

HUMAN RIGHTS: CHALLENGING THE PENALISATION OF SAME-SEX SEXUAL ACTIVITY: INTERNATIONAL AND COMPARATIVE PERSPECTIVES

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I. Phenomena and terminology

- legal and social recognition of sexual orientation and gender identity = recognition of previously hidden aspects of human diversity (cf., sex, race, religion, disability, age)
- "sex" (biological sex) vs. "gender" (social role attached to biological sex) vs. "sexual activity" (use of sexual organs for pleasure or procreation)
- "sexual orientation" (orientation with regard to "choice of sex of partner" for sexual activity and long-term emotional-sexual relationships):

possible sexual orientations of individuals	possible sexual orientations of sexual activity or long-term emotion-sexual relationships (involving two persons)
<ul style="list-style-type: none"> - heterosexual (women attracted to men, men attracted to women) - bisexual (women attracted to both sexes, men attracted to both sexes) - lesbian (women attracted to women) - gay (men attracted to men) 	<ul style="list-style-type: none"> - different-sex (between two persons of different sexes; male-female) - same-sex (between two persons of the same sex; male-male or female-female)

- "gender identity" (conformity or non-conformity between physical/biological/birth sex and psychological sex):

possible gender identities of individuals
<ul style="list-style-type: none"> - non-transgender/transsexual/intersexual (natal-sexual? static-sexual?) (physical sex clear; physical sex = psychological sex) - transgender or transsexual (physical sex at birth clear; physical sex ≠ psychological sex)

- intersexual (physical sex not clear at birth; often imposed on child as result of post-birth surgery; might or might not = psychological sex)

- "LGBT persons" = lesbian, gay, bisexual and transgender persons (the combination of minorities defined by sexual orientation and minorities defined by gender identity)
- most LGB persons are not transgender/transsexual/intersexual; a transgender/transsexual/intersexual person may be heterosexual, L, G or B

II. Are LGB persons found in every country and culture around the world?

- (a) same-sex attraction or sexual activity or long-term emotional-sexual relationships
- vs.
- (b) lesbian or gay identity or culture or "lifestyle"

- can "lesbian" and "gay" apply to (a) without implying an identity or culture or "lifestyle"?
- are "lesbian" and "gay" terms that are not suitable in India?
- are MSM ("men who have sex with men") and WSW ("women who have sex with women") more suitable?
- what about MLM ("men who love men") and "WLW" ("women who love women")?
- do MSM/WSW imply clandestine sexual activity consistent with discharging social duties (to enter into a traditional different-sex marriage and have children)?
- do MLM/WLW or gay/lesbian mean acceptance that "I am different" and that a traditional different-sex marriage will not be right for me? so more threatening to a traditional society?
- are there between 10,000,000 and 100,000,000 potential LGBs or MSM/WSWs or MLM/WLWs in India? (cf. Canada's total population of 32,400,000!)
- S. Katyal, "Exporting Identity" (2002), 14 *Yale Journal of Law and Feminism* 97-176

III. "International Trend 1": Treating sexual orientation as a "suspect classification" (strong presumption against discrimination on this ground)

A. Express inclusion in national or state constitution's "equal protection clause"

Brazil (States):

Mato Grosso - Constitution, 1989, Article 10.III ("orientação sexual")

Sergipe - Constitution, 1989, Article 3.II ("orientação sexual")

Ecuador - Constitution, 1998, Article 23(3) ("orientación sexual")

Fiji Islands - Constitution Amendment Act 1997, s. 38(2)(a) ("sexual orientation")

Germany (States or Länder):

Berlin - Constitution, 1995, Article 10(2), ("sexuelle Identität")

Brandenburg - Constitution, 1992, Article 12(2) ("sexuelle Identität")

Thuringia - Constitution, 1993, Article 2(3) ("sexuelle Orientierung")

Portugal – Constitution (as amended in 2004), Article 13(2) ("orientação sexual")

South Africa - Constitution of the Republic of South Africa Act (No. 200 of 1993), Section 8(2) (transitional Constitution) (“sexual orientation”); Constitution of the Republic of South Africa (No. 108 of 1996) (final Constitution), Section 9(3):

