



Divina Lorinda is a queer living in Kampala, Uganda.
Photo by Stuart Tibaweswa.

British colonial-era laws criminalising homosexuality still affect the lives of millions

Activists say the laws lead to violence, extortion, wrongful arrest and hinder the fight against HIV/AIDS

Laws criminalising homosexuality in the British Empire still devastate millions of lives today, say activists. Of 71 countries which outlaw same-sex relations, half are Commonwealth members. Victims of these laws say they hinder the fight against HIV/AIDS and lead to wrongful arrests, extortion and violence.

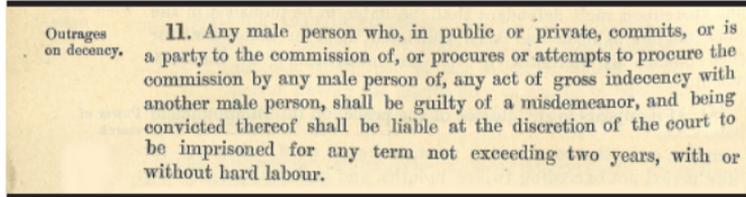
Just after dark on 21 October 2019 in Kampala, Uganda, a mob

gathered outside the gate of an LGBT homelessness shelter, set up to help young people shunned by their families. “They had sticks, they had stones, they were throwing all sorts of things,” said Eric Ndawula, one of those inside. “They were shouting, ‘we need to kill them’.”

After Eric called the police, rather than arrest any of the mob, officers charged 16 victims with “carnal knowledge against the order of nature”, a law Uganda inherited from the Indian Penal Code written by British colonial administrators in 1860. During their four-day imprisonment police searched the 16 for evidence of penetration through a “degrading” forced anal examination, before finally dropping the charges, said Eric, now the 25 year old director of Let’s Walk Uganda, an organisation set up to improve the livelihoods of young LGBT people. ▶▶

The Indian Penal Code was one of a series of Victorian laws which clamped down on homosexuality. Another in 1885 criminalised sex acts between men short of penetration as ‘gross indecency’. This amendment was debated for only four minutes, one of which was spent increasing the punishment from one to two year’s hard labour. Both Oscar Wilde and second world war codebreaker Alan Turing fell foul of this law.

gross indecency laws. According to Téa Braun of the Human Dignity Trust, a charity campaigning for LGBT rights, “In some countries, ironically, it came about as an attempt to make the laws non-discriminatory. So a country that had a law which specifically criminal-

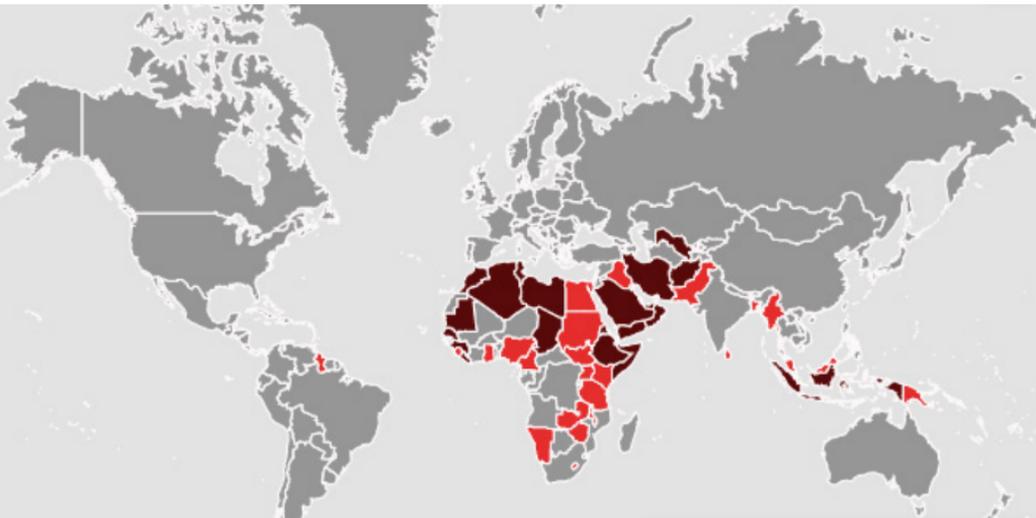


Criminal Law Amendment Act, 1885, outlawing gross indecency.

Victorian England never outlawed lesbianism. However, of the 43 countries which criminalise sex between women some, like Uganda, are influenced by British

ised men, rather than being seen as discriminatory in criminalising anybody,” she said, governments decided “we have to capture both male and female same-sex conduct.”

