

MIGRANT LAW CLINIC (Episode Two):
LGBT+ ASYLUM: THE DSSH MODEL
The Emotional Journey
and the DSSH model:
A positive tool for credibility assessment.

Dr S. Chelvan

15 September 2020, Webinar, London



PROGRAM

SESSION ONE:

10am-11am – LEGAL FRAMEWORK

PART ONE: THE HISTORICAL CONTEXT

PART TWO: HJ (IRAN) – FRAMEWORK

PART THREE: SECOND LIMB: OBJECTIVE COI TEST

PART FOUR: THIRD AND FOURTH LIMBS:

CONDUCT ON RETURN – “PERCEPTION IS KEY” –

Q&A:

INTERMISSION:

11am-11:15am - inc. THE DSSH MODEL VIDEO TESTIMONIALS

SESSION TWO:

11:15 am-12:15 pm: THE DSSH MODEL – “DIFFERENCE”

Q&A– Feedback Forms

SESSION ONE: THE LEGAL FRAMEWORK

PART ONE: THE HISTORICAL CONTEXT

Learning from the past to prepare for our future....

The Emotional JOURNEY

CONVENTION
AND
PROTOCOL
RELATING TO THE
STATUS OF
REFUGEES



1951 Refugee Convention and 1967 Protocol – Article 1A (2):

A refugee is a person who:

‘... owing to **well-founded fear** of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is **outside the country of his nationality or habitual residence**, and is **unable or, owing to such fear, unwilling to avail** himself of the protection of that country...’.

The JOURNEY to SANCTUARY:

PHYSICAL: Travel – ‘outside country of nationality or habitual residence’

EMOTIONAL:

FEAR – Subjective

BUT – *Objective Test* - Well-founded

Lack of effective state protection – “unwilling” **or**
“unable” – ‘unwilling’ – reasonable – based on COI arising from subjective reasoning

PERSECUTION –*Hathaway* definition:

SERIOUS HARM + FAILURE OF
STATE PROTECTION

International 'surrogate' protection (La Forest J in [Canada \(AG\) v Ward](#) 103 DLR (4th) 1, 12).

"The rationale underlying international protection is to serve as "surrogate" shelter coming into play only upon failure of national support. When available, home state protection is a claimant's sole option.

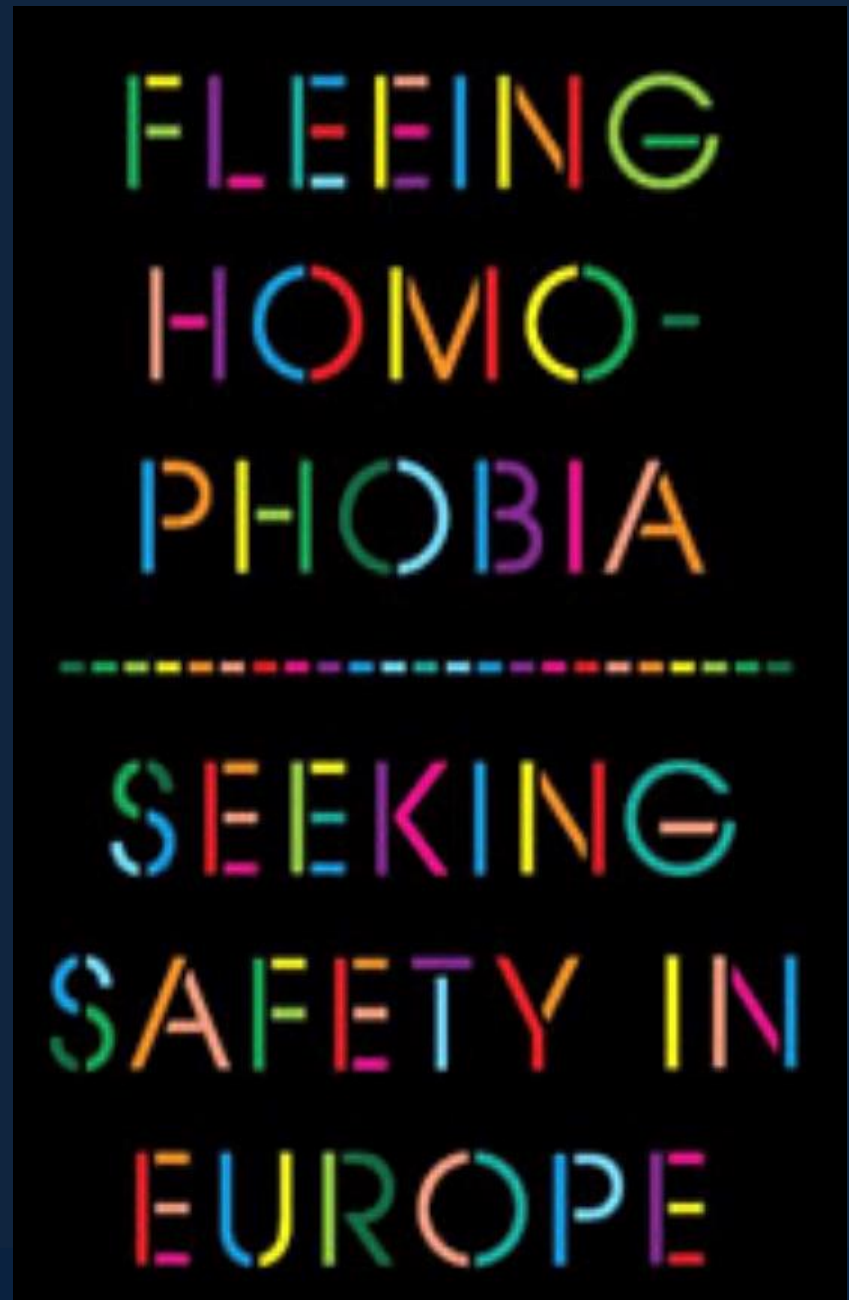
International refugee law was formulated to serve as a back-up to the protection one expects from the State of which an individual is a national. It was meant to come into play only in situations when that protection is unavailable, and then only in certain situations. The **international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other States becomes engaged.**"

First noted asylum case on
sexual identity:

(1981) Netherlands

*Afdeling rechtspraak van de Raad van
State* (Judicial Division of the Council of
State) 13 August 1981, *Rechtspraak
Vreemdelingenrecht* 1981, 5, *Gids
Vreemdelingenrecht (oud)* D12-51.

