

Discrimination and Human Rights Abuses Against LGBT People in Myanmar

Lesbian, gay, bisexual and transgender (LGBT) people in Myanmar face discrimination and mistreatment in many different forms. Traditional beliefs, conservative culture and a lack of understanding about sexual orientation or gender identity expression (SOGIE) or LGBT issues, result in intimidation, humiliation and verbal, physical and sexual abuse against LGBT people in families, schools, workplaces, media and public spaces.



Families

LGBT children often face negative comments, ridicule, pressure, or rejection from their parents and relatives. Some parents think they can “cure” their child, sometimes through acts of violence. Some force their LGBT children to marry a straight partner. This lack of understanding and support causes a lot of distress to the LGBT child and has lifelong trauma effects.



School

Teachers discriminate against LGBT students by insulting them in front of the class, and punish the ones who wear clothes that do not align with their assigned gender. This treatment, in addition to bullying and alienation from fellow students and pressure from parents and family members, causes a great deal of LGBT students to drop out of school early, giving them a severe disadvantage in the workforce where they are equally mistreated. Many also turn to harmful behavior such as using drugs.



Workplace

Although LGBT people may be qualified for their respective work, they are often discriminated against because of their gender identity. LGBT workers often feel unwelcome and separated from co-workers and higher-ups, and have difficulty finding work outside of the sectors that are socially accepted given their identity. For gay men and transgender women, these sectors are mostly make-up artistry, entertainment and work as natkadaw (spirit mediums). Transmen or tomboys usually turn to labor intensive and low-paying work, such as construction workers or rickshaw drivers.



Media and Entertainment Industry

News media rarely report on LGBT issues, which contributes to a lack of understanding among the general public. The film industry perpetuates harmful stereotypes and misunderstanding about LGBT individuals by portraying them as joker figures, and often as being “miraculously cured” of their homosexuality.

Furthermore, Myanmar’s legal framework does not protect LGBT people and is often used to persecute and violate their fundamental rights. In addition, international mechanisms such as the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC) ratified by the Union of Myanmar are not fully implemented.

Legal challenges to the rights of LGBT people

In the context of Myanmar’s weak rule of law and frequent rights abuses against its citizens, LGBT individuals face additional discrimination due to their identity. Myanmar’s legal system enshrines this discrimination through several laws and statutes that directly infringe on the rights of LGBT people or are indirectly used to intimidate, abuse and persecute them.

Constitution of the Union of the Republic of Myanmar, 2008. The sections of the Myanmar Constitution that ostensibly provide equal rights and protection before the law (§ 347) and protect individuals from discrimination (§ 348 and 352) do not include protections on the grounds of sexual orientation or gender identity expression (SOGIE). Theoretically, the Constitution provides for the protection of privacy of citizens (§ 357), for equal opportunity in employment (§ 349), for the right to education (§ 366), for protection from arbitrary and sustained detention (§ 375), and to guarantee the right to a defense (§ 376), all of which are regularly denied to LGBT individuals.

Myanmar Penal Code, 1860. Section 377 of the Penal Code criminalizes consensual same-sex intercourse. Police often use the threat of persecution under this section to extort bribes, or for initial charges (which are then changed at trial). This section leads not only to abusive applications of other laws, but also to social and state-sponsored homophobia, discrimination, and human rights abuses against LGBT people. Section 375 does not recognize rape between two individuals of the same sex. This narrow definition removes any potential recourse for LGBT persons who are sexually assaulted by law enforcement officials or others. Furthermore, the broad definition of “public nuisance” in Section 290 can be applied to anyone the police deem to be a nuisance or disruptive. This is especially used against transgender women as their clothing, makeup and behaviour are deemed “immoral”.

Burma Police Act, 1935 and Rangoon Police Act, 1945. These laws are the most commonly used to intimidate, humiliate, persecute and extort LGBT individuals. Commonly known as the “Darkness Laws”, Section 30 of the Burma Police Act and Section 35 of the Rangoon Police Act allow the police to stop anyone within the dark space of or near a dwelling, with their face covered or otherwise wearing a disguise, or loitering. The provisions of these laws are broad and are used by the police in a discriminatory manner against LGBT individuals.

Police Abuse

Arbitrary arrest and abusive behaviour towards LGBT individuals is entrenched in the police force. LGBT people are physically assaulted, verbally and sexually abused, extorted and forced to pay bribes, and tortured (such as forced to sleep near toilets in the police station, strip naked, and particularly for transwomen, having their heads shaved and/or being forced to “act like a man”).

Access to Justice

There is little recourse to justice for LGBT people. They are often denied access to a lawyer when they are arrested, and struggle to find legal representation equipped to deal with SOGIE-related cases. Many LGBT people and their families don’t dare to file cases themselves when they have suffered abuse or other crimes. Police are frequently uncooperative in helping gather evidence or track down perpetrators, but rather dismiss victims for not having sufficient evidence or blame them for the crime.

Recommendations

- Protect the fundamental human rights of LGB T people by making the following legal reforms:
 - Repeal Section 377 of the Myanmar Penal Code;
 - Amend Section 375 to include same-sex rape;
 - Amend Section 348 of the Constitution to include sexual orientation, gender identity and expression as grounds for non-discrimination.
- Enact a broad anti-discrimination law that includes the establishment of an independent complaint mechanism or an expansion of the mandate of the Myanmar National Human Rights Commission.
- Ensure full and effective implementation of international mechanisms such as the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) ratified by the Union of Myanmar.
- Provide sensitivity and human rights training on sexual orientation and gender identity for law enforcement officials (police, prison and judicial officials) at all levels. Ensure investigation and prosecution of law enforcement personnel who commit human rights abuses against LGBT individuals.
- Ensure modules on human rights, non-discrimination, equality, sexual orientation and gender identity, and relevant sex education are integrated in curriculum for public schools.
- Encourage employers to adopt and implement a policy of non-discrimination, equal opportunities and prohibition on harassment for all, as well as formal grievance or ‘whistle-blowing’ mechanism(s) to report, manage and settle grievances concerning discrimination.
- Promote non-discrimination and equality for all through inclusion of positive images of LGBT people and issues relating to sexual orientation and gender identity in the media and entertainment industry.



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