



# Marriage, Sexual Privacy, and Sodomy Statutes in the World: A Case Analysis

**Alim A\***

Department of Law, University of Rajshahi, Bangladesh

\*Corresponding author: Abdul Alim, Professor Department of Law, University of Rajshahi, 6205, Bangladesh, Tel: 88-01714896132; Email: alimlaw05@gmail.com

## Case Report

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## Abstract

According to the traditional Judeo-Christian moral and ethical standards, which conceive of sex in purely functional terms, i.e., for the purpose of procreation only. Now days the legislation criminalizing consensual oral and anal sex is outdated and has no place in modern society. By criminalizing private, consensual same-sex conduct, some countries in the world's penal laws serves as the weapon for police abuse; detaining and questioning, extortion, harassment, forced sex, payment of hush money; and perpetuates negative and discriminatory beliefs towards same-sex relations and sexuality minorities. This sodomy laws thus creates a class of vulnerable people that is continually victimized and directly affected by the provision as well as sexuality minorities. The inalienable component of right to life, the pursuit of happiness encompassed within the concepts of privacy, human dignity, individual autonomy and the human need for an intimate personal sphere require that privacy dignity claim concerning private, consensual, sexual relations are also afforded protection within the ambit of the said fundamental right to life and liberty. There is almost unanimous medical and psychiatric opinion that homosexuality is not a disease or a disorder and is just another expression of human sexuality.

**Keywords:** Arranged Marriage; Diagnostic and Statistical Manual; Child Marriage; Civil Law

## Introduction

The English law was reformed in Britain by the Sexual Offences Act, 1967, which de-criminalized homosexuality and acts of sodomy between consenting adults (above age of 21) pursuant to the report of Wolfenden Committee [1]. The Committee advising the Parliament had recommended in 1957 repeal of laws punishing homosexual conduct. The Supreme Court of India interpreting Article 21 of the Indian Constitution in the light of Article 12 of the Covenant held that the right to health inhered in the fundamental right to life under Article 21. Again, Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973 after reviewing evidence that

homosexuality is not a mental disorder. In 1992, the World Health Organization removed homosexuality from its list of mental illnesses in the International Classification of Diseases (ICD 10) [2]. Guidelines of the ICD 10 reads: "disorders of sexual preference are clearly differentiated from disorders of gender identity and homosexuality in itself is no longer included as a category [3]."

## Marriage in Bangladeshi Laws

In Bangladesh, marriage laws are based on a combination of religious and civil laws. Civil laws dictate that the legal age of consent and minimum age for marriage is 18 for women and 21 for men. Bangladesh does not have a specific law banning

forced marriage. However, the consent of both parties to a marriage is required. When both parties in the marriage are above the legal age to be married, consent becomes one of the primary factors in determining a marriage's validity. Forced marriages may be challenged and declared invalid if there is evidence to indicate that either party did not consent to the union. If both parties of the marriage are adults, consent is given on an individual level [4]. However, parents who marry off their children, if their children are minors, are committing a criminal offence. Those individuals may be prosecuted under the Child Marriage Restraint Act. However, the marriage itself would not be invalidated by this process. Arranged marriages are an accepted practice in Bangladesh. Jim Abedin who is 25 year's old an American-Bangladeshi Muslim student in Iowa University. He has a boyfriend in Iowa and he loved John, which angered his Muslim family members. They were preparing to marry him to a Muslim stranger girl in Bangladesh [5]. Jim's parents informed him that his mother is extremely sick and come to Bangladesh. Then, he was forced to marry of his parents' choice in Bangladesh. His family believed that their "family prestige" was more precious than his personal choice. Bangladesh does not have a specific law banning forced marriage. However, legally, the consent of both parties to a marriage is required. Jim did not consent to the marriage which occurred in Bangladesh. Now Jim wants to divorce his wife and to marry his boyfriend John though arranged marriages are a long tradition of Bangladeshi culture [6].

