

Human Rights in Asia

extension of the HRC's programs and reach is evident in such initiatives as the Religion and Faith Program, introduced in 2005, and Project One America, with its focus on LGBTQ equality in the Deep South (Mississippi, Alabama, and Arkansas), begun in 2014. Workplace equality, health-care issues, and electing pro-LGBTQ candidates at all political levels remained on the agenda, as did the HRC's efforts toward legalizing same-sex marriage. In the latter case, the group's long-standing activism at the state level contributed to the 2015 US Supreme Court decision in *Obergefell v. Hodges* that declared bans on same-sex marriage unconstitutional. (Plaintiff Jim Obergefell was a long-standing HRC member.) As part of its campaign in support of marriage equality, the HRC changed the colors of its logo from blue and yellow to red and pink, and the image went viral on the internet, particularly in Facebook profile photos.

According to its website, the "HRC works to improve the lives of LGBTQ people worldwide by advocating for equal rights and benefits in the workplace, ensuring families are treated equally under the law, and increasing public support around the globe" (HRC 2017). The HRC has indeed expanded beyond the United States, engaging in research, reporting news internationally, and hosting the Global Innovative Advocacy Summit since 2016.

SEE ALSO *African Commission on Human and Peoples' Rights; Defense of Marriage Act (1996); Hate Crime Law and Policy in the United States; Human Rights; Human Rights and Activism in Latin America; Human Rights and Queer Arab Refugees; Human Rights in Asia; Human Rights in Europe; Military Law and Policy in the United States*

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Human Rights in Asia

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The history and current state of LGBTQ rights in South Asia, East Asia, and Southeast Asia.

Asia is the largest and most populous continent on Earth. As a result, it includes a vast diversity of cultures and people with dissimilar religious beliefs, social organizations, and political histories. Furthermore, the very concept of "human rights" is highly contested. Asia is often juxtaposed against the "West" and characterized as a region that is authoritarian, overly disciplined, and suffering from a lack of civil liberties. To suggest that all of Asia treats LGBTQ people and sexuality in this manner, however, would be a gross misrepresentation. The treatment of sexuality issues and LGBTQ persons throughout the region differs from community to community and is tied to deep historical and cultural conceptualizations of gender, interactions with cultures from inside and outside the region (including the "West"), and local attempts to recognize and integrate LGBTQ people in a rapidly changing world. The three subregions of Asia discussed here are South Asia, East Asia, and Southeast Asia. The entry is organized along these subregions to capture similar influences, traditions, and histories; as such, human rights is discussed in local terms based on these regional histories.

South Asia

The countries of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka constitute the subregion of South Asia. Hindus, Jains, Sikhs, Muslims, Buddhists, and Christians all make their home in the region, demonstrating the deep and rich history of faith in South Asia, with many of these religions originating in the subregion. At the same time, most nations in the subregion were colonized by the British, Portuguese, Dutch, or French or experienced external political

pressure on account of the colonization of their neighbors. Although one of the fastest-growing regions in the world, South Asia is still plagued with gross disparity between urban and rural areas. Simultaneously, the region has an incredible diversity of economies, ranging from advanced information- and knowledge-based services to small-scale production and traditional village farming. These historical, cultural, and economic forces all play a role in shaping the rights of LGBTQ people in South Asia. This section looks at the rights of LGBTQ individuals historically from precolonial to colonial times and in the postcolonial age, while also discussing LGBTQ activism and prospects for the future.

Precolonial and Colonial South Asia Over two-thirds of the region practices the religion of Hinduism. The oldest known set of Hindu scriptures, the Rigveda, dating from around 1500 to 1200 BCE, makes no mention of homosexuality. However, ancient religious texts written between the third and sixth centuries CE do make references to homosexuality. The *Kama Sutra* includes an entire chapter on the practice of fellatio between men. Additionally, close to a third of the region practices Islam, which reached the region in the seventh century CE. Although Islamic law explicitly condemns homosexuality, a tradition of homosexual intimacy can be found in the Mughal era and Islamic mysticism (Sufism). Furthermore, records indicate that *hijras*, or those that may be described today as transgendered, have a long history in South Asia. Throughout the region's history, as opposed to viewing sexuality strictly as a matter of procreation, the ancient literature also discussed sexuality as a source of pleasure. While it should be noted that South Asian LGBTQ history in its full complexity cannot be fully discussed here especially because this history includes a complicated discourse from period to period and from community to community (see Vanita 2002), it can be argued that how sexuality was conceptualized in the region changed dramatically with the introduction of Western colonial power.