“Section 9(3). The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” (emphasis added)

B. Express inclusion in a European Union “equal protection clause”

Charter of Fundamental Rights of the EU (7 Dec. 2000) (not legally binding):¹

“Article 21(1). Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” (emphasis added)

C. Judicial interpretation of other “equal protection clauses”

- *James Egan & John Nesbit v. Canada*, [1995] 2 S.C.R. 513 (Supreme Court of Canada), <http://www.lexum.umontreal.ca/csc-scc/en> (9-0 on principle that, under Section 15(1) of the Canadian Charter of Rights and Freedoms, part of the federal Constitution of Canada, sexual orientation is an “analogous ground” of discrimination, analogous to the “enumerated grounds”: race, national or ethnic origin, colour, religion, sex, age or mental or physical disability), paras. 5, 173-75

- *Smith & Grady v. United Kingdom*, European Court of Human Rights (ECtHR), 27 Sept. 1999, <http://www.echr.coe.int> (HUDOC, Case Title = Grady), para. 97 (dismissal of lesbian and gay members of armed forces) (6-1): “To the extent that they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes [of heterosexual members of the armed forces] cannot, of themselves, be considered by the Court to amount to sufficient justification for the interferences with the [lesbian and gay members’] rights ... any more than similar negative attitudes towards those of a different **race**, origin or colour.” [bold added here and in following two quotations]

- *Mouta v. Portugal*, ECtHR, 21 Dec. 1999, para. 36 (transfer of custody of child from gay father to heterosexual mother) (7-0): “the [Lisbon] Court of Appeal made a distinction based on considerations regarding the applicant’s sexual orientation, a distinction which is not acceptable under the [European] Convention [on Human Rights] [like distinctions based on **religion**] (see, *mutatis mutandis*, ... *Hoffmann* ... [Jehovah’s Witness mother] ...).”

- *S.L. v. Austria*, ECtHR, 9 Jan. 2003, para. 37 (age of consent of 18 to male-male sexual activity vs. 14 to male-female/female-female) (7-0): “the Court reiterates that sexual orientation is a concept covered by Article 14 [the “equal protection clause” of the European Convention] ... Just like differences [in treatment] based on **sex**, ...

¹ Art. II-81(1) of the Treaty establishing a Constitution for Europe (signed on 29 Oct. 2004) is identical to Art. 21(1) of the Charter, and would become legally binding if the Treaty were ratified by all 25 EU member states (ratification process stalled since negative referendum result in France).

differences [in treatment] based on sexual orientation require particularly serious reasons by way of justification ...”

- *Edward Young v. Australia* (Communication No. 941/2000), United Nations Human Rights Committee, 6 Aug. 2003, <http://www.unhchr.ch/tbs/doc.nsf> (Search the Database, “Edward Young”), para. 10.4 (equal treatment of unmarried same-sex and different-sex couples): “the prohibition against discrimination under article 26 [of the International Covenant on Civil and Political Rights, ratified by India in 1979] comprises also discrimination based on sexual orientation.”

IV. “International Trend 2”: Gradual elimination of sexual orientation discrimination: From the death penalty for same-sex couples to equal access to civil marriage and adoption

- 1300 - “those who have connection with Jews ... or are guilty of ... sodomy shall be buried alive in the ground” (P.Crane, *Gays and the Law*, Pluto Press, UK, 1982, 11-12)
- 1642 - the death penalty for male-male “sodomy” in the Connecticut Colony (“If any man lyeth with mankind as hee lyeth with woman, both of them have committed abomination, they both shall surely be put to death.”); quoted by the 2004 exhibition (Jonathan Ned Katz, curator) “The Pink and the Blue: Lesbian and Gay Life at Yale and in Connecticut, 1642-2004”, Sterling Library, Yale University (William Plaine executed in New Haven in 1646; death penalty extended to female-female “sodomy” by New Haven Colony in 1656)
- 1861 - death penalty for male-male anal intercourse repealed for England, Ireland and Wales (was there ever one in India? if so, when repealed?)

