

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	455
Land:	Pakistan
Kilde:	ILGA
Titel:	State-Sponsored Homophobia 2019
Udgivet:	Marts 2019
Optaget på baggrundsmaterialet:	25. juni 2019



STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

LUCAS RAMÓN MENDOS

ilga.org



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Suggested citation:

International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019).

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PAKISTAN

Provisions in force

► Penal Code (Act XLV of 1860).

*Carnal intercourse
against the order of
nature*

Section 377. Unnatural offences.

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 shall not be less than two years nor more than ten years, and shall also be liable to a fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Obscene acts

Section 294. Obscene Acts and Songs.

Whoever to the annoyance of others:

- (a) does any obscene act in any public place; or
- (b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

► Prevention of Electronic Crimes Act (2016).

*Legal barrier to
freedom of
expression*

Section 34(1). Unlawful Online Content.

The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or an incitement to an offence under this Act.

Human rights situation

LGBT people report facing significant hostility within Pakistani society, including harassment and acts of violence if they disclose their sexual orientation or gender identity. Often, individuals face pressure and violence from their family members to conform to heteronormative expectations of marriage.¹

In June 2011, the US embassy in Islamabad sponsored and held the first pride parade in the country (within the US Embassy compound). This attracted strong criticism from religious

¹ Ihsan, "What it's like to be a 22-year-old gay man in Pakistan", *Gay Star News*, 5 July 2016; Beth Abbit, "What it's like to live life as a Muslim lesbian", *Manchester Evening News*, 28 October 2017; "Country of Origin Information Report: Pakistan Country Overview" (European Asylum Support Office 2015), p. 105.

authorities, who called the event “cultural terrorism”.²

In September 2013, the first website blocked by the Pakistan Telecommunications Authority was *queerpk.com*, a site set up to help members of Pakistan’s gay and transgender community socialise and share experiences. According to a spokesperson, it was shut down because “its content was against Islam and norms of Pakistani society”. The moderator of the site was unwilling to challenge the ban out of fear.³

In January 2014, a television programme accused the Pakistani gay community of “being part of a conspiracy hatched by Christians”.⁴

According to Kaleidoscope Trust, in April 2014, a serial killer confessed to killing three gay men because of their sexual orientation, yet Pakistani media depicted the serial killer as “the epitome of righteousness”.⁵

Section 294, on obscene acts, is reportedly often deployed to target male and trans sex workers.⁶ In fact, in 2016, there were multiple reports of violence against transgender women. In May 2016, a transgender activist was killed after being shot eight times and suffering mistreatment at the hospital.⁷

In August 2017, a transgender person was shot dead by a group of shooters who opened fire on a number of transgender people standing in the street from a vehicle.⁸ The shooting occurred after the vehicle had driven past a previous time, with men throwing eggs at the group of trans women. In January 2018, two members of TransAction Pakistan: Transgender Community Alliance were attacked in separate incidents.⁹

Progress on gender identity issues

In June 2016, a group of clerics declared marriage between transgender persons permissible in Islam¹⁰ and in November, a group of transgender activists started raising funds to build a mosque for transgender people, who are often excluded from religious participation.¹¹

In January 2017, the Lahore High Court instructed the government to include the transgender community in the upcoming census in March.¹² However, in August 2017, activists rejected the census findings that the population of transgender people was 10,000 as “inaccurate and misleading”; instead, they say that there are more than a million transgender persons across the country.¹³

In April 2018, the Gender Guardian, a school for the education and vocational training of trans people, was opened in Lahore.¹⁴ In May 2018, the National Assembly passed the Transgender Persons (Protection of Rights) Bill, 2018 aimed at ensuring rights of transgender persons.¹⁵ The law allows transgender people to register to obtain a driver’s license and passport, as well as to change their gender in the national records. Discrimination and harassment of transgender persons is also prohibited under the law.

In September 2018, the Lahore High Court ruled that public hospitals in Punjab province must provide separate facilities for transgender patients to safeguard their right to privacy and protect them from discrimination and prejudice.¹⁶ In December 2018, the first trans pride was held in Lahore.¹⁷

² “Pakistan: Religious groups condemn US embassy gay event”, *BBC News*, 4 July 2011.

³ “Pakistan Blocks First Gay Website Queerpk, Deeming It ‘Un-Islamic’”, *Huffington Post*, 26 September 2013.

⁴ Tufail Ahmad, “Pakistani TV Channel’s Attack On Pakistan’s Gay Community, Bedrooms Raided And Gays Accused Of Being Against Islam And A Conspiracy Of Jews And Christians”, *Middle East Media Research Institute*, 17 January 2014.

⁵ Kaleidoscope Trust et al., *Speaking Out* (2015).

⁶ Kaleidoscope Australia, *Shadow Report to the Committee on Economic, Social and Cultural Rights Regarding Pakistan’s Protection of the Rights of LGBTI Persons* (2016).

⁷ Ali Akbar, “Transgender Alisha succumbs to wounds at Peshawar hospital”, *Dawn*, 25 May 2016.

⁸ “Transgender person shot dead, dozens of suspects held in Karachi”, *Geo News*, 30 August 2017.

⁹ “Violent Attacks on Transgender Activists”, *Front Line Defenders* (website), accessed 9 February 2019.

¹⁰ Mubasher Bukhari, “Pakistani clerics declare transgender marriages legal under Islamic law”, *Reuters*, 27 June 2016.

¹¹ Sehrish Wasif, “In Islamabad, a mosque for transgender community”, *The Express Tribune*, 21 November 2016.

¹² “On court’s order, Pakistan to count its transgenders”, *Sify News*, 9 January 2017.

¹³ Sehrish Wasif, “Transgender community rejects census figures”, *The Express Tribune*, 27 August 2017.

