



CULTURES & CIVILISATIONS
DIALOGUE
Talks on the Hill



Coming out in Dialogue:

*Policies and Perceptions of Sexual Minority Groups in
Asia & Europe*

This research paper was commissioned by the Intellectual Exchange Department of the Asia Europe Foundation with the aim of sharing information and establishing a common ground for discussion with the participants before the meeting. This paper aims to stimulate the debate by highlighting key elements in the background of this topic and should not be interpreted as an exhaustive analysis of issues pertaining to sexual minority groups in the regions of Asia and Europe. The views and opinions expressed in this paper do not necessarily reflect those of the Foundation.

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1. INTRODUCTION

Social attitudes towards sex and sexuality in human societies have been in constant flux throughout history – ranging from repression, to strong condemnation, to tolerance and acceptance. According to which standpoint same sex-relationships are approached, homosexuality and transgender have alternatively been considered as immoral or sinful, as a manifestation of illness or as a normal variation of human sexuality.

Evidence of homosexuality and transgender being present in most Asian and European societies, dates back to the early centuries. References to same-sex love and homosexuality can be found in the literature, historical texts and religious writings of Greek, Middle Eastern, Chinese and Indian societies.

This paper will briefly examine the history and current policies and perceptions pertaining to the place of homosexuality in the various societies of Asia & Europe through the lenses of **religion, medicine and legislation**. As an annex to this report, the reader will find a brief survey of the current situation of policies and practices in the various countries of the Asia-Europe meeting (ASEM).

With the coming of religion, especially the monotheistic religions, homosexual acts have been reinterpreted and have been largely qualified as unnatural and consequently sinful. The basis of this argument tends to fall along the lines that homosexuals and transgender persons defy the laws of nature or the will of God. It is believed that the sexual act is meant for procreation and thus those acts that are derived from lusts and pleasures go against this belief.

From the perspective of the medical establishment – essentially biologists, psychologists and psychiatrists – homosexuals and transgender individuals were for some time viewed as having medical disorders, mainly mental and physical defects. Psychiatry tended to consider homosexuality a distorted behaviour/psychological disorder whereas biologists supported the physical explanation of physical degeneration. This has resulted in studies that have tested for mental and physical abnormalities. However, by and large from the 1980's onwards, homosexual behaviour has been largely declassified as an illness. Scientific evidence or lack of it has been very important in forming the basis of much legislation.

Progressively homosexuality has become a matter of civil law and has been translated into legislation determining the legality of same-sex love in both Europe and Asia. Some states have significantly adapted their legal systems to the demands of minority sexual groups while in many others, the act of homosexuality remains a crime – at least on paper. Broadly, Europe has taken decisive steps towards defending the choices of sexual minority groups, while the Asian landscape presents greater contrasts with some grappling with thick social

and cultural taboos and others having adopted a more liberal stance on this issue.

Movements fighting for the recognition and acceptance of sexual minority groups in societies and under the law have become a growingly defined presence in both European and Asian cultural landscapes while facing strong opposition from some other groups – mainly based on religious convictions.

The question over sexual orientation has been recently brought to the forefront with the Brazilian Resolution, tabled to the United Nations Commission on Human Rights – which prohibits discrimination on the basis of sexual orientation. The European Parliament in its resolution on the Europeans Unions rights, priorities and recommendations for the 60th session of the UN commission on Human Rights in Geneva recommended acting in favour of the resolution. Further the European Union charter for Human Rights and the possible future Constitution for Europe prohibits discrimination on the basis of sexual orientation.

Thus, the reshaping of legislation towards sexual orientation has opened the floor to many other related legal and ethical/moral issues such as same-sex marriage/partnership, equality in employment, censorship, and adoption.

This first part of the paper will present briefly the different existing religious, medical and legal perspectives of homosexuality and transgender.

Facts and Figures:

In general, the number of homosexuals quoted by anti-gay activists tend to show figures near 1%, while surveys quoted by gay activists tend to show figures nearer 10%, with a mean of 4-5% figure most often cited in mainstream media reports. Data on transgender suggest that roughly 1 per 30,000 adult males and 1 per 100,000 adult females seek sex-reassignment surgery (SRS) but these numbers have been challenged by new studies that found that the prevalence of SRS is at least on the order of 1:2500 from male to female.

It is important to note that homosexuality and transsexualism have been reported in almost all societies and periods of history. However, it is not till the XX and XXI century that these sexual groups got themselves organised in Lesbian, Gays, Bisexual and Transgender (LGBT) organisations claiming for equal rights in all spectrum of society and life.

1.1 Terms Defined

For the purposes of this paper and the ASEF Talks on the Hill, we will consider the following definitions:

Sexual Minorities are defined by their sexual orientation and gender identity: gay, lesbian, bisexual, and transgendered or transsexuals. This paper and discussion will focus only on gays, lesbians and transgender since bisexuals see their rights threatened when acting as homosexuals or transgender.

