

**Homosexuality in Pakistan:
Persecution, Fundamentalist Opposition, and Lack of State Protection**

October 7th, 2008

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NB: Where no link follows the summary, the case or article has been attached to the e-mail containing this document.

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1. The IRB National Documentation Package

The IRB provides National Documentation packages (NDP) which include a number of Request for Information reports (RIR). The most recent Pakistan National Documentation package is from December 2007.

It is found at :

http://www.irb-cisr.gc.ca/en/research/ndp/index_e.htm?id=533&lang=e The RIR for the NDP on gays and lesbians is PAK 42114.

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=435969>

There are 3 subsequent RIR updates on sexual orientation:

PAK 42801 July 27 2004

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=435888>

PAK 42345 April 1 2004

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=435898>

PAK 102660 November 29 2007

http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451599

The essence of all the reports is that there is a very closeted gay sub culture in Pakistan.

1. There is a gay subculture but very hidden
2. Under Islamic Law gay people can be sentenced to death, but this is never actually done
3. Police use the law to threaten and blackmail gays
4. Male to female transsexuals/cross dressers (hijras) are tolerated
5. Beyond the hijras, gay relationships are kept in the closet in Pakistan.
6. Section 377 of the Pakistani Penal code is in effect. It makes "unnatural sex" a crime punishable by up to life in prison.
7. The most recent report (102660) confirms that Section 377 of the penal code is still in effect and also includes the following:

Under the country's Sharia law, introduced in 1990 (SodomyLaws.org 31 Mar. 2006), homosexual acts are punishable by corporal punishment (whipping), imprisonment, or death (ibid.; UN 21 Sept. 2006; see also BBC 5 Oct. 2005; ILGA Nov. 2006; *New Internationalist* 1 Mar. 2006).

However it also includes:

Nevertheless, several sources consulted by the Research Directorate indicate that homosexuality may, in general, be "silently accepted" in Pakistan (UN 21 Sept. 2006; ibid. 10 May 2005; BBC 2 June 2005; *The Guardian* 14 Mar. 2006; *Pink News* 14 Mar. 2006). Assaults on homosexuals are said to be "rare" (*The Guardian* 14 Mar. 2006). In the country's North West Frontier Province (NWFP), it is apparently well known that ethnic Pashtun men take young boys as lovers which, according to IRIN, is "a practice now deeply embedded in the local culture" (UN 10 May 2005). In March 2006, a group of gay men wearing dresses participated in a festival in Lahore (*The Guardian* 14 Mar. 2006; *Pink News* 14 Mar. 2006).

2. Sources Referenced by the IRB

A website of the United Nations Office for the co-ordination of Humanitarian affairs. The reference is to an article about male sex workers.

While such behaviour is strictly illegal, homosexuality is fairly widespread in Pakistan. Under the country's Islamic laws, sodomy carries a penalty of whipping, imprisonment or even death – but the fact on the ground is that it is also for the large part silently accepted.
<http://www.irinnews.org/report.aspx?reportid=61708>

Another article from the UN referenced in the IRB site describes gay life in Pakistan. It is dated May 2005. It includes the following:

Such questions might best be put to the country's lawmakers, with Pakistan reportedly being one of the few countries in the world where homosexuality is punishable by death. According to ILGA, Pakistan is one of only eight countries today still retaining capital punishment for homosexuality. Others include Mauritania, Sudan, Afghanistan, the Chechen Republic, Iran, Saudi Arabia and Yemen. The situation with regard to the United Arab Emirates is unclear.

<http://www.irinnews.org/report.aspx?reportid=28594>

3. Federal Court of Canada Decisions

Parshottam v. Canada [2008] F.C.J. No 86 January 15,2008

Parshottam was a resident of USA but claimed refugee status in Canada because he feared he would be deported to Pakistan or Uganda when his green card expired. His application and the appeal were refused because if there is a legitimate concern or persecution the US would not deport him. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed.

Rana v Canada [2005] F.C.J. No 1215

Rana's refugee claim was refused because he failed to provide credible evidence that he was a homosexual. When asked if he was a homosexual he said "I guess so". The issue of whether or not a homosexual would face persecution was not addressed.

Baig v Canada [2007] F.C.J. No 559

Baig's application for refugee status was refused because he was not credible and the board's determination that he was not a homosexual was not unreasonable. The issue of whether or not a homosexual would face persecution was not addressed.

