

Navigating LGBTQ+ Rights: Brunei's Policy Landscape



By **Harsh Mahaseth**

October 22, 2023



Photo by Tim Bieler/ Unsplash

Authors: Harsh Mahaseth and Sonal Sinha*

The crowned Sultan, Hassanal Bolkiah, in office since 1967, has been holding wide-ranging powers- as the Prime Minister, Minister of Finance, Minister of Defence, and the Minister of Foreign Affairs and Trade. Brunei Darussalam is a Nation holding together its historical, religious, and ethnic values in an attempt to provide a holistic societal framework and has been sought after as a nation-building project. The **Brunei Syariah Penal Code Order, 2013** ('SPCO') has become problematic.

Brunei's Islamic order was newly enforced after its independence from a long-standing colonial reign under the British order. Back then, reinforcing Islamic tendencies into practices was seen as a **dangerous meddling** in the erstwhile colonial order. However, Sharia law **gained further accreditation** into the system after independence, when the 'Melayu Islam Beraja' ('MIB') was declared as the national state ideology with the coming of the SPCO.

The Sultan is the ultimate decision-making authority in his own Council and his outreach has shackled the media as he has instilled a strict regime to dismiss dangerous foreign influences from his divine statehood 'nation-building ideology.' TIME magazine **reports** that Shahiran Shahrani, a native of Brunei, an activist who has lashed out at the state crackdown, for holding an LGBTQ+ status, is fleeing intensive and arbitrary official outreach. The activist is seeking asylum in Canada. He **says**, "I'd hate to be the first gay man to be tried under the [new] system" after he was charged by the Brunei Government for a Facebook post. In a bid to secure support among the country's conservative allies, homosexuality has become a

ground for discrimination in religious and secular laws. In times like this, Brunei may **opt to tread** into commonality in legal cultures around the world.

Homophobia, at this point, **runs counter** to the interests of Brunei, as evidenced in its state agenda. The state holds the authority to sanction, conduct, and prescribe the eligibility criteria for non-homophobic citizenship, aiming to foster a sense of belonging. In the United Nations General Assembly, the decision to speak for three minutes at the International Gay and Lesbian Human Rights Commission is left to the members. Notably, this decision comes at a time when the matter is not merely about righteous state conduct but also about mainstreaming international action on fundamental issues such as HIV/AIDS.

South African leaders have shown **commendable state interest** in both homo- and heterosexual tendencies, examining them through social and scientific constructs. The question of whether a particular sexual orientation should be grounds for discrimination sparks **considerable interest**. Even if we were to categorize it as non-discriminatory, the results in the **Dudgeon v. U.K.** judgement could arguably set it aside, emphasizing that ‘decriminalization does not imply approval.

Norms in homophobia are consciously made. It is true in the case of the **Toonem v. Australia** judgement, where ‘sexual orientation’ was read into the ‘sex’. One who does not fit into definite ‘human rights categories’ is called abnormal which has been seen in Brunei. Homophobia is actively read into Islamic law as a **Westernized ‘man-made’ doctrine** which is against the Caliph’s legislative commandment, and one that could potentially bring down its Nation’s image, in spite of the international condemnation it has faced. Perhaps, if discrimination can be read into ‘sex’, as a ground for denying state benefits, we would be bringing honour to historic minorities and put them at par with commonly recognized, and internationally discussed discrimination, such as apartheid. It would hold hope to include specific provisions on ‘sexual orientation’ discrimination in furthering their cause.

****Sonal Sinha** is a final year law student in India who shares her passion for pursuing human rights and social justice.*

Harsh Mahaseth

Harsh Mahaseth is an Assistant Professor and Assistant Dean (Academic Affairs) at Jindal Global Law School, and the Assistant Director of the Nehginpao Kipgen Center for Southeast Asian Studies at O.P. Jindal Global University, India.