Source: Fleeing Homophobia report
(2011)



Question One:

Who provided the driving force for the introduction of positive consideration of asylum claims based on sexual-orientation/identity in the UK?

OPTION ONE: Lord Pannick

OPTION TWO: Lord Rodger

OPTION THREE: Lord Justice Schiemann

OPTION FOUR: The Rt. Hon. Anne Widdecombe MP

OPTION FIVE: Lord Steyn

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 76 OF 2016

NAVTEJ SINGH JOHAR & ORS. ...Petitioner(s)

VERSUS

UNION OF INDIA

THR. SECRETARY

MINISTRY OF LAW AND JUSTICE ...Respondent(s)

WITH

WRIT PETITION (CIVIL) NO. 572 OF 2016

WRIT PETITION (CRIMINAL) NO. 88 OF 2018

WRIT PETITION (CRIMINAL) NO. 100 OF 2018

WRIT PETITION (CRIMINAL) NO. 101 OF 2018

WRIT PETITION (CRIMINAL) NO. 121 OF 2018

J U D G M E N T

Dipak Misra, CJI (for himself and A.M. Khanwilkar, J.)

C O N T E N T S

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Acts of gross indecency between persons.
[§ 18,22 of 1995.]

365A. Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment of either the description for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.

Grave sexual abuse.
[§19,22 of 1995.]

365B. (1) Grave sexual abuse is committed by any person who, for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person, being an act which does not amount to rape under section 363, in circumstances falling under any of the following descriptions, that is to say—

(a) without the consent of the other person;

[§7, 29 of 1998.]

(aa) with or without the consent of the other person when the other person is under sixteen years of age;

[§ 7, 29 of 1998.]

(b) with the consent of the other person while on such other person was in lawful or unlawful detention or where that consent has been obtained, by use of force, or intimidation or threat of detention or by putting such other person in fear of death or hurt;

(c) with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind or was in a state of intoxication induced by alcohol or drugs.

IN THE DISTRICT COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application under
and in terms of Section 9(a) of the
High Court of Provinces (Special
Provisions) Act No.19 of 1990

Officer-in-Charge.
Police Station, Maradana.

Complainant.

SC Appeal No.32/11
SC SPL LA No.304/2009
HCMCA no. 595/04
Magistrate's Court of Maligakanda
No. 7923/C

Vs.

01. Galabada Payagalage Sanath
Wimalasiri,
No.D/1/2, Police Quarters,
Gonahena, Kadawatha.
02. R. Jeganathan,
No.139, Ericwatte,
Galaha

Accused.

AND BETWEEN

Galabada Payagalage Sanath
Wimalasiri,
No.D/1/2, Police Quarters,
Gonahena, Kadawatha.

Accused-Appellant.

Vs.

Officer-in-Charge.
Police Station, Maradana.

Complainant-Respondent

When Sergeant Wijetunga was under cross examination it was suggested to him on behalf of the Appellant that both the Appellant and the other accused were seated in the rear seat engaged in a discussion, whereas the Appellant in his dock statement had said that the other accused arrived at the scene after the Police officers confronted him. These are some of the factors that make the defense version so improbable, and I am of the view that both the learned Magistrate as well as the learned Judge of the High Court were correct in rejecting the dock statement. Thus I hold the question of law raised in sub paragraph (c) of paragraph 8 of the Petition also in the negative.

In view of the conclusions referred to above I see no reason to interfere with the finding of guilt of the Appellant.

The final question on which leave was granted is, as to whether the sentence imposed on the Appellant is excessive in the circumstances of this case and as to whether this is a fit case to invoke Section 303(1) of the Code of Criminal Procedure.

There is no question that the individuals involved in the case are adults and the impugned act, no doubt was consensual. Section 365A was part of our criminal jurisprudence almost from the inception of the Penal Code in the 19th century. A minor amendment was effected in 1995, however, that did not change its character and the offence remains intact.

This offence deals with the offences of sodomy and buggery which were a part of the law in England and is based on public morality. The Sexual Offence Act repealed the sexual offences of gross indecency and buggary in 2004 and not an offence in England now.

The contemporary thinking, that consensual sex between adults should not be policed by the state nor should it be grounds for criminalisation appears to have developed over the years and may be the *rationale* that led to repealing of the offence of gross indecency and buggery in England.

The offence however remains very much a part of our law. There is nothing to say that the appellant has had previous convictions or a criminal history. Hence to visit the offence with a custodial term of imprisonment does not appear to be commensurate with the offence, considering the fact that the act was consensual, and absence of a criminal history on the part of the other accused as well. In my view this is a fit instance where the offenders should be afforded an opportunity to reform themselves.

In view of the above I am of the view that imposing a custodial sentence is not warranted in the instant case. Furthermore the incident had taken place more than thirteen years ago.

Considering the above I set aside the sentence of the one year term of imprisonment and substitute the same with a sentence of 2 years rigorous imprisonment and acting under Section 303(1) of the Code of Criminal Procedure Act, suspend the operation of the term of imprisonment for a period of 5 years effective from the date the sentence is pronounced by the learned Magistrate.

Subject to the variation of the sentence referred to above, the conviction is affirmed.

Registrar of this court is directed to have this judgment conveyed to the learned Magistrate for the purpose of pronouncement of the sentence. Subject to the variation of the sentence, the Appeal is dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE EVA WANASUNDERA, PC
I agree

JUDGE OF THE SUPREME COURT

JUSTICE ANIL GOONERATNE
I agree

JUDGE OF THE SUPREME COURT

NOT
STRAIGHT
ENOUGH

L

Lesbian

A woman who is primarily attracted to women.

G

Gay

A man who is primarily attracted to men; sometimes a broad term for individuals primarily attracted to the same sex.

B

Bisexual

An individual attracted to people of their own and opposite gender.

T

Transgender

A person whose gender identity differs from their assigned sex at birth.

T

Transexual

An out-dated term that originated in the medical and psychological communities for people who have permanently changed their gender identity through surgery and hormones.

Q

Queer

An umbrella term to be more inclusive of the many identities and variations that make up the LGBTQ+ community.

Q

Questioning

The process of exploring and discovering one's own sexual orientation, gender identity and/or gender expression.

