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NAVIGATING FAULT LINES FROM ASIA TO THE INDO-PACIFIC

LEGAL MATTERS, RELIGIOUS MATTERS: LGBTQ+ RIGHTS IN SOUTHEAST ASIA



LEGAL MATTERS, RELIGIOUS MATTERS: LGBTQ+ RIGHTS IN SOUTHEAST ASIA

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In Southeast Asia, several countries have made significant strides in narrowing the gender rights gap and addressing gender discrimination. Nevertheless, disparities persist in the legal realm, particularly regarding the rights of the LGBTQ+ community and their access to fundamental civil liberties and public healthcare. Religious influences predominantly shape these disparities, which hold considerable sway over the implementation of laws in Southeast Asia. This goes for all prominent religions in the region such as Islam (Indonesia, Malaysia, and Brunei), Catholicism (the Philippines, Timor-Leste, and to a lesser extent, Singapore), and Buddhism (Thailand and Myanmar).

Examining these countries collectively can furnish an overview of the LGBTQ+ community in the Indo-Pacific region and assist in elucidating the vital issues that the movement needs to tackle. Despite some legal protections, the LGBTQ+ rights landscape in Southeast Asian countries is influenced by political, cultural, and religious factors, leading to practical norm variation.

Islamic countries: Indonesia, Malaysia, and Brunei Darussalam

Indonesia, Malaysia, and Brunei Darussalam have specific legal provisions concerning the rights of same-sex couples. In Indonesia, same-sex relationships are not criminalised, except in Banda Aceh, which has been governed by Sharia law since 2005 and where regulation No. 6/2014 imposes severe punishment for same-sex relationships. Indonesia does not have specific laws that target homosexuals and even the controversial [new penal code](#) (KUHP) does not clearly delineate what is permitted or prohibited within same-sex relationships. Nevertheless, LGBTQ+ individuals face challenges to their civil rights and are vulnerable to discrimination. Law enforcement is routinely used against the LGBTQ+ community and Article 281 of the 1999 Penal Code stipulates that anyone who commits an 'offence against decency' can be sentenced to two years imprisonment. However, Indonesia's Penal Code or other specialised laws do not explicitly specify or regulate sanctions against the LGBTQ+ community. Another significant regulation in Indonesia is Law 44 on pornography, which categorises same-sex relationships as deviant. Human Rights Watch [reports](#) indicate that this law was utilised between 2016 and 2020 to justify the arrests of individuals engaged in acts [associated](#) with LGBTQ+ people.

Even in countries with democratic systems, such as Indonesia and Malaysia, the religious-political context slows down the LGBTQ+ inclusion process.

One of the challenges Indonesia faces is that the wording of (some of) its laws can be interpreted to justify LGBTQ+ discrimination. This, coupled with the growing influence of political Islam in the country since 2016, has complicated the relationship between the general population and gender minority groups. For instance, in response to the [Reynhard Sinaga case](#) in the UK, Islamic propaganda in Indonesia specifically [targeted](#) LGBTQ+ individuals, sometimes subjecting them to political attacks. Another example is Depok Mayor Mohammad Idris' promise of establishing "[gay rehabilitation centres](#)" in the city. While gay and lesbian relationships are not explicitly deemed illegal, the prevailing political climate in the country has contributed to their characterisation as deviant.

The situation differs in Malaysia, which has long criminalised same-sex relationships. Section 28 of the Sharia Criminal Offences (Federal Territories) Act 1997 stipulates a two-year imprisonment sentence for any man 'disguising'

himself as a woman. Similarly, strict regulations governing LGBTQ+ rights are in place in Brunei Darussalam. Same-sex relationships are prohibited under the 1951 Penal Code (Article 377), which classifies them as "carnal intercourse against the order of nature". The 2013 Sharia Penal Code also penalises acts considered homosexual (Art. 82 and 92). In recent years, Brunei Darussalam has faced significant criticism for its intention to introduce the punishment of stoning for homosexual relations. The situation for transgender individuals is also restrictive, with Article 198 prescribing penalties for "men who cross-dress as women in a public place for immoral purposes".

The Catholic Church: Philippines, Timor-Leste, and Singapore

In contrast, the Philippines and Timor-Leste, where the Catholic Church has a significant influence in society, are at the forefront of LGBTQ+ rights advancement in the region. Timor-Leste stands out as one of the more progressive nations regarding LGBTQ+ individuals. The country's penal code incorporates several articles that safeguard the rights of gender minorities and criminalise discrimination based on sexual orientation. However, despite these legal protections, LGBTQ+ individuals in Timor-Leste still encounter challenges regarding social acceptance. This stems from religious factors and the strong emphasis on heterosexual masculinity. Notably, positive steps were taken on the issue of gender during the 2022 presidential election, with the newly elected President Ramos-Horta advocating for greater respect towards the LGBTQ+ community.

In contrast to Timor-Leste, the Philippines has recently witnessed repression and human rights violations under former President Rodrigo Duterte's 'war on drugs' (2016-2022). While LGBTQ+ individuals are not criminalised, they continue to face discrimination, particularly affecting those living with HIV. They, therefore, strive for enhanced civil rights, such as the right to marry and adopt.