Homosexuality literally means “of the same sex” and is derived from the Greek prefix *homo*, which means the same. The term homosexuality embraces the entire range of same-sex relations and affections, male-to-male and female-to-female.

Gay is a colloquial equivalent to homosexuals. It can be used to describe both men and women homosexuals.

Lesbians are used to describe only female homosexuals. The term lesbian is derived from the name of a Greek island Lesbos. This was where Sappho a famous Ancient Greek poet wrote love poems addressed to other women. She is a well known Lesbian icon.

Transgender person is a condition in which an individual has a strong and persistent cross-gender identification. **Transsexualism** is considered to be the extreme end of the spectrum of gender identity characterised by, among other things, a pursuit of sex reassignment surgery (SRS). Transgender and transsexualism are terms also used indistinctively.

Sexual discrimination is used in this paper to describe unequal treatment, rights and obligations that disadvantage sexual minorities groups due to their sexual orientation and gender identity.

2. THE ROOTS OF POLICIES AND PERCEPTIONS TOWARDS SEXUAL MINORITY GROUPS

2.1 Religion

Introduction

All religions have provided their followers with divine laws and/or moral codes. Throughout history and till today some societies intertwine religion and law since some men consider that the divine laws should overcome the human ones. In others, religion and law are separate. However, in the latter societies it cannot be denied that religion, traditions and civil society opinions have moulded the laws and continue to do so.

The following only describes the main religions in the countries of the Asia-Europe meeting and their teachings on homosexuality and transgender.

2.1.1 Hinduism

Although the accepted Hindu religious texts have no specific “laws” regarding homosexual acts and contain mythological androgynous deities, most of the debate on homosexuality is centred on the interpretation of the Dharma Shastras books.

The Dharma Shastras books are not considered to be religiously binding within Hinduism. However, they prescribe three functions related to sexuality. According to the scriptures, in Hinduism, love is important in order to attain the liberation from the cycle of rebirths (Moksha). Second, all forms of sex pursuing only pleasure is discouraged and extramarital sex is prohibited. Finally, marriage has the function to perpetuate one’s family, to fulfil religious responsibilities and to create companionship and mutual pleasure within lovers.

Currently, most of the debate on homosexuality and transgender within Hinduism is centred on the interpretation of these three teachings.

Basing their argument on the Dharma Shastras, the proponents of homosexuality and transgender argue that since homosexuals can experience romantic love, homosexual sexual relationships are not the product of lust. Consequently, homosexual marriages should be allowed in order to express their love sexually.

In response, opponents of same-sex love argue that love is only natural between a man and a woman and one of the functions of the marriage is procreation. Since homosexuals cannot procreate, they should not marry. Moreover, Brahma’s story is used to support their standpoint. Indeed, Canto 3, Ch.20 Text 23, 24 and 26 within the Srimad Bhagavatam, a Hindu religious scripture, describes how Brahma – one of the three principal Hindu deities- created a group of demons that became obsessed with sex and demanded sex from him, but

then he ran away from them. Opponents of homosexuality interpret Brahma's story in a way to prove that homosexual behaviour is lustful and evil.

Regarding transsexualism, examples of sex changes can be found in Indian mythology. One of these examples is when Vishnu deity turned himself into Mohini in order to distract the demons. Shiva copulated with Mohini and impregnated her. Androgeny and hermaphroditism are also a divine attribute of some deities, reflecting the Hindu belief that the God contains within him/herself all the elements of the cosmos, including both male and female. One example is Shiva, who is often shown with the left side female and the right male being called this form "Ardhanarishavara".

2.1.1 Buddhism

The minimum that is required of the lay Buddhist is embodied in what is called the Five Precepts (*panca sila*), the third of which relates to sexual behaviour.

The *panca sila* moral code advises/recommends to avoid certain types of sexual behaviour. The Third Precept actually says: '*Kamesu micchacara veramani sikkhapadam samadiyami.*' The word *kama* refers to any form of sensual pleasure but with an emphasis on sexual pleasure and a literal translation of the precept would be "I take the rule of training (*veramani sikkhapadam samadiyami*) not to go the wrong way (*micchacara*) for sexual pleasure (*kamesu*)". The Precept leaves up to the individual to interpret what "the wrong way" might be.

However, the Buddha advised against certain behaviours not because they were wrong but because they could be subject to legal sanctions or embarrassing situations due to social disapproval. It might be argued that homosexuality and transgender are some of these behaviours and refraining from them would free the subjects from anxiety.

From the Theravada Buddhist standpoint (earliest form of Buddhism now dominant in Southeast Asia), all relationships: gay, lesbian or straight, are often considered personal matters of mutual consent. If a relationship promotes the happiness and well being of both parties, then it is positive and acceptable. Nonetheless, the monastic code of discipline urges only monks to restrain from all passions, including sexual ones.