### Legal Issues and Analysis

Here, Jim has to produce evidence that the marriage was forceful without his consent. In conducting a Muslim marriage free consent is an essential element. Considering the fact pattern of Jim, whose marriage was void from the beginning?. Homosexual persons are reluctant to reveal their orientation to their family. Those who have revealed their orientation are faced with shock, denial and rejection and some are even pressurised through abuse and marriage to cure them. They are subjected to conversion therapies such as electro-convulsive therapy although homosexuality is no longer considered a disease or a mental disorder but an alternate variant of human sexuality and an immutable characteristic which cannot be changed. In fact the American Psychiatry Association and American Psychological Association filed an amicus brief in *Lawrence v. Texas* demonstrating the harm from and the groundlessness of the criminalization of same sex sexual acts [7-11].

Jim Abedin's boyfriend John claimed that Jim's Muslim parents had bound and gagged him, held him captive in a house in Dhaka, and pleaded with him to marry a Muslim. He went on to say that his family had received death threats in Bangladesh. "They told him they'd prefer him to die

than return to Iowa," he said. On July 3, 2020, when family members claimed that his mother was seriously ill, Jim went Bangladesh. Forced marriage is contrary to the Universal Declaration of Human Rights and violates the International Covenant on Civil and Political Rights, which states that "no marriage shall be entered into without the free and full consent of the intending spouses." The U.S. Department of State considers forced marriage to be a human rights abuse, in the case of minors also a form of child abuse. Often, victims are subjected to non-consensual sex, physical and emotional abuse, isolation, and threats of violence [12-14].

Marriage in Muslim culture is typically viewed as more of a mutually beneficial relationship than a love story. In traditional Muslim families, marriages may be arranged by the bride and groom's parents, who are seen as the best judges of who will be a good partner for their son or daughter. However, children are free to reject anyone by mutual consent if they are not happy with the choice of partner. The process plays out as more of a social contract than a romance [15]. From a legal perspective, Islam views marriage as requiring full and complete consent of both parties. Neither the potential bride nor groom may be forced into a spousal contract against their wishes. However, such a stance does not restrict families from pressuring, persuading or arranging a marriage, as in Jim's case. In a technical sense, the free will of a prospective bride or groom is not negated if they willingly allow or choose to appease to the wishes of their parents.

If an individual is above the age of consent and is the subject of a forced marriage he or she can challenge the marriage's legality in courts of Bangladesh by providing evidence to show that there was no consent to the marriage at the time of the marriage. Additionally, local police, lawyers, and foreign missions in Bangladesh play a significant role in the prevention of forced marriages and provide assistance to those who are victims of forced marriages. In Bangladesh John was not able to file any case because Jim is Muslim, and Islam strictly prohibits homosexuality. So after Jim returns USA he wants to dissolve the marriage [16]. In fact, in many Muslim countries, like Bangladesh where Jim went to high school, homosexuality is a punishable offense.

### Islamic Provisions on Marriage

Many parents become upset if their children wish to marry outside their culture, although Islam allows and even encourages this, as long as both parties are Muslim. Marriage is an essential part of the Islamic culture, and the only way in which a man or a woman can have a sexual relationship. The Qur'an upholds the faithful, and those who restrain their sexual passion, except in the presence of their mates. Muslims do not get married to "experiment", or because it's

“fun and play”. Neither do they marry for a limited period. They marry to settle down, have children, and cement family relationships. Muslim families in western nations like the United States face a particularly difficult time in balancing the demands of their culture with the realities of American influence. Marriage, in its nature is a very sacred obligation [17-21]. However, in most nations, it is also a civil contract regulated by law. Societies and cultures are built upon it, and out of the institution of marriage come social obligations and duties, with which government is necessarily required to interfere. Society certainly has a right to regulate marriage, and how “same-sex marriage” pertains to it [22,23]. However, in the United States, homosexuality has traditionally been regarded in the court of public opinion as wrong.

### The world’s Experiences on Sodomy Laws

Same-sex marriage is a current topic of discussion in the United States. In the United States, common law prevents same-sex couples from marrying. Iowa’s equal protection is based upon on the relative consideration of individual’s rights and the state’s interests. Currently, same-sex marriage is legal in Iowa.