Hussain v Canada [2005] F.C.J. No 1411

Hussain was found not to be credible. The evidence did not corroborate his allegation that he is a homosexual. The issue of whether or not a homosexual would face persecution was not addressed.

4. IRB Decisions

The cases fall into three categories.

1. The claim is successful because the claimant is credible and found to be a homosexual
2. The claim is unsuccessful because the claimant is not credible and the panel finds he is not a homosexual. However, they accept that a homosexual would be at risk.
3. The claim is unsuccessful because the claimant is not credible. Because they do not find him to be a homosexual they don't address the issue of safety in Pakistan.

Some interesting points:

1. Section 377 of the Penal Code has been found to be persecutory in several cases and it is still in effect.

H.(Y.N.) (Re) [1994 C.R.D.D. No 13 (no paragraph numbers)

V.N.N.(Re) [1999] C.R.D.D. No 185 Para 9

2. There is neither state protection for gay males nor any reasonable internal flight alternative

G.P.C. (Re) [2003] R.P.D.D. No 444 para 10

I.O.X (Re) [2003] R.P.D.D. No 98 para 14

3. Having homosexual sex does not make you a homosexual

G.P.C. (Re) [2003] R.P.D.D. No 444 para 10

4. A homosexual will engage in a homosexual lifestyle when in Canada which includes involvement in the gay community

Y.F.S. (Re) [2006] R.P.D.D. No 167 para 28

5. Testimony or affidavits from people established to be in the gay community is not sufficient to win but lacking it can be fatal.

U.P.V. (Re) [1999] C.R.D.D. No 145 para 13

Most of the successful cases make reference to IRB material which is pre 2003. These reports are no longer available, so it is not clear exactly what they say. They were updated in 2003 by Pak 42114 and Pak 102660 in November 2007, above which are not

very strong and say that the law is rarely enforced. This was true prior to 2003, but the tone of the reports appears to have changed. None of the unsuccessful cases found that Pakistan was not a place where a homosexual would be at risk.

E.Y.W. (Re) [2000] C.R.D.D. No 116

This is another case which is related somewhat and is from India. Because the Indian legislation is essentially the same the decision would be applicable. This claim involves a Muslim man from India. He was granted refugee status. Section 377 of the Indian Penal Code is the same as Pakistan and imposes up to life imprisonment for an “unnatural sex act”.

The Panel said:

It is evident then, that even though homosexuality is no illegal per se, homosexuality is criminalized in India. Criminalizing a person or a group of people on the basis of their sexual orientation is clearly persecutory in and of itself. Para 27

This decision accepts Ifti Nasim, co founder of the South Asia Gay and Lesbian Organisation and Support Group (Sangat/Chicago) as an expert on the situation of gays and lesbians in India and Pakistan. The panel accepts as evidence his statement which says :

In the Muslim faith gays are considered inherently “unholy” and “ therefore, harming or killing a gay person is considered a ‘divine duty’.
Para 36

G.P.C. (Re) [2003] R.P.D.D. No 444

The claimant was unsuccessful in this case because it was found that he failed to demonstrate that he was a homosexual. The panel found that having homosexual sex is not the same as being a homosexual. However, the panel did find that there is “neither state protection for gay males in Pakistan nor any reasonable internal flight alternative.” Para 10 Note: the decision makes reference to three IRB reports none of which are still available. Pak 34082 of 2000 has been updated with Pak 42114 of 2003 (see above).

Akhtar v Canada [2004] R.P.D.D. No 804

The claimant was unsuccessful because he failed to demonstrate that he was a homosexual. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed.

Y.F.S. (re) [2006] R.P.D.D. no 167

The claimant was unsuccessful because he failed to demonstrate that he was a homosexual. He was found to not be credible. An important aspect of this was that he did not demonstrate that he had participated in the gay community in Toronto. The Panel found that “ sexual orientation is a way of life” para 28. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed.

H. (Y.N.) (Re) [1994] C.R.D.D. No 13

The claimant was successful. The panel found

1. He was a homosexual

2. Sec 377 of the Penal Code is enforced
..the law is not only enforced but when it is enforced against homosexuals it is enforced as a persecutory manner.

U.P.V. (RE) [1999 C.R.D.D. No 145]

The claimant was unsuccessful because he failed to demonstrate that he was a homosexual. He was found to not be credible. The panel noted that he had not tendered any letter or affidavit from his gay support group, gay organisations he volunteered for, or his gay friends. Para 13. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed.

