope of the regulation was broadened more and is now aimed at all sexual minorities and their expression of respective sexual orientations and practices.

Besides the fact that Section 377 is a human rights violation, several statements in the recent years have tried to downplay this by pointing out that ‘in practice the law was rarely enforced’. However, this might be a part of the story but it is definitely misleading and distracts from other significant challenges:

First, there is no law which protects the LGBT communities against abuse of. Furthermore, it seems that there is no serious interest on the part of the main political actors to implement any substantial anti-discrimination laws. Here, there is a clear lack of political will on the side of

Bangladeshi authorities to change the current legal setup and judicial practices. Until today, despite all recommendations, foremost by the latest Universal Periodic Review in 2013, the government prefers to remain inactive making a point that ‘Bangladesh is a society with strong traditional and cultural values’ and ‘sexual orientation is not an issue’. Consequently, Bangladesh still belongs to a shrinking number of states that not only refuse to recognize same-sex unions, but also criminalize same-sex sexual relationship. This is unfortunate since the constitution actually provides for legal recognition of the LGBT rights: Section II, Article 19 promises equal opportunity for all citizens, and Section III, Article 27 Promises equality before the law for all citizens.

The second challenge is that even if Section 377 of the Penal Code is not or only very rarely enforced, it is used by the state agencies to ‘tease and bully’ LGBT people with impunity. Additionally it provides the legal base for further regulations like the Section 86 of the Dhaka Metropolitan Police Ordinance - the ‘Penalty for being found under suspicious circumstances between sunset and sunrise’ - which is commonly used to harass persons in public spaces.

These two flashpoints are creating an atmosphere in which negative social attitudes towards LGBT people can prosper unhampered. Consequently Lesbian, Gays, Bisexual and Transsexual, Hijras and Kothis getting are being pressured by state and

not-state actors. Here we find another commonality between Pakistan and Bangladesh. Non-state actors are feeling particularly encouraged to discriminate because the so-called 'morality reminders' in form of discrimination, verbal and physical harassments are not sanctioned and prosecutors are enjoying largely impunity. Furthermore, there is tremendous social pressure, as already indicated due to the rise of Islamists in the country, who are trying to impose their illiberal model of life and society on the people of Bangladesh. Since LGBT communities, for obvious reasons, do not share these fanatic sentiments of the Islamists in general and especially not their notion of strictly patriarchal organised family, LGBT communities have unfortunately moved into the limelight of extremist violence. Furthermore, the Islamists spend much time and effort to intervene in any up-coming public debate on LGBT rights, either in order to suppress or to manipulate it in order to promote their radical doctrines. They are especially successful in doing so due to the fact that Bangladesh lacks an objective, non-partisan and neutral discussion on the situation of the LGBT citizens and measures how to improve it. Instead, officials either ignored this imperative or chose a policy of denial. Ultimately, this created a vacuum in the public sphere which is giving Islamists the opportunity to determine the cause of current and future societal and political developments. Therefore, one must state

that the growth of religious extremism has a tremendously negative impact on the status of LGBT people.

Also from the academic side, there is hardly any constructive contribution which could give an impetus for the political-legal sphere. Most of the scientific papers and discussions are focusing on the health perspective, mainly the issue of HIV/AIDS among male prostitutes. Which of course is an important issue, but it narrows down the debate down to just one fragment of a much larger puzzle. As such, the discourse has been reduced to health issues, sidelining the domain of 'rights'. Furthermore, this indicates that organizations and individuals working towards an improvement of the situation of LGBT communities in the political and legal spheres are keeping a low profile. In other words, they still face tremendous difficulties by intolerant segments within the state authorities and hostilities and threats through religious conservatives and Islamic fundamentalists. Consequently, some of the groups concerned with the conditions of the LGBT communities prefer to focus on less 'noncontroversial' issues before they get targeted by Islamic fanatics. The campaign of hate against Nobel Prize winner Muhammed Yunus defaming him as un-Islamic because of his criticism of the persecution of gay people in Uganda is one of the most prominent examples. Another significant case is the intimidation of feminist writer Naslima Nasreen who had to

flee from Bangladesh because of her engagement for Women Right's and her critical stance towards Islam. Both affairs clearly lay out how Human Rights defenders in Bangladesh are not only left without protection against non-state actors but also how they are targeted by state actors, which are either influenced by religious conservative and Islamist ideology or try to appease the fundamentalists for partisan political purposes.

However, in order to improve the situation of minorities in general and LGBT communities in particular, Bangladesh is in need for a responsible, qualified research based-engagement in order to encourage a much broader, non-partisan, qualified and responsible public debate. It must be seen as an imperative that this debate also leads to political decisions and the implementation of legal reforms. In order to do so, certain immediate measures are required. First of all, Human Rights defenders concerned about the LGBT communities have to be integrated into the main stream of the social movement sector in Bangladesh. Some initial steps in this direction have already been made to enhance cooperation between the sexual minority movement, mainstream Human Rights and other social movements as well as academia. For example, lesbian women, which are one of the most vulnerable group since they have to face the twofold challenge of an heterosexual patriarchy: lesbians are not only being targeted for same-sex-sexual

activities, but also for being women; which have been marginalised in the cultural-societal context of Bangladesh. This would not only enhance the efficiency of their efforts but also lead to a further strengthening of civil society. Second, there is an urgent and essential need for a national consensus among the main political parties. Without such a rapprochement the extraordinary political polarisation and instability which constantly creates an environment of fear, violence, and intolerance will continue. In both directions the EU could and must play a crucial role in facilitating an agreement with the major conflicting parties in Bangladesh. Agreements like the 'Everything but Arms' (EBA) scheme -which grants Bangladesh most preferential trade arrangements with the EU-might be put more in the forefront in two directions: Not only to ensure the compliance of the Bangladeshi decision-makers with Human Rights obligations and implementations, but also to stick to their promises to ensure an improvement of the relationship between the two major political parties and their leaders. In sum, a strong civil society and a national consensus are two of the most significant requirements not only to ensure the upcoming elections but also to contain and eradicate Islamic fundamentalism. Only if these features determine and shape the contemporary and future trajectories of politics and society, will there be a viable chance to accommodate the interests of Bangladesh's LGBT communities in a sustainable manner.