The Mahayana is the form of Buddhism spread in China, Japan and Korea. This doctrine fought against dualism. This tendency favoured periods of tolerance. Matteo Ricci, a Jesuit missionary who lived in China expressed with horror emotion the tolerance towards homosexuality in China (1610): "*That which most shows the misery of these people is that no less than the natural lusts, they practice unnatural ones that reverse the order of things, and this is neither forbidden by law nor thought to be illicit nor even a cause for shame...*".

Missionary Father Francois Xavier also reported open homosexuality behaviour in Japan during that time. Japanese Buddhist sects in which homosexual relationships have been documented are the Ji-shu, Hokke-shu, Singon and Zen. In Japan evidence of homosexuality was previously documented in a particular genre of literature, which emerged during the late mediaeval period. This literature extolled love between samurais and even between Buddhist monks and temple boys.

Many Buddhists believe that sexual orientation and gender identity is beyond a person's control, as are race and gender. It has been speculated that homosexual orientation may arise from the residual karma of a previous life spent in the opposite gender. Transgender is believed to be the punishment for the bad karma of a past life. That is, a man who commits adultery is thought to be reborn as a transsexual.

There are many schools and sects of Buddhism. As with Christianity, no consensus exists within Buddhism about gay, lesbian and transgender relationships. Buddhism is most concerned with whether an action is helpful and based on good intentions.

Nevertheless, it is worth noting the words of the Dalai Lama on homosexuality: *"(From a) Buddhist point of view (lesbian and gay sex) is generally considered sexual misconduct. However, such proscriptions are for members of the Buddhist faith and from society's viewpoint, homosexual sexual relations can be of mutual benefit, enjoyable, and harmless"*. Office of Tibet spokesman Dawa Tsering said: *"His Holiness was greatly concerned by reports made available to him regarding violence and discrimination against gay and lesbian people. His Holiness opposes violence and discrimination based on sexual orientation. He urges respect, tolerance, compassion, and the full recognition of human rights for all."*

2.1.3 Taoism

Taoism is a profoundly philosophical Chinese religion dating from the 4th century BC, based upon the book *Tao-te Ching* (the Classic of the Way and its Power), and attributed to the philosopher Lao-tzu (c.570-490 BC).

The Taoist symbol of yin yang represents the balance of opposites in the universe. When they are equally present, all is calm. The two swirling shapes inside the symbol denote change, which is the only constant entity in the universe. According to one saying, 'yin' (darker side) represents the breath that formed the earth; 'yang' (the bright part) denotes the breath that formed the heavens. Another view is that 'yin' represents the feminine aspects while 'yang' represents masculine part. Generally speaking yin and yang can symbolize any two opposing forces in nature. Although Taoism is not directly concerned with anything as mundane as the specifics of sexual relationships, or even gender, a man-man relation is thought to be a Yang-Yang relation and so is imbalanced and destructive. However, each man somehow has some *yin* (feminine) in him too. Some men can have much *yin* in them. So the presence of some feminine

behaviour is not viewed as unnatural for men. In this view, homosexuals or even transgender people can even be regarded as something very natural, according to the natural balance of *yin* and *yang*.

It is also worth noting that many Taoist gods and goddesses live alone or together with some equal deities of the same sex such as Shanshen (Mountain God) and Tudi (Earth God) which are both male gods.

2.1.4 Confucianism

The Chinese philosopher and social reformer, Kong Zi (Confucius) was apparently born about 551 BC. A temple was erected in 480 BC, in honour of Confucius a year after his death, where he attained a cult following that developed into a worship of his spirit. Confucianism is not a religion but is a system of honour codes and moral assumption to enable a community of people on this earth to live harmoniously. Confucianism was chosen by Han emperor Han Wu Di – Han dynasty ruled from 202 BC to 220 CE in China- and used it as a political system and a kind of state religion. Despite loss of influence during the Tang dynasty, Confucianist doctrine remained mainstream Chinese orthodoxy for two millennia, until the beginning of 20th century.

According to *Li Yinhe* in the book *History of Chinese Homosexuality*, historical traces of male homosexuality persist through dynasty to dynasty from ancient times and were never punished so long as homosexuals fulfilled their filial duties by getting married and continuing the family line. However, Confucianism stated that both wife and husband should always remember their correct relationship, but homosexuals and transgendered went directly against such rules. The codex states that man and woman should behave according to their sex roles. However, as long as a man does his duty and sires children, it is his private thing to have other male lovers. Hence, one can conclude that the sin deeds in the codex of Confucianism do not include homosexuality or transsexualism, contrarily to the Christian scriptures.

The intertwining of Confucian morality and communist Puritanism resulting from the formation of the People's Republic of China contributed to the stigmatisation of homosexuality and of transsexualism. Both were perceived to posed a challenge towards the Chinese society.

