

Criminalisation of Homosexuality

Updated 25 October 2015

Pakistan	
	
<p>National Law:</p> <p><i>Pakistan Penal Code</i>¹</p> <ul style="list-style-type: none"> - S377: Unnatural Offences² <p>* The <i>Hudood Ordinance</i> of 1979³ (Section 4) criminalises “zina” or sexual intercourse outside marriage, in line with Sharia law. Although the law does not specifically criminalise same-sex sexual conduct, insofar as non-heterosexual relationships cannot be legalised in any form of marriage, the provision suggests that non-heterosexual sexual acts that involve penetration⁴ can be prosecuted.⁵</p>	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life imprisonment or between 2 and 10 years imprisonment with a fine - Death by stoning, whipping and imprisonment.
<p><u>Treaty Ratification</u></p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>	
<p>S377 (Unnatural offences) is applicable only to men. S4 (Zina) of the <i>Hudood Ordinance</i> of 1979 is applicable to both men and women</p>	
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2015: In its ‘State Sponsored Homophobia Report’ released May 2015, the International Lesbian and Gay Association stated: ‘we are not aware of contemporaneous evidence that consensual same-sex sexual activity has been targeted for the death penalty in Pakistan.’⁶ - 2014: The US Human Rights Country Reports on human rights for 2013 and 2014 found that Pakistan’s laws criminalising LGBTI people were rarely enforced.⁷ Yet prosecutions have been reported: <ul style="list-style-type: none"> o June 2015: Pakistan’s <i>Express Tribune</i> reported that police arrested two men in the Jaffarabad district of Balochistan after they allegedly carried out a ‘secret marriage.’⁸ o 27 August 2013: According to one article, a boy was arrested after being discovered having sex with another boy in a field. The boy’s family allegedly attempted to bribe the police, but the police would not accept the bribe. The same article claims that whilst many arrests occur, ‘[i]n almost all cases

	<p><i>charges will be dropped.</i>⁹</p> <ul style="list-style-type: none"> ○ 18 December 2013: A TV Reporter entered a couple’s house, accusing them of being gay. The news segment was filmed with phrases such as ‘[LGBT are] <i>worthy of stoning</i>’ running over the top of the clip. The couple were arrested by police, although it is not known under what offence they were charged.¹⁰ ○ 30 November 2011: The Immigration and Refugee Board of Canada, relying on information provided by the Neengar Society, suggested that in 2011, in the city of Multan, ten prosecutions took place under Art 377, 2 of which resulted in a 10 year prison sentence for those convicted.¹¹ ○ 25 May 2010: 43 people were arrested when the police suspected a gay marriage was taking place. One of those accused of getting married told police it was a birthday party.¹²
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - July 2015: Hamza Ali Abbasi, a Pakistani actor followed by over 60,000 people on Facebook, declared himself ‘<i>disappointed at people in Pakistan celebrating a behaviour that is taboo even in animals</i>’ and changed his profile picture to a rainbow flag with a red line across it.¹³ - 14 February 2012: Zamir Akram, Pakistan’s ambassador to the UN, wrote a letter to the UN Human Rights Council expressing concern over the ‘introduction’ of sexual orientation in the 2012 General Assembly Resolution (17/19): <p><i>We are... disturbed at the attempt to focus on certain persons on the grounds of their abnormal sexual behaviour, while not focusing on the glaring instances of intolerance and discrimination in various parts of the world, be it on the basis of colour, race, gender or religion, to mention only a few... The OIC Member States are concerned that the Panel will discuss issues that relate to personal behaviour and preferences, and have nothing to do with fundamental human rights.</i>¹⁴</p> - Whilst there have been few ministerial statements on the matter, religious authorities have been strong in their denouncement of gay rights. One of the reasons for a lack of discussion on the subject is likely to be the strict social attitudes under which Pakistan operates.¹⁵

