

# **SAME SEX MARRIAGES AND RELATIONSHIPS: A GLOBAL PERSPECTIVE**

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## **ABSTRACT**

Marriage as an institution has dramatically changed over the last half -century. Same-sex relationships have significantly altered family laws of various nations across the globe. Same-sex marriage is an extremely new social phenomenon. In modern times, the concept of same sex marriages did not exist until the early 21st century. This concept found its popularity in the modern world only when nations slowly began permitting same-sex couples to marry legally. In the recent times, many countries and localities have advocated for the rights of lesbians and gay men to enter legalized relationships, including marriage. This article reviews the legal status of same-sex relationships in various nations. Some of the theories regarding the pros and cons of same-sex marriage will be presented. The article revolves around the legal status of same sex marriages and relationships across the world.

## INTRODUCTION

*“Same-sex marriage would undermine the goals of gay liberation; affirming gay and lesbian identity and relationship diversity. Marriage, by legally distinguishing legitimate and illegitimate relationships, wrongly discourages relationship diversity.”*

*-Elizabeth Brake*

Gay marriage or same sex marriage is not discussed without controversy, even among LGBTQ+ rights activists. Queer theorists, radical feminists, and renowned libertarians like openly condemn same sex marriage. Same-sex marriage is the practice of marriage between two individuals belonging to the same sex. Although same-sex marriage has been regulated through various factors such as, law, religion, and custom in most countries across the world, the legal and social responses have ranged somewhere in between celebration on the one hand to criminalization on the other. Same-sex marriage has been legalized in around twenty-eight countries across the globe, most of which being western nations. There exists wide range of attitudes and policies toward homosexual partnerships. The emerging struggle in many nations is with respect to the legal recognition of homosexual bonds and relationships. Legalization of same sex marriage and relationship has become a hot topic of debate in all the countries all over the world. In the year 1989 then mark became the world's first nation to legalise same sex relationship. Since then, countries like Belgium Canada and Netherland have also legalized same sex relationship. Further, Nations suggest France Hungary Germany Iceland Norway South Africa Israel and Portugal I have recognised legal registration for same-sex partnership. In the very recent times Dutch and Belgium also formulated laws in favour of same sex marriages. Yet gay marriage or same-sex marriage remains banned or considered to be a criminal activity in many countries, and the expansion of broader LGBTQ+ rights has been uneven across the globe. International organizations, including the United Nations, have passed resolutions in support of the LGBTQ+ rights.

## RESEARCH GAP

- Lack of comparative analytical study regarding the legal status of same sex marriages across the globe.

- Lack of socio legal study on the aspects and evolution of laws regarding same sex marriages.
- Lack of understanding with respect to the challenges and obstacles faced by the same sex couple in for recognition in the legal arena.

## **SCOPE AND OBJECTIVE OF THE STUDY**

- To highlight the global perspective with regards to same sex marriages.
- To draw comparative analysis on the legal status of the recognition of same sex marriages across the globe.

## **LIMITATION OF THE STUDY**

- The scope of this study is limited to the legal status of same sex marriages only and does not deal with marriages of any other nature.
- This study would mainly involve only the socio legal aspects with respect to same sex marriages and no other factors influencing the same.

## **RESEARCH QUESTIONS**

- Whether same sex marriages are recognised in all the nations across the globe?
- Whether the United Nations issued orders for the protection of the rights of the same sex couples?
- Whether the social and political status of a nation has an influence on laws made for same sex couples?

## **RESEARCH HYPOTHESIS**

Though in the recent times a lot of nations across the globe have opened the doors of equality for the same sex marriages by providing them a legal recognition. Yet, amidst this rapid evolution there still are plenty of nations that are strongly driven by socio cultural and political

aspects and as a product of which they showcase unwillingness towards legalization of same sex marriages.

## RESEARCH METHODOLOGY

The researcher has used analytical and descriptive research methodology. The researcher has made use of facts on information already available and has analysed those facts to make a comparative evaluation of the material. Analytical research involves secondary data from various articles and journals.

*Citation format:* This research paper is cited in accordance with the bluebook 20th edition format.

## HISTORY OF SAME-SEX MARRIAGES

Same-sex marriage is the practice of marriage between two women or between two men. Same sex marriages and relationships has gained the limelight only in the modern era as the result of its legalization process. There are reports that prove that same sex marriages are no strange concept, in fact it has been a part of the society since centuries. Some scholars, most notably the Yale professor and Historian John Boswell have argued that same-sex relationships were recognized in medieval Europe by the Roman catholic.

Over time the historical and traditional cultures slowly succumbed to the homogenization imposed by colonial rule. Although a multiplicity of marriage practices once existed in the society once upon a time, the conquering nations typically forced local cultures to conform to colonial belief and administrative systems.

By the late 20th and early 21st centuries, the perspectives of the world religions such as the Buddhism, Hinduism, Judaism, Islam, and Christianity and their associated civil practices were often invoked during national discussions on the topic of same-sex marriage. Perhaps because systems of religion and that of civil authority very often support one another, the debates with respect to the legalization on same sex marriages also began to get influenced by religious and civil factors. For instance, Iran and Iraq where a strong Muslim theocracy existed which had criminalized same-sex intimacy, and in the Denmark, the findings of a conference

of Evangelical Lutheran bishops had aided in simplifying the way for the first recognition of same-sex relationships through the concept of registered partnerships. <sup>1</sup>

## **NATURAL LAW AND SAME SEX MARRIAGE**

The opposition to the legalization of same sex marriages very often flows from the belief that same sex marriage and relationships are immoral or they are deemed to be against the principles of natural law. According to the tradition of natural law, each and every human being must seek a fundamental "good" that corresponds with the order of nature to flourish. Natural law proponents opine that heterosexual intercourse between a married man and a woman serves two intertwined good purposes, that is to procreate and to express abiding love towards one another.

Most of the proponents of natural law strongly believe that the practice of Marriage is derived by mankind from the very nature and this is based on the complementarity of the two opposite sexes in a manner in which love of a man and a woman joined in a marital bond is open to life, and this is the how families are created and society goes grows. They further argue that, their disregard towards the practice of same sex marriage is not only because it is against their doctrine neither is it due to the matter of faith, rather they oppose same sex marriage on the grounds of the matter of reason and understanding as to how the nature operates and how the society develops.

But on the other hand, some proponents of natural law believe that the nature is neutral with regards to sexual ethics. They argue that we humans are moral beings and we tend to look to the nature for some aspects of how we can lead our lives but we are made answerable to a much higher standard. Sexual behaviour be it homosexual or heterosexual is an expression of human love and this deep emotion cannot be against the nature.

Some exponents tend to hold a mixed opinion, they are of the view that Natural law preaches happiness of all human beings by the very virtue of this the doctrine of natural law would not do away with one's happiness on the basis of their sexual orientation but at the same time they

find it necessary to focus on the natural reality, that two men or two women cannot consummate their marriage it is physically impossible.

Nevertheless, most of the supporters of natural law opine that the reason that societal response is harsh and vocal about the laws related to same sex marriage and relationship is due to its incompatibility with the human nature.<sup>ii</sup>

## **SAME-SEX MARRIAGE AS A MATTER OF RIGHT**

The guiding authority for marriage as a fundamental right in international human rights law has found itself a place in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).<sup>39</sup> The UDHR and the ICCPR provide the basis for around 90 state constitutions and numerous treaties, grounding a huge range of human rights enactments around the world.<sup>41</sup> The ICCPR imposes an obligation on all its signatories to protect “all persons against discrimination on any ground such as sex.”<sup>42</sup> More significantly, the ICCPR recognizes the practice of marriage as a fundamental right.<sup>43</sup> However, the United Nations Human Rights Committee (UNHRC), is a quasi-judicial committee that comprises of independent experts who monitors the implementation of the ICCPR and they have held that gay marriage is not a human right irrespective of the enumerated fundamental right to marry.<sup>44</sup> Discrimination against LGBT persons is a clear violation of human rights, and the right to marry is a fundamental right inherent to the entire mankind, yet in accordance with the UNHRC, reading together the right to be equal and the right to marriage does not make same-sex marriages and relationships a fundamental human right.

### ***Right to Marriage under ICCPR***

The right to marry is a fundamental human right guaranteed under Articles 23 and 26 of the ICCPR. Article 23(1) of the ICCPR states that, family is the fundamental unit of society and it is entitled to protection by society as well as the State” and Article 23(2) states that, the right of both men and women to marry and to hold a family shall be recognized. Moreover, Article 23(4) states that the member nations shall take necessary steps to ensure equality of rights and responsibilities of the spouses to marriage.



### ***Right to Same Sex Marriage under ICCPR***

The Human Right Commission has commented that Article 23 of ICCPR is very broad. The equality provision under Article 23 is gender-neutral, and it does not make a mentioning of any specifications such as race, religion, sex or ethnicity, that states are prohibited to use as grounds for denying a couple their matrimonial rights. Further the provisions of Article 26, guarantees to all persons equal and effective protection against discrimination on any ground such as sex.”

Article 26 of the ICCPR prohibits nation from discriminating amongst their citizens on the basis of their sexual orientation. Article 26 states that “all persons are equal before the law” therefore, states cannot discriminate based on sex or any other factors. In the year 1994, the Human rights commission in the landmark case of *Toonen v. Australia* held that prohibition sex discrimination also includes prohibition based on sexual orientation.

The human rights commission has commented that the language of the ICCPR does not preclude the recognition of the right to same-sex marriage or relationship neither does it press an obligation on the states to recognize same sex marriage. The drafters of the ICCPR on one hand has chosen the phrase “men and women of marriageable age” while addressing national age restrictions for marriage, on the other hand the convention has also chose the gender-neutral terms “spouses,” in the draft.

ICCPR neither prohibit the recognition of the right to same sex marriage by states-parties, the nor does it obligates the states-parties to recognize same-sex marriage. In the case of *Joslin v. New Zealand*, it was held by the HCR that member nations may refuse to recognize same-sex marriages and they are under no obligation to recognize same sex marriage. HCR at this juncture argued that ICCPR is living document which is subject to change. The convention itself has discriminated against the LGBTQ community under some provisions and also upheld their rights under certain provisions with respect to the right to marriage.

## A GLOBAL PERSPECTIVE ON SAME SEX MARRIAGES

### *United States*

The supreme court of United States in the year 2015 ruled that the US Constitution grants same-sex couples the right to marry and the court also effectively legalize same sex marriage in around 13 States of USA. In the late 1990s only about 27% of US public was in the favour of same sex marriage, but soon there was a drastic shift in in public opinion of the USA. By the end of 2019 61% off American Poland to approve of same-sex marriage.

Less than two decades after President Bill Clinton signed the Defence of Marriage Act which defined marriage as a union between a man and woman there by refusing the same sex couple from attaining federal marriage benefits such as benefit to health care; social security tax benefits and also green card was denied to the immigrant's spouse of US citizens in cases of same sex couple. In the year 2013 the Supreme Court of US struck down some provisions under the Defence of Marriage Act that denied federal benefits and social security to same-sex couples.

Despite the supreme court ruling the debate in USA continues between advocates of legal equality and individuals and the institutions that condemn same-sex marriage on the grounds of religious beliefs. In the year 2018 the Supreme Court ruled in favour of a Colorado Baker who refused to bake a wedding cake for a same sex couple because it was against his religious beliefs which also was in violation of the state's civil right law. However, the court further chose to remain silent with respect to border ruling on whether businesses have a right to deny good or services to LGBTQ people on the basis of religious beliefs.

The legal status of same sex couples differs from state to state in the USA, some states with an open mind have recognised the legal status of same sex couples where as some have shunned them away.

### *European Union*

More than about half of the countries in the Western Europe have provided same sex marriages with a legal status. The first European country, rather one of the first Nations in the world to legalise same-sex marriage is the Netherlands. Netherlands legalises same sex marriage in the



year 2001, followed by Belgium in the year 2003, Spain in 2005, Norway and Sweden in 2019, Portugal, Iceland in the year 2010, Denmark in 2012, France, United Kingdom and Luxembourg in 2015, Finland, Malta and Germany in 2017 and Austria in 2019. Italy is one of states in the Western Europe which is yet to legalise same sex marriage, However, government of Italy has approved civil union of same-sex couples.

Meanwhile, the support for same sex marriage comparatively weaker in the Eastern Europe. In a research conducted in the year 2017 it was witnessed that support for legal recognition of same sex marriage is 16% in Belarus and 19% in the Ukraine. Support in Poland and Hungary is 32% and 27% respectively. Hungary and the Czech Republic recognise same-sex partnership.

In 2013 Russia criminalised non-traditional sexual relationship among minors. Dozens of people have been fined for violations, including participating in protest and sharing articles on social media was considered an offence. The top human rights court of EU have ruled that same sex marriage is illegal in the year 2017. Though the decision of the courts is binding, the court has few means to enforce the same.

Despite growing support for same-sex marriage in many European countries division still remains. European union top courts in the year 2018 ruled that European union does not require its members to recognise same-sex marriage.

### ***South and Central Asia***

Same sex relations are considered illegal in most parts of South and Central Asia. In the late 2018 India lifted a colonial Era ban on gay sex by decriminalising section 377 of IPC. Nepal has enacted protections against discrimination on the basis of sexual orientation and in the year 2015 A government appointed panel of Nepal recommended that lawmakers should legalise same sex marriage. Bangladesh, India, Nepal and Pakistan, allow people to register as third gender in official documents. But countries like Pakistan and Bangladesh still do not legally recognised same sex marriage.

### ***Middle East and Africa***

Same sex relations are considered illegal in most of the regions of the middle East and North Africa. there are also considered to be punishable by death in Iran, Saudi Arabia and Yemen. India 2018 Lebanese code set a potential precedent for decriminalization of same-sex

marriages. Israel recognises same-sex marriages which are performed in other countries with a bill that was passed in the legislative assembly of Israel with respect to legalization of same-sex marriage failed. Same sex couples enjoy civil benefits such as residency permission for the partners of Israel citizens.

Israel also stands apart from its neighbouring countries in public attitude towards same-sex couples. According to a survey conducted 49% of Israeli's population are in in the favour of legalization of same-sex marriage. 19% off of United Arab Emirates, 16% of Europe and 14% of both Jordan and Morocco are in support of legalization of same-sex marriage.

In the enter Sub Saharan African Territory South Africa is the only country where same-sex couples can legally marry. In many parts of Africa, in country like Mauritania and Sudan same sex relationships are punishable by death. In a research conducted in the year 2018 it was found that 78% of Africans across 34 African Nations what is intolerant towards same sex relationships.

### ***Pacific Rim***

New Zealand and Australia are the only countries in the Pacific rim which have legalize same sex marriage. The public opinion in Japan rapidly shifted in the favour of same sex marriage and soon after in the year 2015 the district of Tokyo began to be considered as same sex union. Lawmakers in Thailand and Vietnam have drafted bills in order to legalise same-sex marriage or at least provide them with civil partnerships.

In a research conducted it was found that only around 31% of people in China, 30% of the Malaysian population and 14% of the Indonesian population were in favour of same-sex marriage. In countries like Myanmar Malaysia Singapore and Indonesia same-sex marriage is banded.