2.1.5 Christianity

The attitudes towards homosexuality from the different Christian churches such as the traditional Roman Catholic Church, the Protestant Church, the Anglican Church or the Eastern Orthodox Church in both Europe and Asia all express strong concern regarding sexual minorities rights and their role in greater society, although the extent of tolerance toward homosexuality may vary.

Following World War II, reinterpretations of the passages of the Bible regarding homosexuality have been conducted by scholars like Canon Derrick Sherwin Bailey, John McNeill, or by the Roman Catholic convert Professor John Boswell of Yale and others. These interpretations gave birth to and were embraced by Gay Churches. In 1968, the first gay church was established by Reverend Troy Perry in the United States. In Europe, Reverend Joseph Doucé in Paris founded the counterpart in 1976. Gay Churches include heterosexual, gay, lesbian, bisexual and transsexual people.

The subject of transsexuality is not directly addressed in the Scriptures. Nevertheless, this group have had to face the same issues as homosexuals.

The divergence within Christian Churches themselves can sometime result in contradicting standpoints. For instance, the National Council of Churches of Singapore in its Statement on Homosexuality on 29 July 2003 rejected homophobia but urged the government to maintain its policy of not permitting the registration of homosexual societies and clubs or any other policy promoting homosexual activities.

The Biblical passages most often referred to and discussed by Christians about homosexuality are the following:

- 1 *Leviticus 18:22: "Thou shall not lie with mankind, as with womankind: it is abomination."*
- 2 *Leviticus 20:13: "If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them."*
- 3 *Romans 1:26-32: "For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet. And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient; ... without natural affection, ... who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them."*
- 4 *1 Corinthians 6:9-10: "Neither ... effeminate, nor abusers of themselves with mankind, ... shall inherit the kingdom of God."*
- 5 *Judges: (23) "And the man, the master of the house, went out unto them, and said unto them, Nay, my brethren, nay, I pray you, do not so wickedly; seeing that this man is come into mine house, do not this folly". (24) "Behold, here is my daughter a maiden, and his concubine; them I will*

bring out now, and humble ye them, and do with them what seemeth good unto you: but unto this man do not so vile a thing”.

- 6 *Other Biblical passages which prohibit sexual activity between other than husband and wife (fornication) have also been used to condemn homosexuality.*

The divergence of standpoints on same-sex love within the Christian Churches can be illustrated by the ongoing debate between Christian theologians who consider homosexuality sinful, and others who do not. The ones who do not believe that homosexuality is a sin generally argue that their counterparts have misinterpreted the pertinent Bible passages or quoted them selectively.

Christian opponents of equal rights for non-heterosexuals believe that supporting "pro-gay" legislation would constitute approval of homosexuality and bisexuality, by promoting **wilful** acts of homosexuality. They say that such approval is incompatible with their faith. In contrast, those who are for equal rights **sustain** that changing laws does not change people's sexual inclinations.

Another point highlighted by pro-homosexual Christians is the belief that if homosexual orientation is not a choice then it should be accepted according to Galatians 3:28: *"There is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus."* They argue that if the orientation is not a choice then it is part of God's design for humans.

Regarding the lack of choice of sexual orientation, traditionalists argue that there is free will, people do have a choice about how they behave, and this is quite different from whether or not people have a choice about their sexual orientation. As for most traditional Christians it is homosexual behaviour rather than orientation that is sinful, the questions that arise about homosexual orientation are separate, and less hotly debated.

2.1.5 Islam

The teachings of Islam are derived from the Quran and the Sunnah (practice) of Prophet Muhammad. For Muslims God's will is expressed in a comprehensive code of behaviour or Islamic law (Shari'ah). Law is based on the Quran, the words of God as revealed to Prophet Mohammad, and the Hadith, which is a collection of the words attributed to the Prophet. Finally, the Fatwa - a ruling on a point of Islamic law - is based on Islamic scholars interpretation of the Quran and the Hadith.

Islamic scholars have agreed that Homosexuality is a sin from their interpretation of these verses from the Quran (Yusuf Ali's translations):

- 1 *Al-A'raf: "We also sent Lut: He said to his people: Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds. And his people gave*

no answer but this: they said, "Drive them out of your city: these are indeed men who want to be clean and pure!" (Qur'an 7:80-82)

- 2 *Al-Shu'ara' (starting at 165): "Of all the creatures in the world, will ye approach males, And leave those whom Allah has created for you to be your mates? Nay, ye are a people transgressing (all limits)! They said: "If thou desist not, O Lut! Thou wilt assuredly be cast out!" He said: "I do detest your doings:" "O my Lord! Deliver me and my family from such things as they do!" So We delivered him and his family,- all Except an old woman who lingered behind. But the rest We destroyed utterly. We rained down on them a shower (of brimstone): and evil was the shower on those who were admonished (but heeded not)! Verily in this is a Sign: but most of them do not believe. And verily thy Lord is He, the Exalted in Might, Most Merciful." (Qur'an 26:165-175)*