I

Intersex

An individual whose sexual anatomy or chromosomes do not fit with the traditional markers of "female" and "male."

A

Ally

Typically a non-queer person who supports and advocates for the queer community; an individual within the LGBTQ+ community can be an ally for another member that identifies differently than them.

A

Asexual

An individual who generally does not feel sexual desire or attraction to any group of people. It is not the same as celibacy and has many sub-groups.

P

Pansexual

A person who experiences sexual, romantic, physical and/or spiritual attraction to members of all gender identities/expressions, not just people who fit into the standard gender binary.

NOT
CIS/STRAIGHT
ENOUGH
= the Queer
Refugee



R (Binbasi) v SSHD [1989] Imm A R 595

Mr Pannick: - the 'social group' to 'active homosexuals' (i.e. those who had sex), where the common characteristic is 'a sexual preference ... normally only revealed in private. [It] cannot be a social group if its common characteristic is so concealed'

Kennedy J held those who drafted the Convention's had a modest aim to protect only those genuinely fearful for 'who they are or what they have done' but not for acts they can refrain from.

Joan Vraciu v SSHD(11559) (1994, 1995)

Romanian national – medical testing to ‘prove’ sexuality (submission made by HOPO)?

R v Immigration Appeal Tribunal ex parte Vraciu
(CO/1957/95) (unreported) (QBD) (judgment 1 November 1995) (McCullough J)

SSHD v [Sergei Vasilyevich Savchenkov](#) [1996] Imm AR 28
(McCowan LJ) (1995 Court of Appeal)
(Russian Mafia Gangs – Particular Social group to resist them? (note use *Gomez* –imputed political opinion)).



Date: Tue, 6 Feb 1996 17:53:54 +0000
From: Mark Watson
<mark@stonewall.org.uk>
Subject: Stonewall Immigration Group
[1/2]

Dear Danny,

Below is some information that can be put on your site. We have a web page with our info on which should be linked with your page. Obviously you can decide the best approach. Please note the email address should be mark@stonewall.org.uk and we should be referred to as UK not England!

Thank you for all your hard work

All the best

Mark

Stonewall Press Release: 5 February
1996
Immediate Release

Homosexuals could be "Social Group"
concedes Home Office Minister
Ann Widdecombe states that asylum
claims based on a persons sexuality
might now be granted as homosexuals
could be a social group for UN
Convention purposes

David Alton MP was asked by Stonewall
to raise the issue of homosexuals
as a social group for asylum purposes
with the Immigration Minister who
replied on 31 January 1996 saying that
homosexuals may form a social
group for convention purposes. In her
letter she explains: "Sexual
orientation is taken into account in
the assessment of individual asylum
claims where this is relevant. ...
Each individual claim is considered
on its merits to determine whether the
applicant can demonstrate in all
the circumstances of the case, that he
or she has a well founded fear of
persecution in a particular country
for any of the Convention reasons.
We interpret this provision in the
convention as follows:
i) the group is defined by some innate

We interpret this provision in the convention as follows:

- i) the group is defined by some innate or unchangeable characteristic of its members analogous to race, religion, nationality or political opinion for example their sex, linguistic background , tribe, family or class which the individual cannot change or should not be required to change; and
- ii) there must be a real risk of persecution by reason of the person's membership of the group.

Whilst claims based on homosexuality might satisfy i) with this definition, the requirement's set out in ii) would also have to be met in the individual case."

**R v Immigration Appeal Tribunal ex part Shah
and Islam v SSHD [1999] 2 AC 629.**

Lord Steyn [643C-E]:

‘practising homosexuals’, due to their distinct status as a discriminated social group, sharing ‘an innate and immutable characteristic’, may also be protected as a ‘particular social group’.

Sahm Sunder Jain v. SSHD (IATRF 99/0437/4)
[2000] Imm. AR 76, Court of Appeal (1999)

‘However, the position has now been reached that criminalisation of homosexual activity between consenting adults in private is not regarded by the international community at large as acceptable. If a person wishes to engage in such activity and lives in a State which enforces a criminal law prohibiting such activity, he may be able to bring himself within the definition of a refugee. That is one end of the continuum.’

[emphasis added]

[additional emphasis added]

Development of the cannon of case-law to *J* and the “discretion test”

- (i) *Jonah* to *Iftikhar Ahmed* (CoA);
- (ii) [Appellant S 395](#) (Australian High Court, 2003);
- (iii) [Z](#) (2004) (CoA);
- (iv) [Amare](#) (2005) (CoA);
- (v) [RG \(Colombia\)](#) (2006) (CoA); and
- (vi) [J](#) (2006) (CoA).

[J v. SSHD](#) [2006] EWCA CIV 1238; [2007] IMM AR 73 [§ 16] (Maurice Kay LJ)

‘It will have to address questions that were not considered on the last occasion, including the reason why the appellant opted for “discretion” before his departure from Iran and, by implication, would do so again on return. It will have to ask itself whether “discretion” is something that the appellant can reasonably be expected to tolerate, not only in the context of random sexual activity but in relation to “matters following from, and relevant to, sexual identity” in the wider sense recognised by the High Court of Australia (see the judgment of Gummier and Hayne JJ at paragraph 83).’

HJ (Iran) and HT (Cameroon) [2009] EWCA Civ 172; [2009] Imm A. R. 600

Cultural Relativism [§ 32 as per Pill LJ]:

“The need to protect fundamental human rights transcends national boundaries but, in assessing whether there has been a breach of such rights, a degree of respect for social norms and religious beliefs in other states is in my view appropriate. Both in Muslim Iran and Roman Catholic Cameroon, strong views are genuinely held about homosexual practices. In considering what is reasonably tolerable in a particular society, the fact-finding Tribunal is in my view entitled to have regard to the beliefs held there. A judgment as to what is reasonably tolerable is made in the context of the particular society. Analysis of in-country evidence is necessary in deciding what an applicant can expect on return and cannot, in my view, be ignored when considering that issue.”

AT (HOMOSEXUALS: NEED FOR
DISCRETION?)IRAN [2005] UKAIT 00119
[§ 28] SIJ FREEMAN

‘Whether there is or is not a "core right" for persons of any sexual orientation to conduct themselves with discretion in their public sexual practices is not something we need in our view decide, though we should have thought that such discretion was part of the ordinary consensus of civilized mankind (and still more so of a number of races considered "uncivilized", so far as they still exist).’