## **COMPARATIVE ANALYSIS**

Same sex couples not only face legal issues but are also victims of harsh societal behaviour. Irrespective of their legal status the LGBTQ community across the world are total strangers to the concept of social acceptance. It is a true fact that a number of jurisdictions in the recent years have provided same sex marriage and relationships with a legal recognition. Yet an overwhelming weight of international authorities including most of the Liberal Western

Democracies continue to hold on to their established traditional concerns with respect to the rights of gays and lesbians these Nations till date opine that institution of marriage is made for couples of opposite sexes only. Some of the Nations not only condemn the practice of same sex marriage but have also made it punishable by death sentence. Whereas, on the other hand most the countries in the recent times have brought about change in not only their legislations but also public opinion and have legalised same sex marriages and relationships. Some Nations though are not completely in favour of same-sex relationships, yet have legally recognised same sex civil partnerships at least.

Practices such as same-sex marriage and relationships are highly influenced by religious and socio-cultural background of the Nations. Some Nations have stuck to their traditional believes and have a dejected approach towards same sex marriages where is some Nations have accepted and provide same sex couples with the legal status irrespective of their social and cultural backgrounds.

## **SUGGESTIONS FOR IMPROVING THE CONDITIONS OF SAME SEX COUPLES**

Legal recognition of same sex marriages in the round 28 countries might not qualify same sex marriages to be considered a customary international law. There is a need for same sex marriages to evolve into customary laws in order to persuade more nations to legalise same sex marriages. While international communities need to continue pressurizing Nations like Russia, sum of the African, Asian and middle East Nations, in order to protect LGBTQ persons from violence and discrimination. In recent times the global discussion about LGBT rights has increasingly focus on the concept of same-sex marriage. The rate of change with respect to judicial legislative and political opinion of people with respect to same sex marriages is breathtaking. Most Nations league South Africa Latin America and Europe have made remarkable changes in their laws respect to same sex marriages. A huge wave of awareness is necessary in in some parts of the world which still strongly believe that the concept of marriage is made for opposite sex couples only. The United Nations should formulate policies with respect to legalization of same-sex marriages across the globe. There should be pressure what are Nations to stop them from ill-treating their LGBTQ population. Inclusive approach of both the society as well as judiciary towards same sex marriages is the need of the hour.

## CONCLUSION

*“The right to marry whoever one wishes is an elementary human right compared to which the right to attend an integrated school, the right to sit where one pleases on a bus, the right to go into any hotel or recreation area or place of amusement, regardless of one’s skin or colour or race” are minor indeed. Even political rights, like the right to vote, and nearly all other rights enumerated in the Constitution, are secondary to the inalienable human rights to life, liberty and the pursuit of happiness proclaimed in the Declaration of Independence; and to this category the right to home and marriage unquestionably belongs.”*

*-Hannah Arendt, Reflections on Little Rocks.*

Protection of the rights of the LGBTQ people is an inseparable aspect of human rights. No state should be allowed to discriminate against its citizens on the basis of their sexual orientations. We cannot deny the fact that public opinion highly influences judicial matters of this social magnitude. There are instances where in the nations legal systems have opened itself to accommodate the LGBTQ community but the societal doors remain shut for them. For example, one such nation is India. It has been two years since the ban on same sex marriages was lifted in the Indian territory through the landmark judgements, yet the Indian population still continue to be homophobic. Awaking the feeling of acceptance and social accommodation towards the LGBTQ community is necessary to cut harsh and bitter opinions that the world society hold for the same sex couples. Once there is a change in the perspective of the society, it would no more be an uphill task for neither the judiciary to pass judgements nor the parliament of the nations to draft laws in the favour of the same sex couple.

## ENDNOTES

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<sup>i</sup> Available at <https://www.britannica.com/topic/same-sex-marriage>

<sup>ii</sup> Available at <https://www.chicagotribune.com/news/ct-xpm-2012-12-30-ct-met-gay-marriage-natural-law-20121230-story.html#:~:text=According%20to%20the%20tradition%20of,express%20a%20deep%2C%20abiding%20love>.