- 3 *Merciful." (Quran 4:15-16)*

These following are the Hadith references on homosexuality although they are not verified:

- 1 *"Whenever a male mounts another male, the throne of God trembles"*
- 2 *"If you see two people who act like the people of Lot, then kill the active and the passive".*
- 3 *"Sihaq (lesbian sexual activity) of women is zina (illegitimate sexual intercourse) among them."*

All traditional Sharia legislation falls into one of four main legal schools: Hanafi, Hanbali, Shafi'i and Maliki. While there is a consensus of opinion that same-sex intercourse is in violation of Islamic law, there are differences of opinion within Islamic scholars about punishment, reformation, and what standards of proof are required before physical punishment becomes lawful. For instance, the Hanafi School (South and Eastern Asia) teaches that no physical punishment is warranted regarding homosexuality. The Hanabali, (widely followed in the Arab world) teach that severe punishment is warranted whereas the Shafi'i School of thought (mainly in South-East Asia) requires a minimum of 4 adult male witnesses before a person can be found guilty of a homosexual act.

Islamic Law does not consider homosexuality as a determinate personal preference, but a behaviour that depends on the circumstances. Ironically, one of the arguments used by the Christians during the Crusades in the Middle Age was the necessity of fighting against the homosexual behaviour "imported" to Europe by the Moors. During that time, the presence of homosexual behaviour in Muslim countries can be studied through poems extolling boy love, medical and psychological explanations, chronicles of Christian missionaries in north-Africa, and other writings on the History of the Muslim countries suggest that through history and during certain periods of time homosexuality was more or less tolerated.

While contemporary Islamic societies as the Islamic Society of North America through Dr. Muzammil Siddiqi, the British Muslim group Al-Muhajiroun, the Canadian group Ahmadi Muslim Jama'at' have condemned homosexuality, homosexual Muslims have their own organisations, websites and mailing lists too that give orientation and support to Muslim homosexuals and transgendered persons and their families.

It is worth noting that in fact during the time of the Prophet Muhammad (632 AD) there was not one single case of a reported punishment or execution for homosexuality or same-sex acts. The first execution to ever have been carried out was during the time of the third Caliph, Omar.

While most major Islamic institutions have not explicitly addressed transgender issues, there is information concerning cross-dressing, those transgressing traditional gender roles and sex-reassignment surgery. One *hadith* appears to condemn cross-dressing, stating: "Cursed are those men who wear women's clothing and those women who wear men's clothing." Another condemns "the hermaphrodites among the men and the over-masculine women." Islam permits hermaphrodites to undergo a sex change operation so that the person can be either a female or a male. However, Islam forbids males to behave like females in terms of cross-dressing, wearing make-up, injecting hormones to enlarge their breasts, and undergoing sex change operations.

Conclusion

Religions have approached sexual minority behaviours focusing mainly on gay relationships. Homosexual behaviour and transgender is prohibited or not recommended by almost all religions but even those societies where homosexuality is forbidden, the existence of homosexuals and transsexuals cannot be denied and in some countries is allowed to certain extent.

2.2 Biological and psychological perspectives

Medical explanations for homosexuality and transgender stem from two different perspectives, which need to be distinguished: on one hand, homosexuality and transgender stems from a **psychological condition** and on the other hand, they are an **unalterable condition determined by genetic or physiological factors**. Although, these perspectives were put forward throughout history, hypothesis of their causes have yet to be scientifically definitively proved.

Medical literature from the classical antiquity (Hippocrates and Aristotle mainly) supports mainly the physical explanation for homosexuality (generative secretions from the parents or internal physical malformation, respectively).

Later, Alexandrian society explained homosexuality as determined by planetary influences. The medieval medical literature followed the medical classical tradition and astrology. However, with the influence of religion which considered homosexual behaviour sinful, influenced for instance some scholars to continue studying homosexuality as a medical disorder (Abu Bakr ar-Razir) or as due to a weak moral without genetic ethiology (Ibn Sina).

During the Renaissance till the nineteenth century in Europe, the physical/physiological perspective again prevailed and numerous volumes were written on the areas of the body responsible for homosexuality, including the brains (this forensic tradition began with Paulus Zacchias by the beginning of the seventeenth century).

Throughout the nineteenth century, the influence of Darwinian theories remarked on the pathologic condition of homosexuals since they did not show any urge to procreate. In Europe, important psychiatrists as J. D. E. Esquirol, Auguste Morel, Ernst von Feuchtersleben and James Cowles Prichard, classified homosexuality as distorted behaviour and as a "*degeneration of the central nervous system*". It was not till that century that homosexuality was studied as a proper medical entity.