In Singapore, Christianity also holds a significant influence on matters of gender representation — particularly through the Catholic Church. Indeed, Singapore's conservative stance on LGBTQ+ rights and legislation can partly be attributed to the influence exerted by major Christian churches, which represent the country's second-largest religion. In November 2022, however, Singapore decriminalised homosexual relations between men, previously illegal under Article 377A. However, the city-state has yet to take steps toward legalising gay marriage.

Buddhist countries: Thailand and Myanmar

Myanmar and Thailand — neighbouring countries with shared borders and a history of recurrent military coups — embrace Buddhism as the predominant religion. However, despite these geographical, political, and religious similarities,

the recognition of LGBTQ+ rights diverges between Myanmar and Thailand. In Thailand, no legislation criminalises same-sex relationships. The decriminalisation of homosexuality took place in 1956, and in 2002, homosexuality was no longer classified as an illness. Nonetheless, gays and lesbians still face discrimination, and the Thai Constitution does not currently recognise same-sex marriage.

In 2013, the Thai government initiated efforts to establish a law guaranteeing marriage equality. However, these efforts were hindered by the 2014 military coup led by General Prayuth Chan-o-cha. It was only after the 2019 elections that the opposition Future Forward party was able to propose the Marriage Equality Act to Congress in 2020. However, due to the unstable political situation, the proposal only managed to pass the initial congressional hearing. Although the Move Forward party — the new version of the Future Forward party — advocated for LGBTQ+ rights during the 2023 election campaign, the marriage equality proposal has faced multiple postponements without final confirmation. Thailand's inaugural LGBTQ+ march in 2022 marked progress after 16 years of political tensions and *coups d'état*. This year's Bangkok Pride, attended by 50,000 members of the LGBTQ+ community on 4 June 2023, advocated for equal rights, including gender recognition, marriage equality, sex worker rights, and better healthcare. Women's rights organisations in Thailand actively work towards equality and aim to legalise same-sex marriage by 2028. In May 2023, the electoral victory of Pita Limjaroenrat, leader of the progressive Move Forward party, added momentum for civil rights advancement in parliament and set a potential example for other Southeast Asian countries.

The situation in Myanmar is notably different. A report by Myanmar LGBTQIA Human Rights Watch highlights the legal changes implemented after the February 2021 coup concerning international law. Myanmar's legal framework encompasses only two laws that protect individuals within the LGBTQ+ community. The first is the 2018 Youth Rights Law, which mandates government promotion of access to economic opportunities and political activities for young people, including LGBTQ+ individuals. This emphasis on inclusivity is further underscored by the Children's Rights Law of 2019, which prohibits discrimination based on race, gender, and sexual orientation.

The 2021 military coup in Nay Pyi Daw created a significant discrepancy between Myanmar's established legal framework and its operational judicial mechanisms. Homosexual relations remain illegal under the Colonial Penal Code of 1860 (Section 377), carrying a maximum 10-year imprisonment penalty. Additionally, provisions in the 1945 Vice Act and the 1899 Rangoon Vice Act contribute to normalising mistreatment and discrimination against the LGBTQ+ community. Article 35(c) of the Morality Law often targets transgender individuals by classifying the wearing of makeup as a form of disguise. Similarly, Article 30 of Rangoon's morality law has been invoked to arrest homosexual and

transgender beauticians found carrying scissors. Other provisions like “negligent propagation of sexual diseases”, “public nuisance”, and “prohibition of activities affecting morals” have been utilised to target and prosecute LGBTQ+ individuals. Following the coup, repression, sexual violence, and torture against the LGBTQ+ community by military and security forces have alarmingly increased.

Adequate regulatory stability?

In countries like Indonesia, Brunei, Malaysia, and Singapore, the religious matrix plays an important role in the representation and recognition of homosexuals. In other places, such as Timor Leste, Thailand, and Myanmar, LGBTQ+ communities have become victims of inter-state political tensions, slowing down the process of acquiring civil rights (Thailand and Timor Leste) or outright blocking it (Myanmar).

Indonesia, Timor-Leste, and the Philippines witness restrictions due to political circumstances, resulting in LGBTQ+ individuals facing ideological confrontations. Conversely, Brunei prioritises religious considerations over universal rights. Thailand acknowledges LGBTQ+ communities but lacks fundamental civil rights like marriage equality, and Myanmar, under the junta, is far from thinking about the LGBTQ+ community due to other priorities.

Indeed, the governments of these countries have yet to achieve adequate regulatory stability in defence of the rights of the LGBTQ+ community. Even in countries with democratic systems, such as Indonesia and Malaysia, the religious-political context slows down the LGBTQ+ inclusion process.

Significant progress in all these countries can be achieved through societally, politically, and religiously responding to gender rights issues more sensitively. Additionally, the implementation of regulations addressing both verbal and physical violence can play a pivotal role in safeguarding LGBTQ+ communities and upholding their civil rights in the countries under consideration.

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