

NYU School of Medicine Master Scholars
Medical Humanism Program
Colloquium on Medical Ethics

A Comparative Study of the Legal Status of Gay, Lesbian, and Transgender people in Iran, Turkey and Morocco

Hossein Alizadeh

International Gay and Lesbian Human Rights Commission's
Middle East and North Africa Program Coordinator

Presentation's Highlights

Sodomy Laws in Iran and Morocco

1. Sodomy law in Morocco
2. Iran's current sodomy law
3. Iran: the ongoing revision of the Penal Code
4. Iran: the special case of transgender people
5. Turkey and the rights of sexual minorities

The Kingdom of Morocco

المملكة المغربية



Islam in Morocco

- 99% of Moroccans are Muslim
- Predominant school of Fiqh: Maliki madhhab
- Islam is the primary source of law

Moroccan Constitution

Preamble : An Islamic and fully sovereign state whose official language is Arabic

Article 6: Islam shall be the state religion. The state shall guarantee freedom of worship for all.

Article 19: The King, "Amir Al-Muminin" (Commander of the Faithful), shall be the Supreme Representative of the Nation [ummah] and the Symbol of the unity thereof.

Morocco: Homosexuality and the Law

Article 489 of the Moroccan Criminal Law

Anyone who commits any form of **unnatural sexual acts** with **member of the same gender**- as long as his/her act does not deserve a more severe punishment -will be punished by six months to two years in jail and two hundred to a thousand Dirhams fine [\$25- \$125].

Article 489: Chapter VI, “Violation of Morality Laws”
(Article 483-496)

Islamic Republic of Iran

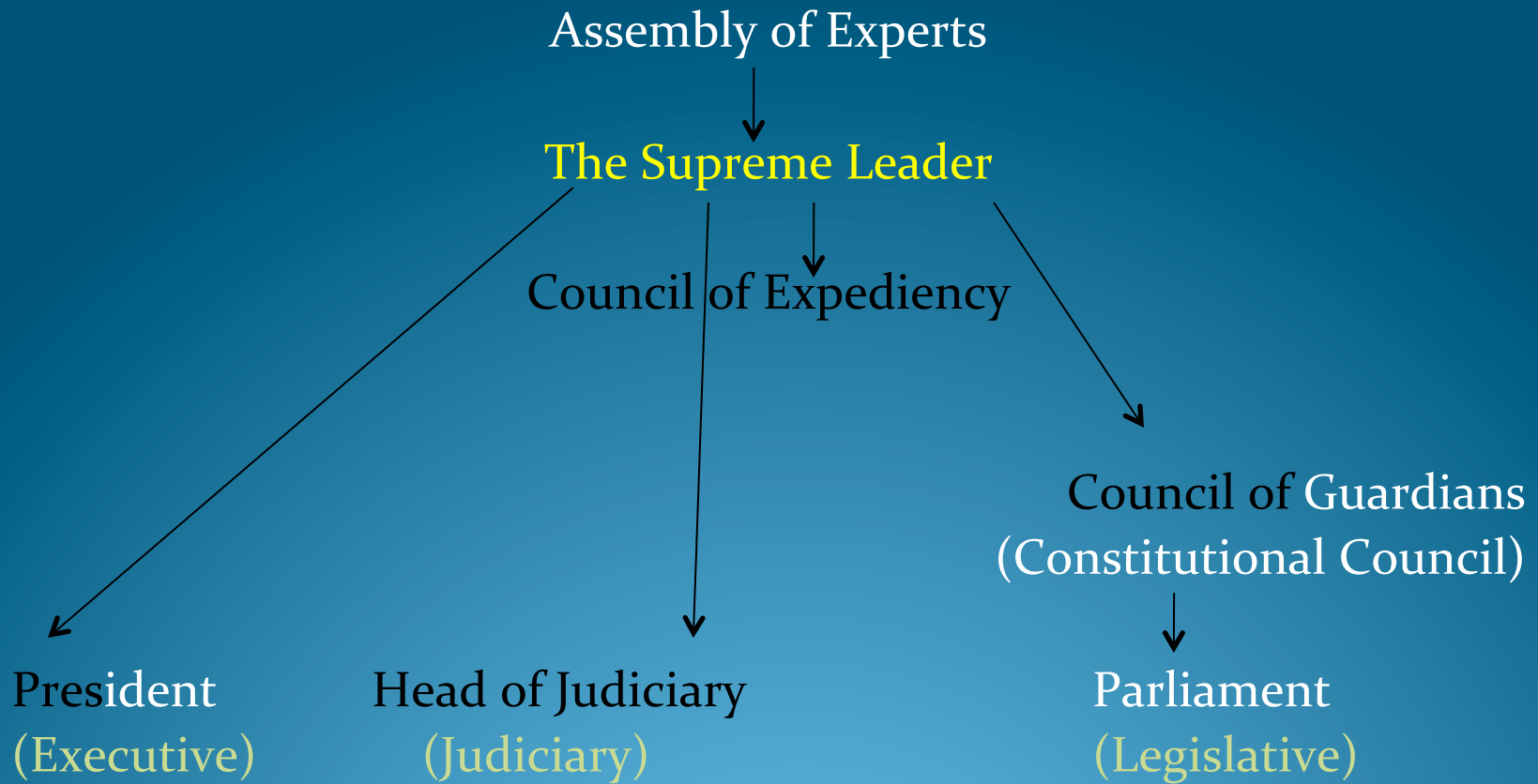
جمهوری اسلامی ایران



Islam in Iran

- 89% of Iranians are Shiite Muslim (Twelver), 9% Sunni Muslims.
- The Shiite Fiqh - as articulated by renowned Shiite religious authorities - is the primary source of law.
- The Iranian Supreme Leader, the head of the Judiciary, and a number of high-ranking clerics both inside and outside Iran (known as **Grand Ayatollahs**) are qualified religious leaders whose opinion can be used in the court of law.
- **The Assembly of Experts** - a group of top Ayatollahs - elects and dismisses the Supreme Leader on the basis of qualifications and popular esteem.

Iran's Political System



Iran: Homosexuality and the Law

Book Two: the book of Corporal Punishment for Grave Public Sins

- Part 1: Punishment for Sex outside marriage
- Part 2: **Punishment for Sodomy**
- Part 3: **Lesbian intercourse**
- Part 4: Punishment for Pimping
- Part 5: **Sexual Malicious Accusations**

Article 108: Sodomy is the anal intercourse with a man, either through penetration or just by rubbing penis between the thighs.

Revision of the Penal Code

The current Islamic Penal Code:

- Passed by the parliament in **July 1991** as a temporary law, **subject to review in 5 years**.
- In **March 1996**, the parliament renews the law for another 10 years.
- In **Aug 2007**, the parliament extends the law for another year.
- A revised version of the Islamic Penal Code was approved by the parliament in **Dec 2008**, subject to review in 5 years.
- In **January 2009**, the Constitutional Council found 100 articles of the proposed bill in violation of the Sharia law and sent it back to the parliament.
- In **Aug 2009**, the old (current) law expired.
- In **March 2010**, the Iranian Supreme leader intervened and used his authority to renew the current Penal Code till further notice.

Penal Code: the revisions

Redefining “Minor”

141-1 According to the law, **minors** are those under the age of 18 according to the solar calendar. The children can be divided into **3 categories**:

1. Under the age of seven, when they are referred to as **non-cognizant immature**.
2. If they are over 7 years old but have not reached the age of puberty, they are referred to as **cognizant immature**.
3. Those under the age of 18 that have reached the age of puberty are referred to as **mature**.

Note: **The age of puberty** for boys is 15 years of age and for girls 9 years of age according to the lunar calendar.

Penal Code: the revisions

Article 212-1: The person who has committed a crime punishable by Haad, is only liable if he/she has done the act under normal circumstances (as an adult, of free will, mental capability, and not under duress) **and** is aware of the Sharia's disapproval of his/her act.

221-18: Sodomy is defined as **the penetration of the penis into the anus of another man at least as much as the point where his penis is circumcised**, whether the bottom is alive or dead.

221-19: The punishment for the top person involved in sodomy is death as long as he has committed the intercourse forcefully or **if he is married to a sexually active wife** (Ehsan). Otherwise he should be subject to 100 lashes. The punishment for the bottom is death, as long as he is an adult, mentally capable, and not forced to commit the act.

Iran's Transgenders

- Formally recognized as a protected group
- Religious decree by late Ayatollah Khomeini to allow gender-reassignment surgery as long as medical experts think it is needed
- Upon the completion of gender reassignment, the court will re-issue your ID card with your new gender identity.
- During the gender transition, State Agency for National Well-Being subsidizes or pays for medical procedures and issues a note to stop police and morality forces from harassing you.
- Official medical diagnosis: People with hormonal imbalance (or "diabetics"). Used to be diagnosed as "people with mental disorders".
- Eligible for exemption from compulsory military service
- Official statistics (2009): 4,000 self-identified transgenders in Iran
- Challenges:
 - facing a religious and medical discourse rather than a human-rights discourse (being seen as victims of nature and/or sick people)
 - forced gender reassignment,
 - public ignorance (government officials: "people with sexual identity disorder"),
 - discrimination,
 - police harassment,
 - gender shock (the difficult life of being member of a different gender)

Republic of Turkey

Türkiye Cumhuriyeti



Islam in Turkey

- 99% Muslims
- Mainly Sunni Muslims
- Inherited Ottoman Empire (the seat of the biggest Muslim kingdom in 16-19 centuries)
- A secular government with strict separation of church and state: no official state religion
- Ban on women's headscarf at government buildings and colleges
- Ruled by moderate Islamic party since 2002 (The Justice and Development Party – in Turkish: Adalet ve Kalkınma Partisi AKP)
- Push for membership in the European Union
- No sodomy law and no Sharia law
- Legal and state-regulated sex work

Homosexuality in Turkey

- Lawsuit against LGBT rights groups on the bases of violating Turkish morality laws and family values (the cases against Lambda Istanbul in 2008 and Black Pink in İzmir in 2010).
- Frequent government pressure on groups: Kaos GL
- Police harassment and brutality and extortion targeting gay men
- Social taboos and discrimination against sexual minorities
- Job discrimination
- Frequent violent crimes against transgender people (case of Pink Life in 2010)
- Systematic state-prosecution of trans people (Law of Misdemeanors (No. 5326), 2005).
- Medical ignorance about sexual minorities (forced therapy)
- Political support from Kurdish MPs (25 members of Peace and Democracy Party ((Barış ve Demokrasi Partisi) Turkish: BDP) and also some members of The Republican People's Party (RPP) (Turkish: Cumhuriyet Halk Partisi (CHP)))



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