

Flygtningenævnets baggrundsmateriale

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AFGHANISTAN



Penal Code, 1976.

Chapter Eight: Adultery, Pederasty, and Violations of Honour

Article 427:

[INTERCOURSE BETWEEN MALES]

“(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.

(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:

a) In the case where the person against whom the crime has been committed is not yet eighteen years old.”

Although the Afghan Penal Code does not contain any explicit provisions on the criminality of consensual same-sex sexual acts. Article 130 of the Constitution does allow recourse to be made to Sharia law, which prohibits same-sex sexual activity in general, and indeed any sexual contact outside marriage. Afghanistan’s Sharia law criminalises same-sex sexual acts with a maximum of the death penalty. A BBC article of late-2016 **confirms** that LGBT people live in constant fear of this or other severe persecutory penalties and they are forced to hide their identities. A high-profile scholar is quoted “there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven”, and this is consistent with a **history** of such repression in Afghanistan.

In Afghan legal terminology “pederasty” appears to refer to intercourse between males regardless of age. The fact that paedophilia - or sexual relations with persons under the age of consent - falls under subsection 2(a) of article 427 indicates that this is the case. Terming sexual acts between adult men “pederasty” has previously not been uncommon; this occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a “pederast” usually referred to a male who had anal intercourse with another male, regardless of age. Further, the traditional practice of keeping Bacha Bazi (teenage boys typically aged 14-18) for sexual use and as symbols of status amongst older men is **reported** to be currently widespread.

In its 2nd cycle UPR in January 2014, the only recommendation regarding SOGI that Afghanistan received was **not accepted** (‘noted’), Norway called for the “repeal the provisions of the penal code that criminalise sexual relations between consenting adults of the same sex”. No mention was made of the death penalty in relation to same-sex behaviour directly, although ten recommendations calling for the abolition of the death penalty in line with civil and political rights were made: under international human rights law these necessarily include SOGI in their scope. A Joint Submission (SRI, IFPP, and AFGA) made a **reference** to men who have sex with men (MSM), and this appears to be the only mention of SOGI-related material through Afghanistan’s entire 2nd cycle UPR process. Its next review is October 2018.

Although a senior member of Afghanistan Independent Human Rights Commission **attended** the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, but to date there has been **no mention** of sexual orientation or SOGI in the work of that Commission.

BANGLADESH



Penal Code, 1860 (Act XLV of 1860).

Section 377. “Unnatural Offences”

[AGAINST THE ORDER OF NATURE]

“Whoever voluntary has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

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

While referencing family values at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs **concurred** with the newly-found position of the National Human Rights Commission that LGBT people should be protected from violence and discrimination in law. However, throughout 2016 the levels of violence and threat from religious radicals that LGBT people have been exposed to have exponentially risen, and the State has not offered protection. As such, many have been forced to leave their homes and flee the country for fear of their lives.

There are no SOGI-based NGOs in Bangladesh, although there are some long-standing CSOs, such as Boys of Bangladesh and the Bhandu Social Welfare Society, and online communities such as Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow. It is unlikely that these groups can register as NGOs as it is understood that Section 377 **extends** to membership of a SOGI-based organisation, a view **endorsed** (at p.8) by one of Bangladesh's only barristers concerned with SOGI issues, Sara Hossain.

Bangladesh **accepted** a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination at its 1st UPR, but this issue was not picked up at its 2nd cycle review, nor is there evidence that such sensitisation has significantly occurred. The **capacities** of seven South Asian National Human Rights Institutions (NHRIs) to respond to LGBTI concerns were assessed in 2013, amongst them that of Bangladesh. Bangladesh's 3rd cycle UPR will be in January 2018.

On 15 November 2013, Bangladesh legally **recognised** the Hijras population as being a 'third sex' for purposes of voting, travel, identification and other core civil rights.

In January 2013, Bangladesh's first ever LGBTI magazine, *Roopbaan* was published and it has expanded its **initiatives** (at p.40) into organising awareness and advocacy, including two public events - 'Rainbow rally' - to promote friendship and diversity in Dhaka in 2014 and 2015. However, in April 2016 organisers had to **cancel** the rally because of threats and opposition from Islamists, and four arrests were reported. On 25 April 2016, the editor of *Roopbaan*, Xulhaz Mannan, and fellow activist Mahbub Tonoy, were **gruesomely executed** in an apartment in Dhaka.

In February 2015 Avijit Roy, the author of Bangladesh's first scientific book (2010) on same-sex sexual identity, was **savagely murdered** on the streets of Dhaka, seemingly by religious fundamentalists.

BHUTAN



Penal Code 2004.

Chapter 14: Sexual Offences

Unnatural sex

[AGAINST THE ORDER OF NATURE]

Section 213. "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature."

Grading of unnatural sex

Section 214. "The offence of unnatural sex shall be a petty misdemeanor."

Chapter 2: Classes of crime

Section 3. "For the purpose of this Penal Code, the classes of crimes shall be as follows:

(c) A crime shall be petty misdemeanor, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant."