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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXPLORING GLOBAL PERSPECTIVES: A COMPARATIVE STUDY OF LGBTQIA LAWS AND SOCIAL CHALLENGES

AUTHORED BY: ISHHAN KASHYAP
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UNITED STATES

Marriage Equality: In 2015, the United States's Supreme Court ruled in *Obergefell v. Hodges*¹ that same-sex marriage is legal nationwide, effectively legalizing marriage equality across all 50 states. **Anti-Discrimination Laws:** Several states and cities have enacted laws protecting LGBTQIA+ individuals from discrimination in job, accommodation, and other sectors. **Military Service:** In 2011, the "Don't Ask, Don't Tell" policy, which prohibited openly gay, lesbian, and bisexual individuals from serving in the military, was repealed, allowing LGBTQIA+ individuals to serve openly.

Healthcare: The Affordable Care Act (ACA) prohibits discrimination based on sexual orientation and gender identity in healthcare settings, and many states have enacted policies to ensure transgender individuals have access to transition-related care.

Hate Crime Laws: Many states have hate crime laws that include sexual orientation and gender identity as protected characteristics.

Transgender Rights:

Legal Recognition: Some states allow transgender individuals to change the gender marker on their identification documents without requiring surgery, while others have more restrictive policies. **Access to Facilities:** Access to restrooms and other facilities consistent with gender identity has been a contentious issue in many states and municipalities.

Challenges:

Discrimination and Violence: LGBTQIA+ individuals, particularly transgender people and people of color within the community, continue to face discrimination, harassment, and violence.

Healthcare Disparities: LGBTQIA+ individuals may face barriers to accessing healthcare, including discrimination from healthcare providers and lack of culturally competent

¹ 576 US 644 (2015)

care. Youth Homelessness: LGBTQIA+ youth are disproportionately represented among homeless youth due to family rejection and discrimination.

LGBTQIA+ rights remain a political issue, with ongoing debates and legal battles over issues such as transgender rights, conversion therapy bans, and religious exemptions to anti-discrimination laws.

Overall, while the USA has made significant progress in recognizing and protecting LGBTQIA+ rights, there is still work to be done to ensure full equality and acceptance for LGBTQIA+ individuals in all aspects of society. Efforts continue to address discrimination, violence, healthcare disparities, and legal recognition for LGBTQIA+ people in the USA.

UNITED KINGDOM

In the UK, LGBTQIA+ rights have seen significant progress over the years, although challenges and disparities still exist. Here's an overview of LGBTQIA+ rights in the Marriage Equality: Same sex marriages have been valid in England, Wales, and Scotland since 2014, and in Northern Ireland since 2020, following legislation and judicial rulings. Civil partnerships, offering similar legal rights to marriage, have been available since 2004. Anti-Discrimination Laws: The UK has comprehensive anti-discrimination laws that protect LGBTQIA+ individuals from discrimination in employment, housing, goods and services, education, and other areas. The Equality Act 2010 explicitly prohibits discrimination based on sexual orientation and gender reassignment.²

Gender Recognition: The Gender Recognition Act 2004 permits transgender community to apply for legal recognition of their acquired gender. However, the process has been criticized for being overly bureaucratic and invasive, leading to calls for reform.

Hate Crime Laws: Hate crimes based on sexual orientation and gender identity are recognized and prosecuted under UK law.

The National Health Service (NHS) provides healthcare services, including gender-affirming treatments and surgeries, for transgender individuals.

LGBTQIA+ inclusive education is increasingly promoted in schools, aiming to create safer and more inclusive environments for LGBTQIA+ students.³

² Aishwarya Sinha, Comparative Study of the Progression of Queer Rights in India and the UK, with Special Emphasis on Intersex People, IJPSL, 2021

³ Ibid

Challenges: Discrimination and Violence: Despite legal protections, LGBTQIA+ individuals still face discrimination, harassment, and violence in various settings, including in public spaces, schools, and workplaces.

Healthcare Disparities: LGBTQIA+ individuals may encounter barriers to accessing healthcare, including discrimination and lack of awareness among healthcare providers.