[emphasis added]

[NR \(Jamaica\) v SSHD](#) [2009] EWCA Civ. 856;
[2010] INLR 169 [24] (*as per* Goldring LJ)

‘Sexual identity is current identity.’

Dauvergne and Millbank, in “Applicants S396/2002 and S395/2002, a gay refugee couple from Bangladesh” 25 Sydney Law Review 97, 107 (2003)

‘Is this normal life? Would the court for example hold that a heterosexual person’s fundamental human rights were not infringed if, for “safety’s sake” they had to pretend to be gay in every area of their professional, personal, and social life, in every public place, by not living with their partner of choice, never showing affection to their partner or identifying themselves as a couple to friends or family, and only pursuing their heterosexual “lifestyle” by having swift and furtive sex with strangers or prostitutes in a public park? Is such desperate secrecy and deception, undertaken in fear, for months, years, or decades, a normal life?’

[emphasis in text]

GENDER IDENTITY/EXPRESSION CASES:

- UK cases: **ONLY 2 REPORTED cases:**

(1) *Rahimi v. Secretary of State for the Home Department*
[2006] EWCA Civ 267

(2) [AK \(Iran\) v SSHD](#) [2008] EWCA Civ 941
(appeal remitted)

Rahimi v. Secretary of State for the Home Department
[2006] EWCA Civ 267

The Court of Appeal referred to a pre-operative trans-female, who was born natal male but considered herself to be female, in the female gender (*as per Moore-Bick LJ [§ 1]*):

‘The applicant is an Iranian transsexual. She was born male but considers herself to be female and acts and dresses accordingly and I shall therefore refer to her in that way.’

Very worrying case – says no risk (relies on 2005 CG case on risk to ‘open’ and not ‘discreet’ (pre-HJ SCt):

- **Homosexual acts clearly are criminal, but there is little to suggest that a person who is homosexual in orientation is subject to serious ill-treatment or persecution as a result.**
- **The position of transsexuals seems to be very similar. The condition is one that is recognised by the state and the state makes provision for appropriate treatment for those who wish to undergo it. There is little to support the suggestion that merely being transexual [*sic*] in Iran will expose one to serious ill-treatment or persecution.”**

(2) [AK \(Iran\)](#) v Secretary of State for the Home Department [2008] EWCA Civ. 941 (appeal remitted)

The Court of Appeal were at pains to distinguish cases involving homosexuality and those involving “transexuality” [*sic*] with respect to a claim of a self-identified trans woman, but used MALE pro-noun as pre-operative (*as per* Sedley LJ [§ 4]):

“Before I go any further, I want to make three points about these two determinations. First of all Immigration Judge Atkinson had not made the *jejune* error of confusing transexuality [*sic*] with homosexuality. He had taken a good deal of care to distinguish the two, but had accepted the appellant’s case that there was a real risk that others in Iran would not do so.”

3 relevant Unreported Cases:

(1) SSHD v EFH (AA/08503/2015) (UT, April '16):

Addressed this historical wrong by dismissing the Secretary of State's appeal against a positive determination of the First-tier Tribunal that had allowed the (asylum) protection claim of a pre-operative trans-woman from Singapore who would face persecution as a pre-operative trans woman, **with a real risk of imprisonment for failure to comply with reservist duties on return to Singapore**, where she would be treated as a man under Singaporean law as she was neither (cis) female (biological) or a post-operative trans-woman.

- First-tier (November 2015) and Upper Tribunal (IAC) (April 2016).
- Earlier determination as H (IA/27528/2013) did not address military service (8.8.2014)

(2) LSL – Malaysian trans man – anti—crossdressing laws led to real risk (PA/11792/2016) (10.8.2017) (UJ Latter)

[28]“The issue on the evidence available now is whether the appellant would be at risk of persecution as a transgender man or whether because of his birth assigned gender, he would be perceived to be a lesbian in Malaysia. Following the approach in HJ (Iran), I am satisfied that the appellant is a transgender man who would be perceived as a lesbian by the Malaysian authorities. I must go on to consider whether if the appellant lived openly as such, he would be liable to persecution?.

(3) **MKMR** (PA/08121/2018) (26.11.18) (UJ Latter and UJ Allen)

‘[32] The grounds argue that the judge was wrong not to follow the country guidance in LH and IP. We are satisfied that in the light of that judgment it was open to the judge to take the view that judgment in Galabada was cogent evidence providing strong grounds for not following LH and IP and to find that there was a reasonable degree of likelihood that the appellant would be at risk of persecution on return. We also note that in LH and IP the Tribunal accepted that transgender individuals might be more at risk than other gay men and in the present case the appellant is seeking to transition to female.’

[emphasis added]

PART TWO: HJ (IRAN) – FRAMEWORK

HJ (Iran) and HT (Cameroon) v SSHD [2010]

UKSC 31

- The central question which arose in these appeals is whether a gay person (gay man, lesbian, or bisexual (“LGB”)) can be reasonably be expected to tolerate discretion on return and therefore not be entitled to refugee status (the *J* test).
- Reference to all three differing sexual identities is found at § 76.
- Reference to equal applicability to gay men and lesbians is found at § 83 (*as per* Lord Rodger).

LORD RODGER [§ 53]:

‘The underlying rationale of the Convention is therefore that people should be able to live freely, without fearing that they may suffer harm of the requisite intensity or duration because they are, say, black, or the descendants of some former dictator, or gay. In the absence of any indication to the contrary, the implication is that they must be free to live openly in this way without fear of persecution. By allowing them to live openly and free from that fear, the receiving state affords them protection which is a surrogate for the protection which their home state should have afforded them.’

[emphasis added]

■ Lord Rodger highlighted that there was no yardstick to measure the suffering which would find an existence “reasonably tolerable ... it is something that no one should have to endure” [§ 80].

Such a test would require an individual to [§ § 75 to 76]:

“[A]ct discreetly and conceal his sexual identity *indefinitely* to avoid suffering severe harm. ...[76] ... So, starting from that position, the Convention offers protection to gay and lesbian people – and, I would add, bisexuals and everyone else on a broad spectrum of sexual behaviour - because they are entitled to have the same freedom from fear of persecution as their straight counterparts. No-one would proceed on the basis that a straight man or woman could find it reasonably tolerable to conceal his or her sexual identity indefinitely to avoid suffering persecution.

[emphasis added]

“RIGHT TO LIVE FREELY & OPENLY” [§ 78]

“In short, what is protected is the applicant's right to live freely and openly as a gay man. That involves a wide spectrum of conduct, going well beyond conduct designed to attract sexual partners and maintain relationships with them. To illustrate the point with trivial stereotypical examples from British society: just as male heterosexuals are free to enjoy themselves playing rugby, drinking beer and talking about girls with their mates, so male homosexuals are to be free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates. Mutatis mutandis – and in many cases the adaptations would obviously be great – the same must apply to other societies. In other words, gay men are to be as free as their straight equivalents in the society concerned to live their lives in the way that is natural to them as gay men, without the fear of persecution.”

Discretion and ‘Gay Martyrs’ – NOT General – but OPEN [59] (Lord Rodger):

‘Although counsel for the Secretary of State was at pains to draw this distinction between assuming that the applicant would act discreetly to avoid persecution and finding that this is what he would in fact do, the distinction is pretty unrealistic. Unless he were minded to swell the ranks of gay martyrs, when faced with a real threat of persecution, the applicant would have no real choice: he would be compelled to act discreetly. Therefore *the question* is whether an applicant is to be regarded as a refugee for purposes of the Convention in circumstances where the reality is that, if he were returned to his country of nationality, he would have to act discreetly in order to avoid persecution’

[emphasis added]

HJ (Iran) and HT (Cameroon) v SSHD [2010]
UKSC 31

- **LORD RODGER'S 4 LIMB TEST:**

- (summarized by the Court of Appeal in LC (Albania) v SSHD [2017] EWCA Civ. 351 [2]).

(i) **Is the applicant gay, or someone who would be treated as gay by potential persecutors in his country of origin?** If no, the claim should be refused. If yes:

(ii) **Do openly gay people have a well-founded fear of persecution in the country of origin?** If no, the claim should be refused. If yes:

(iii) In respect of his sexual orientation, on his return, **will the applicant be open**? If yes, he is a refugee and his claim should be allowed. If no:

(iv) If **he would not be open, but rather live discreetly, is a material reason for living discreetly that he fears persecution**? If yes, he is a refugee and his claim should be allowed. If no, then his claim should be refused.



I am
(discretely)



gay

HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31; [2011] 1 AC 596 [82] – ASYLUM CLAIM ONE:

- **LIMB 1** – ‘Prove’ IS or PERCEIVED to BE – come ‘within’ the Convention reason
- **LIMB 2** – Do ‘open’ MEMBERS of the Convention reason group – face a ‘well-founded fear of persecution’
- **LIMB 3** – Will the individual be ‘open’ on return;
- **LIMB 4** – If NOT – then – if the ‘voluntary discretion’ (Concealment) is due to personal choice or social pressure then NOT a refugee:
- **BUT** – if ‘**A** Material Reason’ is a Well-Founded Fear of Persecution then THEY are a Refugee

PART THREE: SECOND LIMB:
OBJECTIVE COUNTRY OF ORIGIN
INFORMATION TEST

Lord Rodger [82] HJ (Iran)

‘When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality?’

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived *openly* would be liable to persecution in the applicant's country of nationality.

[emphasis added]

[additional emphasis added]

Lord Hope [35 (b)] [HJ \(Iran\)](#):

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. **The Home Office's Country of Origin report will provide the background.** There will be **little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared.**

LIMB 2 – those who lived openly – few ‘martyrs’

Whether it is satisfied on the available evidence that [those who satisfy LIMB ONE Convention reason membership]
who lived openly would be liable to persecution in the applicant’s country of nationality.

REMOVING THE MASK: LOCATING 'THE MARTYR'

Reviewing UK Home Office Country of Origin Information relating to
Sexual Orientation and Gender Identity or Expression ('SOGIE') Protection Claims

Dr. S. Chelvan, Barrister



*'How COI is used for refugee status determination
(second limb of Lord Rodger's binding guidance in HJ (Iran) (para 82).'*
Report submitted to the Independent Advisory Group on Country Information

10 February 2020



Home Office

Country Policy and Information Note Afghanistan: Sexual orientation and gender identity or expression

Version 3.0
February 2020

Note on Afghanistan: women fearing gender-based harm and violence.

- 2.4.18 In the country guidance case of [AJ \(Risk to Homosexuals\)](#) the Upper Tribunal held that 'So far as non-state actors are concerned, a practising homosexual on return to Kabul who would not attract or seek to cause public outrage would not face a real risk of persecution.' (Headnote 4 and paragraphs 58 and 61).
- 2.4.19 The conclusions in Headnote 4 and paragraph 58, that a practising homosexual on return to Kabul, who would not attract or seek to cause public outrage, would not face restrictions on his ability to live as such which amount to a real risk of persecution, is based on the 'reasonably tolerable' test in that it concluded that a homosexual would and can be expected to keep his homosexuality private. As [HJ \(Iran\)](#) found the 'reasonable tolerable' test to be incorrect, the Upper Tribunal in [AJ \(Risk to Homosexuals\)](#) applied the incorrect test so its guidance in respect of return to Kabul should not be followed.
- 2.4.20 Transgender persons, particularly transgender women, are marginalised or ostracised by their families and wider society, often keeping their identities secret to avoid discrimination, abuse and sexual exploitation (see [Transgender persons](#)).

Country Policy and Information Note
Sri Lanka: Sexual orientation and
gender identity and expression

Version 3.0
October 2018

documents after a report from a mental health professional but there is scant evidence that this is in use.”¹⁶

- 3.4.7 In a letter dated 27 August 2018 the British High Commission in Colombo stated that “there are some improvements. Individuals are now able to have their change of gender recognised. A Gender Recognition Certificate (GRC) can be applied for which then enables the issuance of a new passport and National Identity Card. The British High Commission, Colombo, met someone who has gone through this process and who advised that it was handled in a relatively short period of time. The only drawback is that the new passport carries an ‘endorsement’ that states that the bearer is a transgender person whose previous passport was issued under such name and such gender marker”.¹⁷

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4. State attitudes and treatment

4.1 Law in practice

- 4.1.1 A Shadow Report to the UN Human Rights Committee regarding Sri Lanka’s protection of the Rights of LGBTI Persons (Response to List of Issues) Compiled by the Kaleidoscope Human Rights Foundation with the assistance of DLA Piper International LLP and Sri Lankan LGBTI Advocacy Groups, dated September 2014, stated ‘[...] there continue to be reports of widespread discrimination, harassment and violence directed towards members of the LGBTI communities within Sri Lanka.’¹⁸
- 4.1.2 In November 2016, the Sri Lankan Supreme Court heard a case in which an accused appellant was charged along with another accused before the Magistrates Court for “committing an act of gross indecency between two persons in terms of Section 365A of the Penal Code”. The Magistrate had found the Appellant and the other accused guilty and imposed a term of imprisonment of one year and imposed a fine of Rs. 1,500 with a default sentence of six months. The Supreme Court heard all the evidence again and determined that the sentence of the one year term of imprisonment should be set aside and substituted with a sentence of 2 years rigorous imprisonment, suspended for a period of 5 years¹⁹.
- 4.1.3 Attorney-at-law Dushantha Kularathne, however, told Roar (an online media platform covering current affairs, business, lifestyle, technology, arts, and culture in South Asia), that:
- ‘homosexuality in Sri Lanka is definitely an offence, but conceded that it is indeed open to interpretation. [...] Homosexuality, among other things, comes under “unnatural offences” or acts of a sexual nature that go against nature, as per section 365 of the Penal Code. According to Kularathne, however, no cases have been reported of anyone actually being prosecuted for being gay. [...]

¹⁶ BTI, ‘Country Report’, 2018, [url](#).

¹⁷ See Annex A.

¹⁸ Kaleidoscope, ‘Report’ (pgs 1 and 4), September 2014, [url](#).

¹⁹ Sri Lankan, Supreme Court case- SC Appeal No.32/11, 30 November 2016 [url](#).



Home Office

Country Policy and Information Note Bangladesh: Sexual orientation and gender identity and expression

Version 4.0
April 2020

- 2.4.26 In general, an LGBTI person who is open about their sexual orientation and / or gender identity may be at risk of treatment which by its nature and repetition amounts to persecution. LGBTI rights activists, and journalists and bloggers who report on such issues, may be at greater risk of treatment amounting to persecution because of their profile (see [LGBTI community and activists](#)).
- 2.4.27 If a person does not openly express their sexual orientation or gender identity consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.28 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.4.29 Decision makers must also refer to the AI's on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state-actors, decision makers must assess whether the state can provide effective protection.
- 2.5.3 Some sources indicate that many LGBTI persons who experience societal ill treatment do not report the incidents to the police due to a fear of having to reveal their sexual orientation or fear that they may face violence or extortion on account of their sexual orientation or gender identity (see [Societal treatment, violence and discrimination](#) and [Police responses to reports of anti-LGBT violence](#)).
- 2.5.4 State authorities have been responsible for arbitrary arrests, detentions, harassment and discrimination towards LGBTI persons with reports of the police physically and sexually assaulting them. There is some evidence of the authorities taking appropriate action for the murder of 2 gay rights activists in 2016 and, in 2019, 4 people were in custody charged with the murders (see [Official response to reports of anti-LGBT violence](#) and [Violence perpetrated by extremist groups](#)).
- 2.5.5 In general, the state appears able but unwilling to offer effective protection and the person will not be able to avail themselves of the protection of the authorities. However, each case will need to be considered on its facts.

BH (policies/information: SoS's duties) Iraq [2020]
UKUT 189 (IAC) (14 May 2020) [67]

It may be helpful to summarise our conclusions on the relevant legal principles:

(a) The respondent has a duty to reach decisions that are in accordance with her policies in the immigration field. **Where there appears to be a policy that is not otherwise apparent and which may throw doubt on the respondent's case before the tribunal, she is under a duty to make a relevant policy known to the Tribunal,** whether or not the policy is published and so available in the public domain. Despite their expertise, judges in the Immigration and Asylum Chambers cannot reasonably be expected to possess comprehensive knowledge of each and every policy of the respondent in the immigration field.

(b) In protection appeals (and probably in other kinds of immigration appeal), the respondent has a duty not to mislead, by failing to draw attention to documents etc under her control or in the possession of another government department, which are not in the public domain, and which she knows or ought to know undermine or qualify her case **[CPIT – Requests for Further Information]**.

(c) The fact that country information is contained in a COI does not, without more, make that information subject to the duty in sub-paragraph (a) above.'

Question Two:

Can the internal relocation alternative be available in Queer Refugee claims?

YES or NO or MAYBE

MB (Internal relocation - burden of proof)
Albania [2019] UKUT 392 (IAC) (30.7.19)

Headnote:

‘[in addressing availability of internal relocation alternative once SSHD has identified location [24]]
.....a duty of cooperation at the stage of assessment, for example the production of the country information reports.’

[emphasis added]

HJ (Iran)—prevailing attitudes throughout the country (Lord Hope [21]):

‘...The misconception lies in the idea that he will be willing and able to make a fresh start when he moves to somewhere where he is not known. In *Hysi v Secretary of State for the Home Department* [2005] EWCA Civ 711, [2005] INLR 602 the Court of Appeal held that the tribunal had not assessed the consequences of expecting the applicant to lie and dissemble in the place of relocation about his ethnic origins. He would have to be a party to the long-term deliberate concealment of the truth, living in continuing fear that the truth would be discovered: para 37. There is no place, in countries such as Iran and Cameroon, to which a gay applicant could safely relocate without making fundamental changes to his behaviour which he cannot make simply because he is gay’ [emphasis added].

RG (Colombia) v SSHD [2006] (CoA) following fresh claim and before the AIT in 2009:

- Internal relocation – Home Office position: single street in Bogotá – where there were gay cafes and restaurants;

Expert evidence - Country report - greatest incidents of hate crimes towards the LGBT+ community;

Proceedings withdrawn following positive grant of ILR (Legacy case). Point not determined either way before Judge Gleeson.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

WHAT ARE HUMAN RIGHTS?