¹⁴ Rana Bilal, “Pakistan’s first-ever school for transgender community set to open its doors”, *Dawn*, 6 April 2018.

¹⁵ “NA passes Transgender Persons Protection of Rights Bill 2018”, *Pakistan Observer*, 8 May 2018.

¹⁶ Rik Glauert, “Hospitals in Pakistan to separate transgender patients, court rules”, *Gay Star News*, 21 September 2018.

¹⁷ Tom Capon, “Trans people held the first ever trans pride march in Pakistan”, *Gay Star News*, 30 December 2018.

National Human Rights Institution

Pakistan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the 'traditional values of humankind' resolutions at the Human Rights Council.¹⁸

In 2011, Pakistan voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.¹⁹ In June 2012, at the 19th session of the HRC, at the reading of the report, Pakistan led a walkout by member States of the Organisation of Islamic Cooperation, which was unprecedented behaviour in that forum.²⁰ They were objecting to "attempts to create" "new standards" regarding SOGI that "seriously jeopardise the entire international human rights framework".

In 2014, Pakistan again voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.²¹

Throughout 2016, Pakistan took the lead in opposing the appointment of a United Nations SOGI mandate holder.²² However, in that year, Pakistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.²³

At the session of Third Committee of the UN General Assembly held in November 2016, Pakistan voted against the LAC amendment to remove Operative Paragraph 2,²⁴ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Pakistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

There were no direct mentions of SOGI in either of Pakistan's UPR outcome documents in May 2008²⁵ and October 2012.²⁶ Only in 2008 were there civil society submissions on the issue (it appears that of the 38 civil society submissions made in 2012, none had a SOGI context).²⁷ However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards in their 2nd cycle UPR.

During its 3rd cycle of the UPR carried out in November 2017, Pakistan received seven SOGIESC recommendations. It accepted two of them, whilst noting (functionally rejecting) all remaining five.

The State accepted recommendations from Albania calling for Pakistan to "ensure that the 2017 law presently being reviewed on the recognition of the rights of intersex and transgender persons pays necessary attention to both women and men transgenders"; and from Spain, urging the State to "rapidly adopt and implement the two draft bills recently presented before the National Assembly to ensure the rights of transgender persons". However, it noted recommendations from Chile asking the State to "adopt legislative measures to

¹⁸ Human Rights Council, *Resolution 16/3: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*, A/HRC/RES/16/3, 8 April 2011.

¹⁹ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

²⁰ "African, Arab Delegates Walk out of UN Gay Rights Meeting", DW, 7 March 2012.

²¹ Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

²² "Islamic & African Nations Boycott Meeting With First U.N. Expert on Anti-Gay Violence", UN Watch, 26 January 2017.

²³ Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

²⁴ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

²⁵ *Draft Report of the Working Group on the Universal Periodic Review Pakistan*, A/HRC/WG.6/2/L.8, 15 May 2008.

²⁶ *Draft report of the Working Group on the Universal Periodic Review: Pakistan*, A/HRC/WG.6/14/L.10, 2 November 2012.

²⁷ ILGA, *Submission in the UPR Review of: Pakistan* (2008); International Gay and Lesbian Human Rights Commission, *Human Rights and Transgender People in Pakistan* (2008).

decriminalize homosexuality and consensual sexual relations between people of the same sex”; and from Australia, France, Mexico and the Netherlands, calling the State to take measures to protect the LGBTIQ community from discrimination and violations to their human rights.²⁸

Pakistan referred to SOGIESC issues during the session, focusing on the improvements of the situation of trans people. The State expressed that “for the first time ever transgenders were counted in the recently concluded census and are now being issued national identity cards by the National Database Regulatory Authority through inclusion of the third gender category”.²⁹

Treaty Bodies

In 2017, the **Human Rights Committee (CCPR)** expressed concern about the criminalisation of same-sex relations and the lack of information on effective measures to prevent and punish all forms of discriminations against lesbian, gay, bisexual, transgender and intersex persons.³⁰ It urged the state to decriminalise consensual same-sex relations and adopt a comprehensive anti-

discrimination legislation that prohibits discrimination on the basis of sexual orientation and gender identity.³¹

In 2016, the **Committee on the Rights of the Child (CRC)** expressed extreme concern about the widespread discrimination against lesbian, gay, bisexual and transgender children.³² It called on the state to take all appropriate measures, such as comprehensive public education programmes, to combat and prevent discrimination and negative societal attitudes and mobilize political, religious and community leaders to support efforts to eradicate traditional practices and attitudes that discriminate against these children.³³

Special Procedures

In March 2016, several mandates³⁴ received information about alleged threats and attempted assassination of Adnany, a human rights defender and transgender activist.³⁵ They expressed grave concern at the recurrent threats and shooting of Adnany and the initial denial of medical treatment on the basis of gender discrimination by the hospital she was sent to after she was attacked.

²⁸ “UPR-Pakistan”, ILGA Website, 16 November 2017.

²⁹ “UPR-Pakistan”, ILGA Website, 16 November 2017, Section C.

³⁰ *Concluding observations on the initial report of Pakistan*, CCPR/C/P AK/CO/1, 23 August 2017, para. 11.

³¹ *Concluding observations on the initial report of Pakistan*, CCPR/C/P AK/CO/1, 23 August 2017, para. 12.

³² *Concluding observations on the fifth periodic report of Pakistan*, CRC/C/PAK/CO/5, 11 July 2016, para. 18.

³³ *Concluding observations on the fifth periodic report of Pakistan*, CRC/C/PAK/CO/5, 11 July 2016, para. 19.

³⁴ The mandates were: the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

³⁵ For more information, see [PAK 6/2016](#).