Colonial-era legislation idealized the formation of conjugal heterosexual households on the basis of "love marriage" and biological adulthood. In 1860, in response to a number of local practices that challenged British values of the time, the colonial government inserted Section 377 into the Indian Penal Code, a provision that criminalized sodomy and carnal intercourse against "the order of nature." Furthermore, in 1871, the Criminal Tribes Act was passed to scrutinize and regulate the practices of groups such as hijras. These types of laws transformed the South Asian sexual landscape. First, many of these laws were used to blackmail homosexual political and business rivals. Second, they subjected nonnormative sexualities and expressions of gender to state surveillance and control.

Postcolonial South Asia The nationalist movements and subsequent postcolonial projects tended to retain and mimic the values of the colonizer as evidence of a modern and developed nation with self-governing capacity. As nations in the West began to decriminalize same-sex sexual practices, South Asian nations sometimes chose to retain and even enhance similar laws that were inherited through colonization to distinguish themselves as independent nations no longer forced to follow in the footsteps of their former colonizers. Political Islam, an ideology that encouraged the re-Islamization of society through grassroots social and political activism, and that served to mobilize South Asian Muslims to challenge the authority of the British, emphasized a stricter interpretation of religious texts. Heterosexual marriage in the postcolonial context, although historically important, became the only acceptable form of intimate and sexual relationship.

Although Section 377 is still in place in most of the former British colonies of South Asia, such as India, Pakistan, Bangladesh, and the Maldives, and the law serves as the model for similar laws in Bhutan and Sri Lanka, this does not mean that alternative sexual practices have been eliminated in South Asia under threat of law. Personal accounts of sexual activities in major cities of India in the 1970s reveal that, although forced underground, homosexual encounters could easily be found in public parks and buses (Rangayan 2012). Various sources document the presence of alternative sexualities and practices in countries such as Pakistan, despite the presence of such draconian laws (Azhar 2013; Ladly 2012).

Some societies are especially restrictive. Although it has been argued that Buddhism leads to more open and tolerant ideas of sexuality (Stewart 2010), in Sri Lanka, where nearly 70 percent of the population practices Theravada Buddhism, heteronormative versions of the family are promoted in the constitution and homosexual sex is criminalized. In 1999, when gay organizations protested a newspaper editorial stating that lesbians should be raped, the Sri Lanka Press Council ruled that lesbianism was "illegal, immoral, sadistic, salacious, and against Sri Lankan culture, and therefore deserved to be condemned" (quoted in Tambiah 2004, 84). Furthermore, even when laws are passed to recognize LGBTQ community members, such as laws protecting hijras in Pakistan, India, and Bangladesh, their implementation can be problematic. In 2014, after Bangladesh officially recognized hijras as a third gender and pointedly hired twelve hijras for government jobs, eleven of them were subsequently fired because they had penises (Hossain 2017). Thus, official recognition comes with state control, surveillance, and discrimination.

LGBTQ Activism in South Asia In spite of these challenges, LGBTQ activism in South Asia is growing.

Human Rights in Asia

Since the 1970s, a number of LGBTQ individuals in India began to organize, and by the 1990s a number of prominent LGBTQ organizations had begun to seek official recognition from the government. In 2009, one Indian organization successfully petitioned the Delhi High Court, in *Naz Foundation v. Government of NCT of Delhi*, to strike down Section 377, although the ruling was reversed in 2013. In 2017, LGBTQ organizations in Sri Lanka petitioned the government to strike down Sections 365 and 365A of the criminal code—the laws criminalizing LGBTQ acts. Nepal’s Sunil Babu Pant—the first openly gay national-level legislator in Asia—successfully petitioned the Supreme Court to announce that LGBTQ persons are not mentally ill and deserve equal rights under the constitution. Nepal today has some of the best protections for LGBTQ people in the region and in 2017 was described as a “global LGBT rights beacon” (Knight 2017).

Yet not all nations of South Asia are pushing for the same outward recognition of rights, and in some cases where rights are afforded, LGBTQ communities suffer. In 2011, the US embassy sponsored the first gay “pride” festival in Pakistan. Instead of encouraging more Pakistanis to advocate for their rights, this event placed many queer organizations “in the line of fire” and marked them as Western conspirators (Charania 2017). In India and Bangladesh, adopting the LGBTQ language of the West to become “respectably queer” or to better “serve” marginalized communities has intensified economic and social class, caste, and gender differences.