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ABOUT US

ISSUES

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BY COUNTRY

WHERE WE
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In her global human rights update, Bachelet calls for urgent action to heighten resilience and protect people's rights

**45th session of the Human Rights Council
Item 2: Global Human Rights Update**

Statement by Michelle Bachelet, UN High Commissioner for Human Rights

14 September 2020

Distinguished President,
Excellencies,
Colleagues and Friends,

Further violence, and human rights violations and abuses.

In **Honduras**, attacks on and violent deaths of LGBTI persons continue to increase. Since the beginning of the state of emergency in mid-March, OHCHR-Honduras has documented seven killings of trans women; three of them occurred in July alone. In both these countries, I welcome our continued engagement with the authorities, to strengthen accountability.

In **Poland**, I am concerned about the continuing repression of LGBTI people and activists, including restrictions on their freedom of assembly, and the Government's support for towns that have termed themselves – using unacceptable language – “LGBTI-free zones.” The scapegoating and targeting of a minority group, for political purposes, feeds intolerance and discrimination, damaging all of society.

PART FOUR: THIRD AND FOURTH LIMBS

CONDUCT ON RETURN

– “PERCEPTION IS KEY”

Lord Rodger [82] HJ (Iran):

‘If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.’

[emphasis added]
[emphasis in text]

The 'voluntary' discretion test – continued....

(negative standard):

'If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.'

[emphasis added]

Only if a refugee *if* discretion connected to fear of persecution:

‘If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. ...’

[emphasis added]

Lord Walker [96]

‘The essential question in these cases is whether the claimant has a well-founded fear of persecution as a gay man if returned to his own country, even if his fear (possibly in conjunction with other reasons such as his family's feelings) would lead him to modify his behaviour so as to reduce the risk.’

Sir John Dyson, SC (MR) [123] (Gay Martyr v.2)

‘Thirdly, the Secretary of State seeks to draw a distinction between the decision-maker (i) "requiring" the asylum-seeker to act discreetly on return and (ii) making a finding that the asylum-seeker will in fact act discreetly on return. It is said that the former is impermissible and irrelevant to whether the asylum-seeker has a well-founded fear of persecution, whereas the latter is not only permissible but highly relevant. But as Lord Rodger points out, this is an unrealistic distinction. Most asylum-seekers will opt for the life of discretion in preference to persecution. This is no real choice. If they are returned, they will, in effect, be required to act discreetly.’

[emphasis added]

Question Three:

- *Should discretion continue to be applied to protection claims?*

- *YES or NO*

Two Questions:

Question 1:

What is the basis of being 'open' in the UK?

Question 2:

How to 'prove' straight on return?

QUESTION 1: OPEN IN THE UK?

(A) HOMOPHOBIA WITHIN THE DIASPORA

Chikwendu, Meremu, *Circular Consciousness in the Lived Experiences of Intersectionality: Queer/LGBT Nigerian Diasporic Women in the USA*, (December 2013) Volume 14 (4) *Journal of International Women's Studies*, pp. 34-46.

*‘[T]hey relate to being Nigerian is informed by **the way they relate to being queer, which is in turn informed by the ways they are marked as Black, which is in turn informed by their gender identity, and so on.** I use the term circular consciousness to describe this embodied awareness of the circuitousness of identity construction, the circuitousness in our understandings of power and agency, and consciousness as the catalyst for strategies for daily survival. ...*

*Living in-between and being “this and that” is a position the women simultaneously accept and disavow, particularly when in-between-ness is not freely chosen but is a positionality that is thrust upon them. **They struggle with how to be Nigerian and something else, how to be Black and something else, how to be queer and something else; acknowledging shared connections and histories, while also maintaining that something else.** In terms of negotiating Nigerian nationality around US narratives around Blackness, this need to be something else is a catalyst for change.’*

(B) RACISM WITHIN THE UK LGBT+ COMMUNITY:

The June 2018 *Stonewall* ['LGBT in Britain – Homes and Communities' report](#) makes clear 51% of the BAME LGBT+ community face racism – this makes clear gay BAME people in the UK do not feel that they can fully live 'freely and openly' in the UK – where there is no persecution.

(C) HATE CRIME AGAINST THE LGBT+ COMMUNITY:

There is additionally a high level of violence to LGBT individuals in the UK (see [July 2018 Government Equalities Report](#)).

QUESTION 2: HOW TO 'PROVE' STRAIGHT?

'Perception is Key' – PROVE Straight on
Return ... For LIFE?

EU Withdrawal Act 2018 - Brexit

- Sections 1B (in force) and 2 (1) (not yet in force) of 2018 Act:
 - ‘EU-derived domestic legislation, as it has effect in domestic law immediately before exit day [31 January 2020], continues to have effect in domestic law on and after exit day.’
- 2006 International Protection Regulations 2006/2525 transpose domestically the 2004 MSQD (see para 334 (ii) of the Immigration Rules reference to Refugee Definition in accordance with reg. 2 of 2006 regs). Other provisions not already transposed will have Direct Effect.
- Luxembourg Court judgments binding until Completion Day (31 December 2020) (section 6 of 2018 Act)

ACTUAL &/or IMPUTED

Analysis through the PRISM of IMPUTED allows you to:

A – FOCUS ON THE VIEW OF THE **PERSECUTOR**;

B – Address - NON-CONFORMITY; and

C – Evidence **DIFFERENCE** as giving RISE to PERSECUTION.

LGBT+ =
NOT *STRAIGHT*
ENOUGH
= NON-CONFORMITY

Article 10 (1) - 2004 Qualification Directive
– 2004/83/Reg 6 (1) of the 2006
International Protection Regs

(d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

IMPUTED – the Test....

(2)

– immaterial whether applicant actually possesses the ... characteristic... provided .. [it] is attributed to the applicant by the actor of persecution

POLITICAL OPINION:

- [RT \(Zimbabwe\) and anor v SSHD](#) [2012] UKSC 38; [2013] 1 AC 152 — [16] - not producing a ZANU-PF membership card and/or not being able to sing the latest ZANU-PF campaign song— [32] right not to hold and not to express a political opinion is political.
- **LIMB ONE** — do they have or not have a political opinion/ or imputed to hold a political opinion not conforming to the one held by the potential persecutor;
- **LIMB TWO** — what happens to those who do hold that political opinion — **protestors!**
- **LIMB THREE** — will they protest on return ...? IF NOT — WHY NOT?