European Union (first 15 member states) (year law passed)	equal age of consent to sexual activity (no exceptions)	legislation against discrimination: employment ² or services	same-sex couples: register + some rights	same-sex couples: register + equal rights ³	same-sex couples: adoption (child of partner)	same-sex couples: joint adoption (child not related to either partner)	same-sex couples: register + equal rights + same name (civil marriage)
Spain	1988	1995	1998-03 ⁴	2005	2005	2005	2005
Netherlands	1971	1991	1997	1997	2000	20005	2000
Sweden	1978	1987	1994	1994	2002	2002	committee
UK: decrim: 1967, 1980/82	2000	2003	2004	2004	2002 ⁶	2002	-----
Belgium	1985	2003	1998	2003	2006	2006	2003
Denmark	1976	1987	1989	1989	1999	-----	-----
Finland	1998	1995	2001	2001	-----	-----	-----
Germany	1994	2003	2001	-----	2004	-----	-----
France	1982	1985	1999	-----	-----	-----	-----
Luxembourg	1992	1997	2004	-----	-----	-----	-----
Portugal	?	2003	2001 ⁷	-----	-----	-----	-----
Ireland	?	1993	-----	-----	-----	-----	-----
Italy	1889	2003	-----	-----	-----	-----	-----
Austria	2002	2003	-----	-----	-----	-----	-----
Greece	?	2003	-----	-----	-----	-----	-----

² National legislation or, for the public sector, Directive 2000/78/EC (in force 2 Dec. 2003).

³ Perhaps excluding certain parental rights (adoption, medically assisted procreation).

⁴ Laws in the *comunidades autónomas* (regions).

⁵ Government plans to remove exception for intercountry adoption by 2007.

⁶ Adoption of partner's child and joint adoption: England and Wales (Adoption and Children Act 2002; in force 30 Dec. 2005); Adoption and Children (Scotland) Act 2007; proposed for N. Ireland.

⁷ Recognition of de facto cohabitation; there is no register.

Canada and United States (examples of provinces or states) (year law passed or year of court decision)	decriminalisation of same-sex sexual activity	legislation against discrimination in employment or services	same-sex couples: adoption (child of partner)	same-sex couples: joint adoption (child not related to either partner)	same-sex couples: register + some rights	same-sex couples: register + equal rights	same-sex couples: register + equal rights + same name (civil marriage)
Québec	1969	1977	1991	1991	2002	2002	2004 ⁸
Ontario	1969	1986	1995	1995	2003	2003	2003
British Columbia	1969	1992	1995	1995	2003	2003	2003
Massachusetts	1974 ⁹	1989	1993	1993	2003	2003	2003 ¹⁰
Vermont	1977	1991	1993	1993	1999/2000 ¹¹	1999/2000	-----
Connecticut	1969	1991	2000	2000	2005	2005	-----
California	1975	1992	2003	2003	1999	2003	-----
New York	1980	2002 ¹²	1995	1995	-----	-----	-----
Texas	2003 ¹³	-----	-----	-----	-----	-----	-----
Florida	2003	-----	----- ¹⁴	-----	-----	-----	-----
Mississippi	2003	-----	----- ¹⁵	-----	-----	-----	-----
Utah	2003 ¹⁶	-----	----- ¹⁷	-----	----- ¹⁸	-----	-----
cf. INDIA	-----	-----	-----	-----	-----	-----	-----

⁸ The 2003 and 2004 judgments of the Courts of Appeal of Ontario, British Columbia and Québec were extended to all 10 provinces and 3 territories by the Civil Marriage Act in 2005.

⁹ Invalid as applied to "consensual conduct in private between adults". See *Commonwealth v. Balthazar*, 318 N.E.2d 478 (Mass. 1974), as clarified by *Gay & Lesbian Advocates & Defenders v. Attorney General*, 763 N.E.2d 38 (Mass. 2002).

¹⁰ State recognition of same-sex couples generally does not apply at the federal level.

¹¹ Vermont Supreme Court in 1999, legislature in 2000.

¹² But legislation was passed by New York City in 1986.