East Asia

The subregion of East Asia includes the countries and territories of mainland China, Hong Kong, Japan, Macau, Mongolia, North Korea, South Korea, and Taiwan. Much like South Asia, the region encompasses vast cultural diversity; simultaneously, however, East Asia has had a deeper penetration of economic development. East Asia contains three of the four “Asian Tigers,” or economies that experienced massive growth from the 1960s onward. These three—South Korea, Taiwan, and Hong Kong—stand today as advanced, high-income, and industrialized economies. Additionally, as of 2018, Japan was the third-largest economy in the world, and China, though still developing, was the second-largest and one of the fastest-growing economies in the world. While economic wealth may bring social change, such change introduces complex interactions between local practices and globalizing norms. Mahayana Buddhism, Confucianism, Taoism, and Shintoism are but a few of the cultural influences on the region. Furthermore, economic growth occurred under strong authoritarian governments, and in response, waves of democratization have transformed some East Asian nations into robust, liberal democracies. However,

even with sweeping political changes and economic growth—and some expanded rights for LGBTQ people—much of the region still adheres to strong heteronormative family values, communitarianism, and filial piety. Such social norms can lead to cosmopolitan and modern lifestyles, with alternative sexualities considered shameful and hidden from public. This section looks at the traditional views on homosexuality, the democratization period, and East Asian LGBTQ activism in the twenty-first century.

Premodern Views on Homosexuality Historical records across much of East Asia document awareness of LGBTQ practices. Although Confucianism has been in existence since the sixth century BCE, and Buddhism arrived in the region in the third century BCE, both are vague in their views on sexuality (Stewart 2010). In China, records reveal homoerotic behaviors in the imperial courts as early as the second century BCE (Leupp 1995). Buddhist monks in Japan from the Heian period (794–1185) were reported to engage in same-sex relations, while gay sex was not uncommon in premodern Korea, from the Silla dynasty (57 BCE–935 CE) to the Chosŏn dynasty (1392–1910) (Leupp 1995; Shin 2013). It should be noted that although many of the records discuss male homoeroticism, gender inequality led to lesbianism being ignored (Chou 2000; see also Sang 2003). In Mongolia, however, homosexuality was historically recognized, accepted as normal, and even praised because of the significance of LGBTQ shamans in Mongolia prior to the 1700s (Stewart 2010). In China, attitudes appear to change during the late imperial era. The Manchu dynasty criminalized sodomy in 1740 CE (Sommer 2000). Furthermore, it has been argued that by the early twentieth century, strong gender binaries and condemnation of “sexual perversions” had been introduced to the region by Western colonial powers (Stewart 2010; Hinsch 1990).

Modern Era Throughout much of the subregion, reactions against foreign influence were profound. Japan rapidly modernized following the Meiji Restoration (1868), triggering a militaristic growth that prepared the nation for World Wars I and II. In the first half of the twentieth century, the Chinese Communist Party took control after much political infighting emerged in part as a result of the presence of and competition from foreign influence. The Korean Peninsula, too, experienced conflict between the Soviet-backed north and US-backed south. By the early 1950s, the region was ravaged by war, economically in shambles, and politically weak. Strong authoritarian leaders emerged in South Korea and Taiwan to prioritize order and growth over freedom. China entered the Cultural Revolution period, purging itself of Western “decadence and promiscuity” such as homosexuality. Japan initiated an ambitious phase of industrialization and export-led growth.

After three decades, Japan had grown into the third-largest economy in the world.

By the beginning of the twenty-first century, much of East Asia had grown economically robust, with laws playing down tradition and promoting economic growth and mobility. China removed communist-era laws criminalizing homosexuality. In Hong Kong and Macau, the British and Portuguese penal codes were amended (in 1991 and 1996, respectively) to remove clauses criminalizing gay male sex. In South Korea, since the 2001 passage of the National Human Rights Commission Act, discriminatory acts on the grounds of sexual orientation have been considered as violating one's right to equality. Democratization movements in the late 1980s transformed Taiwan into a liberal and progressive state, leading many to believe it may be the first in East Asia to allow for gay marriage. Yet these changes have yet to transform the social status of LGBTQ persons in East Asia. Although gay marriage was discussed in Taiwan as early as 2003, this triggered a political backlash with politicians engaging in hate speech against the LGBTQ community (Yu-Rong and Wang 2010). In Hong Kong, because of homophobia, many gay and lesbian individuals conceal their sexuality from friends, employers, and family. Although homosexuality is not illegal in China, South Korea, or Japan, and LGBTQ rights are constantly expanding, heteronormative expectations of marriage and children, along with strong filial piety expectations, force LGBTQ people to hide their feelings and prioritize social obligations over individual desires.