Hussain v. Canada [2004] R.P.D.D. No 732

The claimant was unsuccessful because he failed to demonstrate that he was a homosexual. He was found to not be credible. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed.

V.N.N. (Re) [1999] C.R.D.D. No 185

The claim was successful. The claimant was found to be credible. He was a homosexual and Section 377 of the penal code is “ patently persecutory”. Para 9.

Mahmood v Canada [2003] R.P.D.D. No 636

The claimant was unsuccessful because he failed to demonstrate that he was a homosexual. He was found to not be credible. The issue of whether or not a homosexual would face persecution in Pakistan was not addressed

I.O.X. (Re) [2003] R.P.D.D. No 98

The claim was successful. The claimant was found to be credible. He had been married to a woman in the U.S.A. but the panel found this to be a marriage of convenience. Para 10. The panel also found that there is not a reasonable level of state protection and there is no internal flight alternative. Para 14. The panel acknowledged that there was evidence that it is possible for homosexuals to in Pakistan there is more than a mere possibility of a risk of persecution. Para 14.

5. News Articles

Associated Press: Pakistan judge tells lesbian couple they broke the law,

http://english.pravda.ru/news/society/22-05-2007/91900-islam_lesbian-0, 22 May 2007

A news article of the story of a couple, one a woman and the other a man after having sexual reassignment surgery, who seek protection from the woman’s father who has harassed them since their marriage. The court warned the couple that they could face charges of committing “unnatural lust” (with a sentence of 2 years to life in prison) and perjury for lying to the police about the gender of the husband.

The Guardian: Muslim Alliance Derails UN’s Gay Rights Resolution

<http://www.guardian.co.uk/world/2003/apr/25/gayrights.andrewosborn>, April 23, 2003

A news article about a five-country alliance, including Pakistan, which derailed a UN vote concerning homosexual human rights. The alliance then introduced an amendment to abolish any reference to discrimination based on sexual orientation.

UK Gay News: Iran: Gay Amir, Aged 22, Given 100 lashes, 20 September 2005

<http://www.ukgaynews.org.uk/Archive/2005sept/2001.htm>

A young Iranian man received 100 lashes (picture provided) and was threatened with execution for being gay at the hands of the authorities under an Islamic fundamentalist regime. The man was forced to flee the country after receiving his extensive injuries.

UK Gay News: Gay, Lesbian Rights Supporter Detained in Pakistan Police Crackdown,

4 November 2007 <http://www.ukgaynews.org.uk/Archive/07/Nov/0401.htm>

A Human Rights Commission Meeting, including several prominent LGBT activists, was interrupted by authorities in order to make 400-500 “preventative arrests”. The police would not reveal the reason for or the length of their detention.

365 Gay: Death threats follow Pakistan’s first gay marriage , 5 October 2005

<http://www.globalgayz.com/pak-news05-08.html#article7>

After the marriage of two men in a remote village in Pakistan, both men were ordered to leave the area immediately or be killed for “breaking all the religious and tribal values and ethics” of Pakistan. Villagers would likely be within their rights to make this threat, the article continues, since sodomy is punishable by death in the country.

The Globe and Mail: Gay Refugee Claimants Seek Haven in Canada, 24 April 2004

<http://www.glapn.org/sodomylaws/world/canada/canews020.htm>

This article focuses mainly on the Canadian Immigration and Refugee Board and claims for refugee status based on sexual orientation. It includes a look at statistics based on country origin. One of the countries discussed is Pakistan, which one lawyer claims to be successful about half of the time. It also mentions the story of Iftikhar Ahmad Shahbaz, a homosexual male from Pakistan, and his claim for refugee status.

International Humanist and Ethical Union: Homosexuality in Pakistan, 4 February 2008.

An article over viewing the situation for homosexual people in Pakistan. It discusses the law, the usual views of the family, the underground sub-culture that exists in some cities, and the cost of being outed in Pakistani society. <http://www.iheu.org/node/2922>

The Boston Globe: Open Secrets, July 11 2004.