Until World War II, the physical hypothesis for homosexuality was still predominant. However, multiple factors such as the failure of science to find biological traits and "cures" to homosexuals, the different views on homosexuality throughout cultures and religions stated by anthropology, the studies of biologists such as Miriam Rothschild and ethologists such as Konrad Lorenz who demonstrated that homosexual behaviour has been observed in almost every known species of animals, facilitated the consideration of homosexuality as a non-pathological variation within the human species and influenced perceptions of same-sex love. This change not only affected laws but also psychotherapy. Psychoanalysis adopted the notion of universal primary bisexuality; homosexuals were just individuals that because of early experiences kept them engaged to a certain psychological stage and should be considered like any heterosexual with

neurotic personality. Hence a different psychological approach to homosexuality and transgender was adopted: when a subject does not want to change his/her sexual orientation, psychotherapy thus aims for a better acceptance and adjustment of this part of the personality by the subject and family.

As it was mentioned before, Psychiatry and latter Clinical Psychology considered homosexuality a medical and psychological disorder, respectively. The criteria to diagnose homosexuality as a mental disorder were stated in the Diagnostic and Statistical Manual of Mental Disorders (DSM) from 1952 onwards. Finally, in the revised-third version of the DSM-III-R (1987) the word homosexuality was eliminated due to pressures from gay activists, the influence of Psychoanalysis on Psychiatry and Psychology, a more positive perception of homosexuality and the lack of scientific arguments (neither physiological, anatomical, neurobiological, etc.) to support homosexuality as a mental disorder. Nevertheless, the diagnostic criteria for Gender Identity Disorder (transsexualism) is still in the DSM-IV although associated laboratory findings and physical examination findings have not found distinctive characteristics for this population. There is not a definitive explanation

Some transgender people are still fighting to remove the diagnosed condition and in that way normalise their condition. Nevertheless, others have used the diagnostic to prove that this “mental illness” leads to a “the disturbance (that) causes clinically significant distress or impairment in social, occupational, or other important areas of functioning” (Criteria C, DSM-IV). This medical condition would prove the necessity of be included and treated free (surgically and psychology) in countries where there is welfare system or, at least, would prove surgery necessary. The current situation is that some transgender persons are referred to psychotherapy in the belief that the cross-gender desire is pathological, while others maintain that surgery is the best treatment. Usually, when the subject decides to go through operation, he/she previously engages in psychotherapy to evaluate the appropriateness of surgical methods.

The breakout of HIV/AIDS in the 1980's was a turning point for the homosexual community, and resulted in a reemergence of a medical debate on homosexuality. At that time, the virus was largely spread through the male homosexual community and hence associated to homosexuality. [The disease was called the “gay disease” or “gay cancer”.] Because of this association between HIV and sexual orientation, civil rights and liberties of homosexuals were threatened under the guise of concern for public health in domains such as insurances policies, job opportunities, etc.

2.3 Current policies and attitudes towards homosexuals

2.3.1 Legislation

Legislation on homosexuality has varied throughout history and from one country to another. Hence it is relevant to note that same-sex love has not always been penalised by law. For instance, the Athenian law only punished those male citizens who prostituted himself to another male, as prostitution was reserved to slaves. As for the Roman republic, only the passive homosexual was punished while the law gave free play to the active. Homosexuality began to be penalised by law during the dynasty of Constantine the Great (305-337) by the influence of Christianity, while the secular government was being taken over by the religious sphere. Since that period till the Middle Ages, homosexuality continued to be penalised and at some period of time received capital punishment by castration, burning and/or stoning to death. Some Muslim countries condemned homosexual acts by punishing one hundred lashes if adult and unmarried, and stoning by death if married.

During the eighteenth century in Europe, thinkers as Voltaire, Beccaria and their followers convinced educated people that homosexuality was a moral and religious issue and that it should not be a matter of the civil law. The influence of the Enlightenment Century on the perception and understanding of same-sex love resulted in some European Catholic countries and in America in the reform of their penal codes; some of them replaced the death penalty with life imprisonment. In 1791 sodomy was removed from the list of punishable offences in France. Other Catholic countries in Europe and America reformed their penal codes although some of them only replaced the death penalty with life imprisonment.

After World War II, important reports contributed to the legalisation of homosexual acts in Europe. First, the two Kinsey Reports of 1948 and 1953 showed/demonstrated the extent of the homosexual practices by subjects of all socio-economic classes in U.S/ the United States.

Second, following the Report of the Wolfenden Committee in 1957 in England which recommended decriminalising homosexual behaviour; the British Parliament acted for decriminalisation in 1967 in England and Wales and in 1980 in Scotland. Third, the European Convention of Human Rights guaranteed the right of privacy in 1950 which has been used by the homosexuals to protect their rights. For instance, in 1981 a Northern Ireland citizen held that laws penalising private consensual homosexual behaviour violated the right of privacy. However, the right of privacy has not always been extended to homosexual acts by the law.