LGBTQ Activism in the Twenty-First Century Notwithstanding East Asia's heteronormative rigidity from the early twentieth century onward, LGBTQ rights have been advancing thanks to a large number of dedicated individuals willing to contravene strict societal norms. In Japan, lesbians were the first to organize social groups starting in the 1970s. By the mid-1980s, as a result of the influence of Western LGBTQ movements, the LGBTQ community in Japan became more visible, issuing publications, organizing gay film festivals, and putting on the first lesbian and gay pride parade, in 1994. In China, Li Yinhe, a scholar and LGBTQ rights activist, proposed the Chinese Same-Sex Marriage Bill in 2003 and, after it failed, reintroduced it again in 2005, 2006, and 2008. Activists in Mongolia and Macau are pushing for greater recognition of the LGBTQ community by petitioning the government for official registration of LGBTQ nongovernmental organizations. Finally, although Mongolia and Taiwan have laws allowing for transgender people to change their sex on official documents after sexual reassignment surgery, South Korea allows transgender people to change their sex on such documents without undergoing surgery. In Hong Kong, the landmark 2013 case *W v. Registrar of Marriages* declared

that transgender people have the right to marry as their identified gender rather than their biological sex at birth.

Southeast Asia

This subregion is arguably the most dynamic in Asia, sharing both the dramatic economic growth of East Asia and the overt colonial past of South Asia. The subregion includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Culturally, the subregion embodies great diversity, having traded and shared cultures with the major powers of Asia and Europe. Its inhabitants speak over eight hundred languages and practice almost all of the major world religions. The subregion's legal systems are equally varied, with many nations crafting different laws to apply to their diverse communities. In this subregion, LGBTQ rights have been slow to materialize but also have great potential given the subregion's vibrant diversity and hybridization of cultures from past to present. This final section reviews the subregion's precolonial and colonial histories, "Asian values" and globalization, and, finally, LGBTQ activism in the twenty-first century.

Sexuality in Precolonial and Colonial Southeast Asia

Deeply entrenched and broadly institutionalized traditions of pluralism with respect to gender and sexuality have existed in Southeast Asia since the early modern era. When the Portuguese, Dutch, Spanish, British, and French arrived between the seventeenth and nineteenth centuries, they found such gender norms confusing and unruly. The British subsequently passed Section 377, prohibiting sex against the "order of nature" in Brunei, Malaysia, Myanmar, and Singapore—with Singapore eventually also implementing Section 377A, a code specifically targeting gay males. In colonial Philippines, there is evidence that the Spanish decreed that sodomites be sentenced to death by fire. Additionally, the Spanish replaced the *babaylans*, or transgendered religious figures, with *datus* (heads of clan) as village leaders. While the French and the Dutch had less interventionist policies to deal with sexual plurality, they nevertheless saw it as a threat to European racial purity and public health.

Upon the departure of Western colonial powers from the region after World War II, borders were in flux, internal conflicts along racial and political lines erupted, and global ideological battles (i.e., capitalism versus socialism) swept the region. National movements in Indonesia prioritized family and traditional values as the galvanizing, postcolonial force behind nation building. Vietnam, Cambodia, and Laos turned to "high modernity" through socialism, expunging themselves of traditional and French colonial laws. The British colonies of Brunei, Burma, Malaysia, and Singapore all maintained their British laws and, in some cases, emboldened them with stronger penalties, particularly in the area of sexuality.

“Asian Values” and Globalization Experiencing dramatic economic growth, and in reaction to Western colonization, Southeast Asian nations began to push back against the human rights discourse. Political leaders, such as Singapore’s Lee Kuan Yew (1923–2015) and Malaysia’s Mahathir Mohamad (1925–), asserted that the Western obsession with individual rights and “moral decadence” were inappropriate for Asia. Many Southeast Asian countries therefore emphasized their “traditional cultures” and fought off Western individualism, of which LGBTQ rights were seen as a manifestation. In Indonesia, the family in particular was used by the New Order government as the fundamental building block of society, and by the 1980s and 1990s this heteronormative structure became increasingly exploited to marginalize LGBTQ identities. Even in Thailand, a state that has relatively liberal views on sexuality, when a Thai teacher’s college upheld its decision to ban gay teachers, the Thai minister of education refused to intervene, stating that “under no circumstances ... would the ‘rights’ of individuals be permitted to undermine the security of the collective body” (quoted in Morris 1997, 54).