CRIMINAL GANGS

- Political Opinion:
- Also note *Gomez (Non-state actors: [AceroGarces disapproved](#)) Colombia * [2000] UKIAT 00007* [34-51]— Criminal gangs in Jamaica -real structure - have rules – they are ‘political’ –
- this distinguishes from the approach of the CG case of [AB \(Protection – criminal gangs- internal relocation\) Jamaica CG \[2007\] UKAIT 00018](#) (PSG – gender and family grounds – fear as an informer) (successful in March 2020 in Honduras Criminal Gang case before FTT – not appealed)

DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168

‘[71] Mr Chelvan has submitted that we needed to consider both a particular social group and an imputed particular social group. We find that as the reasons for persecution must be found in the mind of the persecutor there is no need to differentiate between such categories. The only question we need to ask is whether an individual is a member of a particular social group. It may matter a great deal to an individual whether he is or is not homosexual but, certainly in the context of Jamaica, whether an individual is or is not homosexual, bisexual or asexual is of far less importance than the question whether he is perceived to be homosexual. There is some force in the suggestion, that "perception is all". Mr Blundell has conceded that gay men in Jamaica belong to a particular social group.’

[emphasis added]

‘[72] Mr Chelvan sought to persuade us that a widely defined group was at risk of persecution in Jamaica. He put this as "those seen as not conforming to what Jamaica sees as the norm of masculine identity in Jamaica." Whilst we accept that this formulation may assist in defining those who are thought to be homosexual, it is a wider definition than is required for the purposes of this determination both on the facts of the appellant's case and in relation to the expert evidence and country material before us. We have not heard sufficient argument nor has the material before us been sufficiently targeted for us to address anything other than the core group of men who are or are perceived to be homosexual. This determination is not intended to address the position of Lesbians, Transsexuals, Transvestites or others who have encountered difficulties because of their actual or perceived sexuality.’

[emphasis added]

SW (lesbians – HJ and HT applied) Jamaica CG
[2011] UKUT 00251 (IAC) (24.6.2011) ‘the politics of gossip’.

‘Headnote:

(3) Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear.

(4) Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion.

...

(6) A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence.

(7) In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood.

[emphasis added]

Domestic Violence:

[DD](#) [2019] UKAITUR AA128422015 (13.11.19)

[33] EoL:

I have read DM (Sufficiency of Protection-PAG-Women-Domestic Violence) Albania CG [\[2004\] UKIAT 00059](#). Dr Chelvan, rightly, points out that the definition of PSG is now set out in Regulation 6(1)(d) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Regulation 6(1)(d)(ii) prescribes that "the group has a distinct identity because it is perceived as different by the surrounding society". I accept the evidence of Dr Antonia Young that such victims who left would be "branded for life" as someone who has dishonoured her community. The extent of that branding will no doubt vary in each case and not all victims of domestic violence will need international protection but I am satisfied that the group is distinctive enough to amount to a particular social group.

Recent and Pending case law.....

Recent:

Iraq (published 20 December 2019)

[SMO, KSP & IM \(Article 15\(c\); identity documents\) Iraq CG](#)

[2019] UKUT 00400 (IAC)

[314] ‘...those not conforming to Islamic mores.’

Pending:

YD (Algeria) - England and Wales - Court of Appeal –
October 2020 (UNHCR intervening)

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC) (3.6.20)

‘(2) Depending on the facts, a ‘person living with disability or mental ill health’ may qualify as a member of a Particular Social Group (“PSG”) either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin.

...

*(4) The assessment of whether a person living with disability or mental illness constitutes a member of a PSG is fact specific to be decided at the date of decision or hearing. **The key issue is how an individual is viewed in the eyes of a potential persecutor** making it possible that those suffering no, or a lesser degree of, disability or illness may also qualify as a PSG.’*

‘The Silence Fallacy’ – [LC \(Albania\) v SSHD](#) [2017] EWCA Civ. 351; [2017] 1 WLR 4173 [52 vii)]

“the silence fallacy” in sexual orientation cases, i.e. **an assumption that, in a homophobic homeland, an individual will be safe as long as he is silent about his actual sexual orientation.** For that proposition, he relied upon a number of authorities, including [SW \(Jamaica\)](#) (see paragraph 23 above) and other Jamaican cases to the same effect; and [Hysi v Secretary of State for the Home Department](#) [\[2005\] EWCA Civ 711](#); [2005] INLR 60, in which this court found that it would be unrealistic for the appellant to lie about the relevant characteristic in that case, namely his ethnicity. However, in my view, a submission that **Albania is a country where it is impossible for a gay man to avoid being perceived as gay without engaging in some form of positive behaviour, as Mr Chelvan suggests, would require some evidential basis.**’

LH and IP (gay men: risk) Sri Lanka CG

[2015] UKUT 00073 (IAC) [119]

'The appellants alleged that they might be forced contrary to their orientation into a heterosexual marriage. If that were the case, it would certainly be capable of amounting to persecution, but the evidence before us did not support their statements. There was some evidence of rural lesbians and bisexual women being forced into same-sex marriage, but little or no evidence to support such a risk for gay men, particularly if they chose to exercise an internal relocation option to the more gay-friendly cities such as Colombo.'

[emphasis added]

[MA \(Cart JR: effect on UT processes\) Pakistan \[2019\] UKUT 353 \(IAC\) \(3 October 2019\)'involuntary conduct' \[60\]:](#)

‘It is this feature of the report of 30 August, however, in our view accurately summarised by Ms Head, that is in our judgment crucial. There is, as Mr Kotas accepted before us, no reason to doubt it. The question of any reasons for the appellant's discretion does not arise in this case. Nor, realistically, does any question about whether he would wish (or choose) to be discrete. The position is that he is a homosexual man who **because of his quite exceptionally severe mental condition, well-attested by medical opinion not subject to any challenge, will be unable to maintain a life of discretion whatever his wishes would be.**’

[emphasis added]

Question submitted by Susana Benidir, Sentinel Solicitors

What expert evidence would you recommend us gathering for these types of appeals?

- (a) Country expert reports where the SSHD COI is being challenged/ambiguous/and
- (b) Med/Psych evidence –past-persecution -
BUT NOT to ‘prove’ LGBT+

Q & A

INTERMISSION

MIGRANT LAW CLINIC

Presented by Dr S. Chelvan

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