By 1960 leaders of the gay and lesbian organisations started asking for civil rights and protection against discrimination. It also to be noted that lesbian acts had largely been ignored by the law. Laws and practices refer only to male

homosexuals. By 1992 a significant number of countries adopted anti-discrimination legislation in Europe but none in Asia.

In China homosexual practices were legal until 1644, when the Manchus assumed control of the Chinese Empire and prohibited consensual homosexuality. However, this law remained un-enforced. During the Cultural Revolution (1966 - 1976), the Chinese authorities considered homosexuality to be a social disgrace or a form of mental illness. Chinese gays and lesbians experienced severe repression during that period. Since there was no law against homosexuality, gays and lesbians were generally charged with hooliganism or disturbing public order. Since that time homosexuality has remained in the closet.

Homosexuality has never been explicitly illegal in Vietnam. The ancient legal codes of the Le and the Nguyen dynasties detailed penalties for crimes such as rape and adultery, but homosexuality was left out. Although Vietnamese legal codes had always been strongly influenced by the Chinese, when the Ching dynasty in China first elaborated punishment for sodomy, the Vietnamese did not follow suit, and in fact omitted that from their codes. Nor did the French colonials institute explicit prohibitions against sodomy or pederasty in their colonies, because under the Code Napoléon, these acts did not fall under the purview of the legal system.

Homosexuality may however still be seen as taboo. In 1997, the countries first large-scale and lavish gay wedding was held, and while public opinion did not support this, the police said that no laws exist which would have allowed them to arrest the couple.

It appears in general, that countries that were colonised by countries other than Britain – those inheriting the Roman law traditions – did not adopt laws criminalising homosexuality – including Indonesia, Indochina and the Philippines. It should be noted however, that in most cases, while it is not technically illegal, homosexuality is not politically acknowledged.

Southeast Asia did not have specific laws regarding homosexuality till a number of countries were colonised and common law - derived from the English “system of law that relies on long-established custom and the evolving pattern of precedent established by court decision” - was established in the colonised countries, namely Singapore, Hong Kong, Malaysia and Brunei. Common law prohibits homosexual acts and criminalises homosexuals and is still practised in colonised countries. However in Muslim countries the Sharia law supersedes common law when it relates to the Muslim residents of the country such as in Brunei.

In conclusion, homosexuality has progressively become a matter of civil law. It has been translated into laws determining the status of same-sex love in both European and Asian countries’ legislations. Nowadays, legislation regarding

homosexuality encompasses different domains but focuses mainly on partnership status/same-sex marriage, adoption and employment.

2.3.2 Legislating and discrimination: partnership, adoption and employment

Some groups argue that currently, legislation regarding homosexuality, although under reformation process in some Asian and European countries, remains discriminating towards sexual minority groups. The main areas of interest for the legislator and of concern for the sexual minority groups are partnership, adoption and employment.

In the area of partnership, some forms of discrimination vis-à-vis the rights of heterosexual couples – include:

- The rights of homosexual couples to register their partnership
- Homosexual couples not permitted to hold wedding ceremonies
- Homosexual couples not permitted to marry
- Rental housing contracts
- Income tax deduction as heterosexual couples
- Visiting rights to institutions
- Next-of-kin status for partners of the unconscious ill and the dying
- Entitlement to half the property
- Inheritance rights
- Carrying the surname of the partner
- National Insurance
- Immigration rights of foreign partners
- Same heterosexual couple status

Regarding legislation on adoption by same-sex parents, most countries with the exception of a handful of countries prohibit adoption by homosexual couples or singles. Although some countries do allow single woman to adopt they do not allow lesbians or gays to do so.

Finally, in the area of employment, some forms of discrimination and rights comprise:

- Specific laws that bans anti-gay discrimination
- Allowing homosexuals the same employment opportunities as heterosexuals
- Not discriminating homosexuals to certain jobs
- Protecting homosexual employees
- Providing the same rights for homosexual partners as heterosexual partners
- Not segregating homosexual from heterosexual employees
- Not employing due to sexual orientation

2.3.3 UN Human Rights Commission

Widespread and egregious human rights abuses have been documented on the basis of sexual orientation and gender identity.

The Brazilian delegation to the United Nations (UN) on Human Rights introduced a resolution prohibiting discrimination on the basis of sexual orientation in 2003:

- 1 (OP1): *“The Commission on Human Rights expresses deep concern at the occurrence of violations of human rights all over the world against persons on the ground of their sexual orientation”;*
- 2 (OP2): *“The Commission on Human Rights stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation”;*
- 3 (OP3): *“The Commission on Human Rights calls upon all States to promote and protect the human right of all persons regardless of their sexual orientation”;*
- 4 (OP4): *“The Commission on Human Rights notes the attention given to human rights violations on grounds of sexual orientation by the special procedures in their reports to the Commission Human Rights (CHR), as well as the treaty monitoring bodies, and encourages all special procedures of the CHR, within their mandates, to give due attention to the subject”;*
- 5 (OP5): *“The Commission on Human Rights requests the High Commissioner for Human Rights to pay due attention to violations of human rights on the grounds of sexual orientation”.*

It was retabled in 2004 following calls for its postponement.