Map: The 71 countries which criminalise same sex intimacy. Those coloured in red were influenced by British colonial-era laws.



On 17 February 2021 the Himalayan state of Bhutan decriminalised homosexuality. Activist Tashi Tshten from Rainbow Bhutan said, although the country was never colonised by the British, “Most of the laws were basically copy-pasted from the Indian Penal Code. So when you look at those laws and see language like sodomy and unnatural sex, these are very common words that you can find even in Sri Lanka, Bangladesh, and some parts of Pakistan. These laws came from the colonial era.”

The gross indecency law became known in Victorian England as ‘the Blackmailer’s Charter’. Tashi became a victim of that colonial legacy. “I was blackmailed because he found out that I was gay. He



Anjali Gopalan, Naz Foundation

told me that he would tell the police that I engage in this type of activity and he would call the police unless I pay him the money.”

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 377 of the Indian Penal Code, 1860

Extortion by corrupt police officers was one of the sparks for the two-decade legal campaign to repeal section 377 of the Indian Penal Code by Anjali Gopalan of the Naz Foundation, an Indian HIV/AIDs organisation. “The police would say ‘we’re arresting you and we’re going to call your family, we’re going to tell them you were with another man.’ We have one of the most corrupt police systems in the world, so they would just make money off these men.” said Anjali. The Naz Foundation eventually won their legal battle in 2018.

Elsewhere the British colonial legacy continues. Last year two Zambian men, Japhet Chataba and Steven Sambo, received a Presidential pardon after serving three of their 15 year prison sentence for “carnal knowledge of any person against the order of nature”.



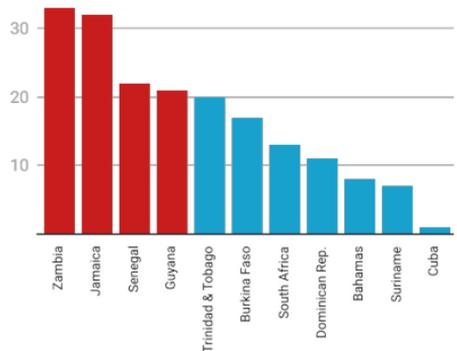
Bhutan’s Minister of Finance with members of the LGBT+ community
 From left: Dechen Selden, Lyonpo Namgay Tshering (Finance Minister), Sonam Choden, Ugyen Y Lhamo and Kencho Tshering.

Such laws make it more difficult for people to report hate crimes. “LGBT people are labelled by the state as criminals,” said Téa Braun. “People die because of these laws: at the hands of the state, at the hands of the community, at the hands of, sometimes, people’s own family.” Sometimes LGBT people are raped, including by members of their own families, in order to ‘cure’ them. Amber Fatmi from the Lawyer’s Initiative Forum in India said, “Such cases come in where you report against the family for corrective rape, then the police also book you for unnatural sex. So largely because of that the LGBTQ community do not come up and say that rape has happened.”

These laws also hobble the campaign against HIV/AIDS, according to Téa. “The HIV prevalence rates in many criminalising countries is notably higher than in non-criminalising countries. Why

HIV prevalence rates among men who have sex with men, %, 2000s

Red indicates those countries which criminalised homosexuality at the time.



Source: Global Commission on HIV and the Law

would someone go and report their sexual conduct to a health practitioner if that person might report them for committing a crime?”

The only silver lining to this dark cloud is that the response to the HIV/AIDS epidemic created movements to end criminalisation. In India the campaign against section 377 grew out of groups educating people about safe sex. “On the one hand the government was funding programmes for men who have sex with men”, said Anjali, “and on the other the police were” locking up the Naz Foundation’s HIV outreach workers. In Bhutan, according to Tashi, their biggest allies were in the health ministry, while the influential Minister of Finance worked in the HIV/AIDS prevention. Over the last decade a succession of Commonwealth countries, such as Fiji, the Seychelles, Belize, Trinidad and Botswana have joined Bhutan and decriminalised homosexuality.

So what would Eric Ndawula say if he came face-to-face with one of these Victorian lawmakers? “People refuse to accept that people could be different than them. You never know that LGBT people exist until you know that your son is gay, or your wife, or you yourself.” This is a point echoed by Téa Braun: “Whether intentionally

or unintentionally they’ve created vast global devastation in the lives of hundreds of millions of people – men and women. Perhaps the lack of knowledge back then of people and of the diversity of the human species led to that. But that lack of knowledge and that prejudice lives on today in the lives of hundred of millions of people.”■

Eric Ndawula, Let’s Walk Uganda