¹³ *Lawrence & Garner v. Texas*, 539 U.S. 558 (2003) (also applied to Florida, Mississippi and Utah). The Texas law prohibiting black-white marriages had to be struck down by the U.S. Supreme Court in *Loving v. Virginia*, 388 U.S. 1 (1967) (same for Florida and Mississippi).

¹⁴ See Florida Statutes ch. 63.042, s. 3 (added in 1977): "No person eligible to adopt under this statute may adopt if that person is a homosexual."

¹⁵ See Mississippi Code Annotated s. 93-17-3(2) (added in 2000) provides that "[a]doption by couples of the same gender is prohibited".

¹⁶ *Lawrence*. Utah Code Annotated s. 30-1-2, repealed in 1963 only four years before *Loving*, prohibited marriages: "(5) Between a negro and a white person. (6) Between a Mongolian, member of the Malay race or a mulatto, quadroon, or octoroon, and a white person."

¹⁷ Utah expressly bans individual adoption by "a person who is cohabiting [residing with another person and being involved in a sexual relationship with that person] in a relationship that is not a legally valid and binding marriage under the laws of this state". See Utah Code Annotated ss. 78-30-1(3)(b), 78-30-9(3) (added in 2000).

¹⁸ Utah Constitution, Article I, Section 29 (added in 2004): "(1) Marriage consists only of the legal union between a man and a woman. (2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect."

V. Judicial decisions requiring decriminalisation

Dudgeon v. United Kingdom, European Court of Human Rights, 22 Oct. 1981,
<http://www.echr.coe.int> (HUDOC, Case Title = Dudgeon)

41. ... [T]he maintenance in force of the impugned legislation [in Northern Ireland prohibiting "buggery" and "gross indecency" between men] constitutes a continuing interference with the applicant's right to respect for his private life (which includes his sexual life) within the meaning of Article 8(1) [of the European Convention on Human Rights]. In the personal circumstances of the applicant, the very existence of this legislation continuously and directly affects his private life ...: either he respects the law and refrains from engaging - even in private with consenting male partners - in prohibited sexual acts to which he is disposed by reason of his homosexual tendencies, or he commits such acts and thereby becomes liable to criminal prosecution.

52. ... The present case concerns a most intimate aspect of private life. Accordingly, there must exist particularly serious reasons before interferences on the part of the public authorities can be legitimate ...

53. ... [A] restriction on a Convention right cannot be regarded as "necessary in a democratic society" - two hallmarks of which are tolerance and broadmindedness - unless, amongst other things, it is proportionate to the legitimate aim pursued ...

60. ... As compared with the era when that legislation was enacted [1861/1885], there is now a better understanding, and in consequence an increased tolerance, of homosexual behaviour to the extent that in the great majority of the member States of the Council of Europe it is no longer considered to be necessary or appropriate to treat homosexual practices of the kind now in question as in themselves a matter to which the sanctions of the criminal law should be applied ...

... On the issue of proportionality, the Court considers that such justifications as there are for retaining the law in force unamended are outweighed by the detrimental effects which the very existence of the legislative provisions in question can have on the life of a person of homosexual orientation like the applicant. Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved.

61. ... [T]he moral attitudes towards male homosexuality in Northern Ireland ... cannot, without more, warrant interfering with the applicant's private life to such an extent. "Decriminalisation" does not imply approval, and a fear that some sectors of the population might draw misguided conclusions in this respect from reform of the legislation does not afford a good ground for maintaining it in force with all its unjustifiable features. To sum up, the restriction imposed on Mr. Dudgeon ... is ... disproportionate to the aims sought to be achieved.

63. Mr. Dudgeon has suffered and continues to suffer an unjustified interference with his right to respect for his private life. There is accordingly a breach of Article 8.