The discussion was postponed to the 60th Session of the United Nations Human Rights Commission in 2004. In 2004, it was stated that the Commission on Human Rights should adopt a resolution that:

- *Affirms the principle of the inadmissibility of discrimination on any grounds.*
- *Expresses concern at the occurrence of discrimination and violations of human rights based on persons’ sexual orientation or gender identity.*
- *Stresses that the enjoyment of human rights and fundamental freedoms should not be hindered on the grounds of sexual orientation or gender identity.*
- *Calls upon States to promote and protect the rights of all persons regardless of their sexual orientation and gender identity.*

- *Encourages all special procedures of the Commission on Human Rights, as well as the treaty bodies, to give due attention within their mandates to human rights violations based on sexual orientation and gender identity.*
- *Requests the United Nations High Commissioner for Human Rights to pay due attention to such violations, and to present a report on this issue to the 61st session of the Commission on Human Rights.*

The controversial resolution encountered much opposition – notably from the Organisation of the Islamic Conference and the Vatican. All EU countries except Italy expressly supported Brazil. China and Malaysia opposed the resolution, while Thailand abstained, and Vietnam did not vote. Other ASEM countries are not members of this commission.

Brazil decided to postpone the resolution once more, in order to use the time to gain further support without watering down the contents.

The European Parliament in its resolution on the European Union's rights, priorities and recommendations for the 60th session of the UN commission on Human Rights in Geneva recommended acting in favour of the resolution. Further the European Union Charter for Human Rights, which is part of the possible future Constitution for Europe¹ prohibits discrimination on the basis of sexual orientation (Title III, Art. 2, §21-1).

*"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or **sexual orientation** shall be prohibited."*

Finally, it is to be noted that new European member states in their acceptance process had to adapt their respective legislation and adopt a broad ranging anti-discrimination programme including provisions prohibiting discrimination on grounds of sexual orientation

2.3.4 "The Gay Movement"

In modern times, the movement for legal and social tolerance of homosexuality finds its roots in the French Revolution and saw light in the world's first homosexual organisation in Berlin (1897). Social change movements for equal rights of sexual minorities started from the 1950's onwards in Europe and the United States. Rapidly, periodicals on homosexuality emerged. During the 1960's, the "sexual revolution" allowed human sexual behaviour to be object of research.

¹ *The European Constitution will enter into force when all member states ratify the convention. Until today (01/2005), only Hungary and Lithuania have ratified the Constitution. The remaining states will submit it for ratification to their respective parliaments or by referendum.*

A certain legitimacy of homosexuality started by studying homosexual-tolerant cultures and prominent gay/lesbian personalities. During the second part of the twentieth century, the interest was put on genetics and on psychology emphasising that tests could not differentiate homosexuals from heterosexuals and, in consequence, homosexuality should not be considered as a mental disorder. After the World War II, homosexuality has been dealt with multidisciplinary approaches: anthropology, history, psychology, sociology, education, laws, religion and ethics, biographies and literature, public opinion research, hate crime, politics...this multidisciplinary approach has led to a closer contact of the society with the homosexual theme.

While some countries may legalise or ban homosexuality the society's perception and attitudes towards homosexuals may differ from the law in terms of economics and society tolerance. For instance, the 'Pink Dollar' may sway many authorities, which still officially oppose homosexuality, to turn a blind eye. Although these countries may make it illegal to be homosexual they accept the economics of homosexuality. Many companies target homosexuals as niche markets too. Furthermore, although in some countries homosexuality is illegal there are majority of the population who are tolerant and accepting towards homosexuals and the vice-versa may hold true too. In general, tolerance does not constitute acceptance.

Homosexual movements started building not just sexual but political identity. In some Western countries this sexual and political identity was conceived as a main priority to achieve some political goals. A growing counter debate is emerging now though, as there is concern about the aggressiveness with which certain segments of the homosexual population have been seen to have acted on their agenda, particularly in the United States. These tactics and objectives have been in some instances counter-productive, as populations have reacted with increased defensiveness to the actions of the homosexual community.

In contrast, the majority of the Asian countries did not follow the trend initiated by the Western ones. One reason is that the concept of homosexual identity was alien to them. Another reason was that Asian countries consider themselves as traditional and relatively conservative cultures where homosexuality is conceived as something against the tradition and something imported from/specific to the western countries. And finally, the laws followed the Islamic law or Victorian laws, both against homosexual practices. Nowadays, the pursue of political identity in Asian countries is not an issue or it is in construction, since Asian homosexual organisations seek to change the traditional mindsets by adapting the Western activist way to the reality of the culture, politics and traditions of their own countries.