

Flygtningenævnets baggrundsmateriale

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Kilde:	International Lesbian Gay Bisexual Trans and Intersex Association (ILGA).
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GAZA – OCCUPIED PALESTINIAN TERRITORY



The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.

Section 152(2) of the Code criminalises sexual acts between men with a penalty of up to 10 years. **[SEXUAL ACTS BETWEEN MEN]**

“(2) Any person who:—

- (a) has carnal knowledge of any person against the order of nature; or
 - (b) has carnal knowledge of an animal; or
 - (c) permits a male person to have carnal knowledge of him or her against the order of nature,
- is guilty of a felony, and is liable to imprisonment for ten years.”

This Code was in force also in Jordan until 1951 and in Israel until 1977, before they adopted their own Penal Codes. Note that in the West Bank (including East Jerusalem) the Jordanian Penal Code of 1951 (modified in 1960) is in force, having no prohibition on sexual acts between persons of the same sex.

Since the 2007 governance of Gaza by Hamas, the Gazan legislative body has attempted to amend or replace the British Mandatory Penal Code. The proposal from 2013 purported to be “Islamic based”, and included flogging for adultery and cutting off an offender’s right hand for theft. While a complete draft of the proposal was never published, it is highly likely its treatment of same-sex acts would have been far more severe than even the current law. The code failed to pass the Gazan legislature.

INDIA



Penal Code, 1860. Section 377.

Unnatural offences

[AGAINST THE ORDER OF NATURE]

“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 or a term which may extend to ten years and shall also be to fine.
Explanation: Penetration is sufficient to candidate the carnal intercourse necessary to the offence described in this section.”

Although the law is technically only applicable to men, women in India are in fact **subject** to it (at p. 12), and are subject to its significant ‘chill factor’, and resultant stigmatisation. In 2009, Section 377 of the Indian Penal Code was given a more limited interpretation by the Delhi High Court, **lifting** the ban on same-sex sexual activity among consenting adult men in private (see **comment**). However, on 11 December 2013, in *Koushal v. Naz Foundation*, a two-judge bench of the Supreme Court of India **upheld** Section 377 as constitutional. Therefore, private consensual sexual activity between two men is still a crime in India. The judgment also said that the legislature should decide on this issue, not the courts, yet attempts at **introducing** such a Bill before parliament have not been unsuccessful.

In terms of India’s recent performance regarding international human rights law at the UN, its 2nd cycle UPR **responses** (May 2012) suggest the country’s current regard to its obligations: India accepted a level 3 (i.e. ‘to consider’) recommendation to “[s]tudy the possibility of eliminating any criminalisation of same-sex relations”, despite the **concerns** that the Criminal Law (Amendment) Bill 2012 that was approved by the Cabinet retained Section 377 of the India Penal Code. In the same UPR session, India rejected a general recommendation for non-discrimination, particularly in employment, based on sexual orientation. India’s 3rd UPR cycle commences in May 2017.