<p style="text-align: center;">Persecution and Discrimination</p>	<p>There are many individual reports of persecution of the LGBTI community in Pakistan:</p> <ul style="list-style-type: none"> - 25 July 2015: Some terror suspects in Karachi revealed in police investigation that they wanted to kill homosexual persons and obscenity promoters in Pakistan. A lead suspect reportedly stated: <i>'By killing the selected ones we wanted to make them a lesson for others who are bent upon making Pakistan a vulgar and obscene country and like the west, in most parts of which the homosexuality has been legalized.'</i>¹⁶ - May 2015: Three transgender women were murdered in a drive-by shooting on the evening of 8 May. Almas Bobby, President of the Shemale Foundation Pakistan - an organisation she started in 2004 to campaign for the rights of transgender people - told Pakistan's <i>Dawn News</i> that <i>'the attackers could be those who did not like the presence of transgenders in the locality.'</i>¹⁷ - 7 April 2015: Armed men in Swabi reportedly abducted and gang-raped a trans woman on after killing two others in a pre-dawn incident while a group of transgender persons were returning home after performing a music and dance show at a wedding party.¹⁸ - July 2014: The UK Home Office's Country Information and Guidance Document on Pakistan stated that: <p style="margin-left: 40px;"><i>Widespread and systematic discrimination against LGBT persons in Pakistan... persist[s], including harassment and violence... No effective protection is provided by the authorities.</i> The document also stated that: <i>Gay rights activists and other individuals who openly campaign for gay rights in Pakistan would be at real risk of persecution from societal actors.</i>¹⁹</p> - May 2014: A group of men reportedly attacked and gang-raped a transgender woman in Karachi. Activists claimed police refused to conduct a thorough investigation despite having photographic evidence and contact information for one of the accused assailants.²⁰ - April 2014: A Lahore paramedic confessed to killing three gay men whom he met online. Authorities suspended one senior officer allegedly involved in the attack, and the police department launched an investigation.²¹ - 25 September 2013: A popular gay website was blocked, despite it containing no pornography. A spokesman of the PTA (Pakistan's internet regulator) gave reasons for the censorship: <i>'We blocked the website under the law because its content was against Islam and norms of Pakistani society.'</i>²² - May 2013: For the first time in the country's history, several transgender women ran for public office in Pakistan's 2013 general elections.²³
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<p style="text-align: center;">Legislative News</p>	<ul style="list-style-type: none"> - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples²⁵ - A number of recent rulings have recognised the equal rights of <i>hirja</i> (the South Asian term for a transgender woman) in Pakistan. The transgender population in Pakistan is estimated to be between 80,000 and 300,000.²⁶ <ul style="list-style-type: none"> o September 2012: The Supreme Court of Pakistan affirmed that transgender citizens should be given equal basic rights as all citizens, including employment and inheritance rights.²⁷ o November 2011: The Supreme Court of Pakistan ordered the Election Commission of Pakistan to collect data from the <i>hirja</i> community and register them as voters.²⁸ o December 2009: The Supreme Court of Pakistan ruled that the country's <i>Hirja</i> community should be issued with national identity cards showing their distinct gender.²⁹ - 2008/13: (UPR) Pakistan rejected recommendations to decriminalise consensual non-marital sex: <p style="margin-left: 20px;"><i>Canada has suggested that we decriminalize consensual sex. We cannot do that. We would not ask Canada to criminalise sexual sex [sic], right, and so we would appreciate it if you do not ask us decriminalize consensual sex, because this stems from our own national legislation. We cannot sell it in Pakistan (UPR 2008).</i>³⁰</p> - Pakistan has a history of consistently voting against various United Nations resolutions on sexual orientation and gender identity. Pakistan has voted in favour of and on some occasions led various counter resolutions. - There are no anti-discrimination laws in force to protect sexual minorities.