European sodomy laws have been banned since the decision of the European Court of Human Rights in *Dudgeon v. United Kingdom* in 1981 [4], which dealt with a sodomy law in Northern Ireland. The European Court held that the law violated the right to “respect for private life” in Article 8 of the European Convention on Human Rights, Wintemute explained. The *Dudgeon* ruling now applies to the 45 participating countries in the Council of Europe, including Iceland, Turkey and Russia, guaranteeing the privacy and equality of more than 8 million people. The United States Supreme Court in the case of *Lawrence v. Texas*: “According to current scientific and professional understanding, however, the core feelings and attractions that form the basis for adult sexual orientation typically emerge between middle childhood and early adolescence. Moreover, these patterns of sexual attraction generally arise without any prior sexual experience [24-29].” [Page 7 of Amicus brief] Thus, homosexuality is not a disease or mental illness that needs to be, or can be, ‘cured’ or ‘altered’, it is just another expression of human sexuality.

In the light of the facts, people believe that there is a clear violation of international human rights law, which forbids discrimination against people because of their sexuality. The Iowa Supreme Court Justice Mark Cady ruled on Friday, April 3, 2009: “We are firmly convinced that the exclusion of gay and lesbian people from the institution of civil marriage does not substantially further any important governmental objective [29]. The legislature has excluded a historically disfavored class of persons from a supremely important civil

institution without a constitutionally sufficient justification.” They continue to argue in favor of the right to sexual privacy because they believe adults should have access to birth control, abortion services and pornography as well as the right to engage in gay sex. Social conservatives hate the right to privacy for the very same reason, as they seek to regulate private behaviors from access to birth control to masturbation. The Constitution of USA does not permit polygamy. Jim would have been convicted of bigamy in the territory of USA. So in Jim’s case, he has to divorce his first marriage under the laws of Bangladesh and then he can marry under the laws of Iowa.

Texas banned sodomy in the late 1870s. It changed the statute in 1973 to exclude heterosexuals from the law leaving sodomy a crime for gays and lesbians. Many other states still include a sex statute in their state penal codes. Anti-sodomy statutes that comprise oral and anal sex exist in 13 states. In five of those Texas, Oklahoma, Arkansas, Kansas and Missouri sodomy is deemed criminal only if performed on same-sex partners.

Many countries also include sex statutes in their penal codes. More than 70 countries retain criminal statutes that outlaw homosexuality, according to Michael Heflin, who directs a program focusing on gay rights at Amnesty International. However, when considering the countries in which homosexual acts can be deemed illegal, these are not nations with traditions of personal liberty, privacy or even constitutional protections [30]. “Some of the countries where Amnesty has gotten involved in are similar to the way *Lawrence & Garner* were convicted, like Saudi Arabia, Egypt, and Malaysia” Heflin said, adding that punishment varies depending on the country [31,32].

For example, in Saudi Arabia, homosexual acts are subject to a maximum penalty of death. “Sodomy is proved either by the culprit confessing four times or by the testimony of four worthy Muslim men,” according to *Homosexual Rights around the World*. “If there are fewer than four witnesses or one of them is not worthy, they are all to be punished with 80 lashes for slander.”

In Ethiopia, offenders may be sentenced up to 10 years in prison “when the victim is subjected to acts of cruelty or sadism; when the offender transmits a venereal disease although fully aware of being infected with it; when an adult is charged with committing homosexual acts with persons under 15 years of age; or when distress, shame or despair drives the victim to committing suicide.”

And in Malaysia, homosexual acts are illegal, punishable by “lashing and a prison sentence of up to 20 years. Even “cruising” [for sexual partners] is illegal, punishable by up to

2 years in prison.”

American laws may not be quite that extreme, but Heflin was quick to point out that the United States is the only Western government that has retained criminal sodomy statutes. “All the Western countries we normally compare ourselves to have repealed [them],” he noted.

Robert Wintemute firmly agreed. “The United States is way behind the rest of the developed world,” said the law professor at King’s College in London and author of a comprehensive listing of global rights for gay, lesbian, bisexual and transgender people. Sodomy laws have also disappeared from almost every other mainland country in North and South America, South Africa, Israel, Australia and New Zealand.

However, sexual orientation is usually discussed in terms of three categories: heterosexual (having emotional, romantic, or sexual attractions to members of the other sex), gay/lesbian (having emotional, romantic, or sexual attractions to members of one’s own sex), and bisexual (having emotional, romantic, or sexual attractions to both men and women). Many cultures use identity labels to describe people who express these attractions. In the United States the most frequent labels are lesbians (women attracted to women), gay men (men attracted to men), and bisexual people (men or women attracted to both sexes). However, some people may use different labels or none at all.

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