Toonen v. Australia, United Nations Human Rights Committee, 4 April 1994
(views adopted on 31 March 1994), <http://www.unhchr.ch/tbs/doc.nsf> (Search the Database, Toonen) (Communication No. 488/1992)

2.1 The author [of the Communication] is an activist for the promotion of the rights of homosexuals in Tasmania, one of Australia's six constitutive states. He challenges two provisions of the Tasmanian Criminal Code, namely, sections 122 ... and 123, which criminalize ... all forms of sexual contact between consenting adult homosexual men in private. [s. 122 prohibited having "carnal knowledge of any person against the order of nature"]

8.2 In so far as article 17 [of the International Covenant on Civil and Political Rights] is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of "privacy", and that Mr. Toonen is actually and currently affected by the continued existence of the Tasmanian laws. The Committee considers that sections 122 ... and 123 of the Tasmanian Criminal Code "interfere" with the author's privacy, even if these provisions have not been enforced for a decade. ...

8.5 As far as the public health argument of the Tasmanian authorities is concerned, the Committee notes that the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV. The Government of Australia observes that statutes criminalizing homosexual activity tend to impede public health programmes "by driving underground many of the people at the risk of infection". Criminalization of homosexual activity thus would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention. Secondly, the Committee notes that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus.

8.6 ... [The Committee] notes that with the exception of Tasmania, all laws criminalizing homosexuality have been repealed throughout Australia and that, even in Tasmania, it is apparent that there is no consensus as to whether sections 122 and 123 should not also be repealed. Considering further that these provisions are not currently enforced, which implies that they are not deemed essential to the protection of morals in Tasmania, the Committee concludes that the provisions do not meet the "reasonableness" test in the circumstances of the case, and that they arbitrarily interfere with Mr. Toonen's right [to privacy] under article 17, paragraph 1.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol [not ratified by India] to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation of articles 17, paragraph 1, juncto 2, paragraph 1, of the Covenant.

10. ... [T]he author, as a victim of a violation ... is entitled to a remedy. In the opinion of the Committee, an effective remedy would be the repeal of sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code.

Constitutional Court of Ecuador, 27 November 1997, Sentencia No. 111-97-TC,
Registro Oficial (Official Registry), Supplement, No. 203

National Coalition for Gay and Lesbian Equality v. Minister of Justice, Constitutional Court of South Africa, 9 Oct. 1998,
<http://www.constitutionalcourt.org.za>, Case CCT 11/98

25. The impact of discrimination on gays and lesbians is rendered more serious and their vulnerability increased by the fact that they are a political minority not able on their own to use political power to secure favourable legislation for themselves. They are accordingly almost exclusively reliant on the Bill of Rights for their protection.

26. ... (a) ... Gay men are a permanent minority in society and have suffered in the past from patterns of disadvantage. ...

(b) The nature of the power and its purpose is to criminalise private conduct of consenting adults which causes no harm to anyone else. It has no other purpose than to criminalise conduct which fails to conform with the moral or religious views of a section of society. ...

27. The above analysis confirms that the discrimination is unfair. There is nothing which can be placed in the other balance of the scale. The inevitable conclusion is that the discrimination ... is... in breach of section 9 [equality] of the 1996 Constitution.

28. ... [T]he common-law crime of sodomy also constitutes an infringement of the right to dignity which is enshrined in section 10 ... [which] requires us to acknowledge the value and worth of all individuals as members of our society. [This crime] criminalises all sexual intercourse per anum between men: regardless of the relationship of the couple ..., of [their] age[s] ..., of the place where it occurs ... [I]t punishes a form of sexual conduct which is identified by our broader society with homosexuals. **Its symbolic effect is to state that in the eyes of our legal system all gay men are criminals.** The stigma thus attached to a significant proportion of our population is manifest. But the harm imposed by the criminal law is far more than symbolic. As a result of the criminal offence, gay men are at risk of arrest, prosecution and conviction ... simply because they seek to engage in sexual conduct which is part of their experience of being human. Just as apartheid legislation rendered the lives of couples of different racial groups perpetually at risk, **the sodomy offence builds insecurity and vulnerability into the daily lives of gay men.** There can be no doubt that the existence of a law which punishes a form of sexual expression for gay men **degrades and devalues gay men in our broader society.** ...

32. Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct will be a breach of our privacy. ... The ["sodomy"] offence constitutes ... independently a breach of the right[] of privacy [section 14] ...