¹ Text of the law is : www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html

² *Pakistan Penal Code, s.377*: '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 fine.
Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'

³ Text of the ordinance is : http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

⁴ It should be noted that the standard of 'penetration' used in the legal 'explanations' pertaining to both Section 377 and the Hudood Ordinance is the same. This standard is not necessarily restricted to gay men; it can be used to prosecute different forms of non-heterosexual and even heterosexual sexual contact – see, <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/IAGCI-Review-Country-Information-and-Guidance-Pakistan-Sexual-Orientation-and-Gender-Identity.pdf>

⁵ The UK Home Office will be revising its country information and guidance on sexual orientation and gender identity in Pakistan to reflect this legal position - see UK Home Office, *Home Office Response to IAGCI Review Pakistan (Sexual Orientation and Gender Identity) CIG, July 2014*, 20 April 2015, <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/HO-Response-to-IAGCI-Review-Pakistan-Sexual-Orientation-and-Gender-Identity-CIG-2015-04-20.pdf> (the original country guidance is : *Country Information and Guidance Pakistan: Sexual orientation and gender identity* (16 July 2014) <<https://www.gov.uk/government/publications/pakistan-country-information-and-guidance>>). The Home Office's country guidance was reviewed by Dr. Matthew J. Nelson who recommended that the legal position affecting LGBT persons be revised. A copy of Dr. Nelson's review is : <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/IAGCI-Review-Country-Information-and-Guidance-Pakistan-Sexual-Orientation-and-Gender-Identity.pdf>

⁶ ILGA, *State Sponsored Homophobia 2015*, 28, May 2015, <http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf> accessed on 15 September 2015.

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Pakistan*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236648>> accessed on 9 September 2015.

⁸ Pycroft, H., 'Gay couple arrested in Pakistan over "secret marriage"', *Gay Star News*, 16 June 2015, <<http://www.gaystarnews.com/article/gay-couple-arrested-pakistan-over-secret-marriage160615/>> accessed on 9 September 2015

⁹ Azhar, M., 'Gay Pakistan: Where sex is available and relationships are difficult', *BBC News*, 27 August 2013, <<http://www.bbc.co.uk/news/23811826>> accessed on 19 July 2014

¹⁰ Reid-Smith, T., 'Pakistani TV news hands over 'gay couple' to police, calls for stoning', *Gay Star News*, 18 December 2013) <<http://www.gaystarnews.com/article/pakistani-tv-news-involved-arrest-gay-couple-calls-stoning181213>> accessed on 19 July 2014

¹¹ Canada: Immigration and Refugee Board of Canada, *Pakistan: Treatment of sexual minorities by society, government and religious authorities; recourse and protection available (2009-2011)*, 30 November 2011 <<http://www.refworld.org/docid/5072d0a92.html>> accessed on 20 July 2014

¹² Kahn, R., 'Transgender Wedding Broken Up By Pakistani Police', *Huffington Post*, 25 May 2010, <http://www.huffingtonpost.com/2010/05/25/transgender-wedding-broke_n_588836.html> accessed on 19 July 2014

¹³ Boone, J., 'Pakistan gets flustered over Facebook's gay rights meme', *The Guardian*, 1 July 2015, <<http://www.theguardian.com/world/2015/jul/01/pakistan-gets-flustered-over-facebooks-gay-rights-meme>> accessed on 9 September 2015

¹⁴ Akram, Z., 'Permanent Mission of Pakistan to the United Nations and Other International Organisations', *UN Watch*, 14 February 2012, <<http://www.unwatch.org/atf/cf/%7B6deb65da-be5b-4cae-8056-8bf0bedf4d17%7D/OIC%20TO%20PRESIDENT.PDF>> accessed on 19 July 2014

¹⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Pakistan*, 2013 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220402>> accessed on 19 July 2014

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- ²¹ Ibid 20.
- ²² Reporters Without Borders, *Enemies of the Internet 2014 - Pakistan: Upgraded Censorship*, 12 March 2014 <<http://www.refworld.org/docid/533925b58.html>> accessed on 20 July 2014
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