This is an article about the homosexual culture in Pakistan. It discusses the harsh punishments that can be given for homosexuality and the way that homosexuality is viewed in Pakistani society. The main focus of this article is on pederasty, the practice of older men coercing or forcing young males to have sex with them. This practice can be tacitly accepted as long as it does not interfere with the marriage of the older male.

http://www.boston.com/news/globe/ideas/articles/2004/07/11/open_secrets/

6. Academic Articles

Sabine Schmidtke: Homoeroticism and Homosexuality in Islam: A Review Article

This academic article gives an introductory look into ideas concerning the evolution of homosexuality in Islamic countries. In the beginning of the article. The author suggests that the decriminalization and social acceptance of homosexuals in the Western world has actually served to increase homophobia in these Islamic countries because of a perceived moral superiority. The article also briefly summarizes the Quran's condemnation of homosexuality and its influence on different notions of punishment.

Washington Blade. "Pakistani gays face strict legal, religious opposition". 204

This is a short news article detailing the legal punishments for homosexuality in Pakistani. They report that while a gay community does exist in Pakistan, they live in fear of the consequences of their orientation.

7. United Nations Affiliated Bodies

UNHCR - The Protection of Forced Migrants in Islamic Law.

Footnote 27 pg. 6, "with the notable exception... homosexuality, blasphemy". This footnote demonstrates that Islamic Law does not consider a homosexual lifestyle to be a right. It would NOT be grounds for claims of refugee status according to this Islamic scholar. <http://www.unhcr.org/research/RESEARCH/476652cb2.pdf>

OHCHR A press release from 2002

Under sub heading 2, "Action on Drafts" 4th para, [Tehmina Janjua spoke] Pakistan voted against a bill to adopt a characterization of human rights that included reference to freedom of sexual orientation.

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/73987890B231D2F0C1256C7D002C982C?opendocument>

OHCHR A Press Release from 2002

This release is citing Pakistan's abstention from Resolution E/CN.4/2002/L.51 relating to the 'Integrity of the Justice System'. Pakistan stated: [Tehmina Janjua as representative]

"speaking on behalf of the Organization of the Islamic Conference (OIC), said that the OIC would like to place on record its concern with regard to the inclusion of the expression "sexual orientation" in operative paragraphs 6 and 12. The OIC fully endorsed all elements contained in the draft resolution but would like to see the deletion of the words "sexual orientation". The OIC felt that the issue could have been addressed without making specific reference to these words. Consequently, the OIC would like to ask for a separate vote on these two words, but was open to further consultation on these words."*

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/2308AB2FFEBA9BD9C1256BA4002>

[66C3F?opendocument](#)

8. Non-Governmental Organizations

Pakistan Leader Outed in Political Battle, Gay.com, April 2003

The article concerns an Openly Gay Politician in Pakistan. The article states that Sharia Law applies a death penalty to 'crimes' of Homosexuality, although the article states this has never been enforced; the article cites the reality of discrimination and a climate of intolerance. <http://www.glapn.org/sodomylaws/world/pakistan/pknews003.htm>

Pakistan's Sodomy Laws Gay.com

This is a country conditions report that includes current statutory prohibitions against homosexual sex as well as punishments and links to recent news articles that involve these laws. <http://www.glapn.org/sodomylaws/world/pakistan/pakistan.htm>

Amnesty International - Human rights and sexual orientation and gender identity Date Published: 31 March 2004

This document describes a range of cases Amnesty International has documented or taken up over recent years of egregious human rights violations against lesbians, gay men, bisexuals and transgender people. Page 2 describes Pakistan's efforts to deny the recognition of the rights of sexual minorities.

<http://www.amnesty.org/en/library/info/ACT79/001/2004/en>

9. Worldlii.org

N97/14889 [1998] RRTA 1685 (27 March 1998) www.worldlii.org

This is a refugee hearing case in Australia for a Pakistani man who is making his claim on the basis of his homosexuality. Unfortunately, in this case the asylum is not granted, however there is elaborate discussion of the persecution that homosexuals face and the lack of protection that they receive from Pakistani authorities. There is some discussion of the illegality of homosexuality under the Penal Code and under the Hudood Ordinances in Sharia law. The claimant is a married man with five children, however he carried out two homosexual relationships while living in Pakistan. The family of one of his partners has threatened to kill him, and it is under this threat that he fears persecution. The Judge does not believe that this threat is eminent, and therefore he does not grant asylum, however he does recognize the threat to homosexuals in Pakistan.

N96/11136 [1997] RRTA 4262 (27 October 1997) www.worldlii.org

A man who is claiming refugee status in Australia, he has been tortured, raped, persecuted, and harassed since a very young age for his homosexuality. His case is granted a reconsideration with the supposition that this person should be granted asylum in Australia.