Yet the tension between globalizing norms, the changing economy, and political rhetoric led to changes in the way the state treated LGBTQ rights at the beginning of the twenty-first century. Some Southeast Asian nations began recruiting the “pink dollar” (purchasing power of the LGBTQ community), aggressively luring foreign talent from “liberal” Western nations, and playing down the “Asian values” discourse. Singapore in 2003 allowed LGBTQ people to openly serve in civil service positions and in 2009 had its first “Pink Dot” event to celebrate LGBTQ people. Vietnam in 2012 began debates on same-sex marriage and in 2015 began to allow ceremonial, though legally invalid, same-sex weddings. In 2010, Myanmar began its transition to a civilian government, with concomitant legal reforms and liberalization, as well as a budding LGBTQ rights movement. Not all countries are progressing smoothly or in the same direction. Brunei enhanced its colonial-era laws criminalizing sodomy by changing the penalty from ten years’ imprisonment to death by stoning. In Malaysia, the political opposition leader Anwar Ibrahim (1947–) was prosecuted, convicted, and imprisoned several times for sodomy in what appeared to be politically motivated gestures. Finally, in Thailand, reports still surface of parents killing homosexual children and of gay conversion therapy tactics, such as raping lesbians or sending gay males to the monastery to become more “manly.”

LGBTQ Activism in the Twenty-First Century In spite of the difficulties, LGBTQ activism remains strong in the region. In 2013, Section 377A was challenged in Singapore’s High Court. Although it was ultimately

upheld, the ruling opened the door for future constitutional challenges. In Myanmar, LGBTQ activists work hard to translate the meaning of “rights” into the vernacular language after so many years of military rule. Finally, activists in the Philippines formed *Ladlad*, the first LGBTQ political party in the Philippines, and the only existing LGBTQ political party in the world, to challenge deep-rooted institutional bias in Philippine politics. Concomitantly, Indonesia and Malaysia have seen an increase in the policing and public shaming of “effeminate” men. In 2017, Indonesia issued “socialization orders,” forcibly arresting, detaining, and expelling gays and lesbians from major cities. While Southeast Asia grapples with finding its own path in the modern world and eschewing the consequences of its colonial past, political activism is still a balancing act between pushing for individual rights and avoiding tactics that might antagonize the state or populations that still embrace the “Asian values” discourse.

As an incredibly diverse region, Asia resists generalizations, particularly when it comes to the contentious issue of “human rights.” It is clear, however, that LGBTQ people have made significant strides throughout the region in making their voices heard and in pushing for greater recognition. Such strides are not without challenges, however. From political hurdles of authoritarian or military governments and cultural influences of religion or “Asian values” to fast-paced yet unequal economic development, LGBTQ activists have had to overcome a plethora of obstacles in making Asia a safe place for the members of their communities to live on an equal footing with non-LGBTQ people. For better or worse, such progress will have to be made over time and—learning from the past—on homegrown terms and in response to local circumstances to be successful.

SEE ALSO *Activism in Africa South of the Sahara; African Commission on Human and Peoples’ Rights; Human Rights; Human Rights and Activism in Latin America; Human Rights and Queer Arab Refugees; Human Rights Campaign; Human Rights in Europe; Marriage, Same-Sex, in Taiwan; Naz Foundation International; Section 377 and Section 377A; Section 377 in South Asia; Sunil Babu Pant and Others v. Nepal Government (2007); W v. Registrar of Marriages (2013)*

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Human Rights in Europe

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Important cases decided by the European Court of Human Rights and the European Court of Justice related to LGBTQ issues.

"Europe" is best understood in terms of political and legal organization as an inner and a larger outer circle of countries. All member countries of the inner circle are also members of the outer circle. The inner circle (twenty-eight countries as of 2017) is the European Union (EU). These countries are bound by the provisions of the successive treaties that make up the constitution of the EU. Although primarily concerned with economic issues, the EU has increasingly become concerned with human rights, such as the right to equality and privacy. The EU "legislates" through the creation of Regulations, which are directly enforceable in member states, and Directives, which member states must legislate to implement. The supreme court of the European Union is the Court of Justice, which is part of the entity known as the Court of Justice of the European Union. The Court of Justice, which sits in Luxembourg, is often referred to as the European Court of Justice.

The outer circle is the Council of Europe, which includes forty-seven countries as member states. The Council of Europe "legislates" by drafting treaties that member states may decide to become bound by. The most important of these treaties is the European Convention on