37. ... The enforcement of the private moral views of a section of the community, ... based to a large extent on nothing more than prejudice, cannot qualify as ... a legitimate purpose. There is accordingly nothing, in the proportionality enquiry, to weigh against the extent of the limitation [of rights] and its harmful impact on gays. It would therefore seem that there is no justification for the limitation.

***Lawrence & Garner v. Texas*, Supreme Court of the United States, 26 June 2003,**
<http://supct.law.cornell.edu/supct/html/02-102.ZS.html>

... In Houston, Texas, officers of the Harris County Police Department were dispatched to a private residence in response to a reported weapons disturbance. They entered an apartment where one of the petitioners, John Geddes Lawrence, resided. ... The officers observed Lawrence and another man, Tyron Garner, engaging in a sexual act [anal intercourse]. The two petitioners were arrested, held in custody over night, and charged and convicted before a Justice of the Peace.

... The applicable state law is Tex. Penal Code Ann. §21.06(a) (2003). It provides: “A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.” The statute defines “[d]eviate sexual intercourse” as ...: “(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or “(B) the penetration of the genitals or the anus of another person with an object.” ... The petitioners ... were each fined \$200 ... [Tney] were adults at the time of the alleged offense. Their conduct was in private and consensual.

We conclude the case should be resolved by determining whether the petitioners were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution.

... The laws involved ... here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences ... When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres. The central holding of *Bowers* [v. *Hardwick*, 1986] has been brought in question by this case, and it should be addressed. Its continuance as precedent demeans the lives of homosexual persons. ... *Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers* ... should be and now is overruled.

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter [eg, a right to marry]. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. “It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.” ... The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual. ...

VI. Progress towards a world free of anti-LGB criminal laws

1960 - sexual activity between men was probably a criminal offence in every part of the former British Empire, including all 50 states of the USA

2003 - with *Lawrence*, criminal laws prohibiting sexual activity between men (or between women) had been eliminated in large parts of the former British Empire, including Australia, Canada, Cyprus, Hong Kong, Ireland, New Zealand, South Africa, the UK, the USA

2003 - repeal in Armenia meant no such laws in any of the 48 European countries (repeal in Cyprus only extended to Turkish-occupied Northern Cyprus in 2006?)

2003 - *Lawrence* meant that such laws had disappeared from North and South America (except for Guyana, Jamaica and certain other Caribbean countries)

2006 - most remaining laws are in Africa and Asia; most are relics of the former British Empire or are found in Muslim-majority countries

Will s. 377 of the Indian Penal Code be next to disappear?

VII. Further reading

R. Wintemute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and the Canadian Charter* (Oxford University Press, 1997)

R.W., “Recognising New Kinds of Direct Sex Discrimination: Transsexualism, Sexual Orientation and Dress Codes” (1997) 60 *Modern Law Rev* 334

R.W., “Strasbourg to the Rescue? Same-Sex Partners and Parents Under the European Convention” in Robert Wintemute (ed.) & Mads Andenæs (hon. co-ed.), *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (Oxford, Hart Publishing, 2001)

R.W., “Religion vs. Sexual Orientation: A Clash of Human Rights?”, (2002) 1 *Journal of Law and Equality* (University of Toronto) 125, <http://www.jle.ca/files/v1n2/JLEvln2art1.pdf>

R.W., “Sex Discrimination in *MacDonald* and *Pearce*: Why the Law Lords Chose the Wrong Comparators”, (2003) 14 *King’s College Law Journal* 267

R.W., “Sexual Orientation and the Charter: The Achievement of Formal Legal Equality (1985-2005) and Its Limits”, (2004) 49 *McGill Law Journal* 1143, <http://www.journal.law.mcgill.ca/abs/vol49/4winte.html>

R.W., “From ‘Love Rights’ to ‘Sex Rights’: Partnership Rights as Human Rights” in Nicholas Bamforth (ed.), *Sex Rights* (Oxford University Press, 2005)

R.W., “Sexual Orientation and Gender Identity” in Colin Harvey (ed.), *Human Rights in the Community* (Oxford: Hart Publishing, 2005) (survey of situation in the UK)