Conversion Therapy: Although not explicitly banned nationwide, conversion therapy, aimed at changing or suppressing a person's sexual orientation or gender identity, is widely condemned, and efforts to ban it have gained momentum.

LGBTQIA+ rights remain a significant political and social issue in the UK, with ongoing debates and activism surrounding issues such as transgender rights, conversion therapy, and access to healthcare.

Overall, while the UK has made significant strides in recognizing and protecting LGBTQIA+ rights, there is still work to be done to address discrimination, violence, and disparities faced by LGBTQIA+ individuals in various aspects of society. Efforts continue to promote equality, inclusion, and acceptance for LGBTQIA+ people in the UK.

MEXICO

In Mexico, LGBTQIA+ rights have seen significant progress in recent years, although challenges and discrimination persist. Same-sex sexual activity was decriminalized in Mexico in 1871. Mexico City became the first jurisdiction in the country to legalize same-sex marriage in 2009. Since then, several other states have followed suit, legalizing same-sex marriage through legislative or judicial means. As of my last update in January 2022, same-sex marriage is legal in Mexico City and in all 31 states through either legislation or court rulings.⁴

Mexico City has also implemented legal protections against discrimination based on sexual orientation and gender identity.

In 2015, Mexico's Supreme Court ruled that state laws prohibiting same-sex marriage were unconstitutional, effectively paving the way for marriage equality nationwide.

Anti-Discrimination Laws:

⁴ Prachi Agrawal, *Out And Proud: A Comparative Analysis of LGBTQ Rights Protection*, Manupatra, 2023

Mexico has federal laws that prohibit discrimination based on sexual orientation and gender identity in employment and housing. However, enforcement of these laws can vary.

Transgender Rights:

In 2008, Mexico City passed a law permitting transgender individual to change their legal gender identities without undergoing surgery or hormone therapy. Several other states have also implemented similar laws or policies.

In 2021, the National Electoral Institute (INE) announced that transgender Mexicans could obtain new voter IDs reflecting their gender identity without requiring a court order.

Challenges:

Despite legal advancements, LGBTQIA+ individuals in Mexico still face significant challenges, including discrimination, violence, and lack of access to healthcare and legal recognition.

Hate crimes targeting LGBTQIA+ individuals, particularly transgender women, continue to be a concern. According to advocacy groups, Mexico has one of the highest rates of transgender murders in the world.

Overall, while Mexico has made significant strides in recognizing and protecting LGBTQIA+ rights, there is still work to be done to ensure full equality and acceptance for LGBTQIA+ individuals in all aspects of society. Efforts continue to address discrimination, violence, and ensure access to healthcare and legal recognition for LGBTQIA+ people in Mexico.

INDIA

In India, LGBTQIA+ rights have seen significant developments in recent years, although challenges and discrimination persist.

Section 377: Until 2018, Section 377 of the Indian Penal Code criminalized consensual same-sex relations, branding them as "unnatural offenses." However, in a historic judgment in September 2018, the Supreme Court of India unanimously struck down this provision, decriminalizing same-sex relationships and affirming the rights of LGBTQIA+ individuals.⁵

Marriage Equality: As of my last update in January 2022, same-sex marriage is not legally recognized in India. While the decriminalization of same-sex relations was a significant milestone, legal recognition of same-sex unions remains a topic of debate and activism.

⁵ <https://blog.ipleaders.in/lgbtq-community-legal-rights-social-discourse/>

Anti-Discrimination Laws: India lacks comprehensive federal legislation explicitly prohibiting discrimination based on sexual orientation and gender identity. However, some states and territories have implemented policies or guidelines to address discrimination.

Gender Recognition: While India allows individuals to change their legal gender through a process of self-identification, transgender individuals still face challenges in obtaining official documents reflecting their gender identity.

Indian society encompasses a diverse range of attitudes toward LGBTQIA+ individuals, with acceptance varying across regions, communities, and generations. LGBTQIA+ activism and visibility have increased in recent years, with Pride events taking place in various cities and greater representation in media and popular culture. However, stigma, discrimination, and violence against LGBTQIA+ individuals persist, particularly in rural areas and conservative communities.

Challenges:

Family and Social Acceptance: LGBTQIA+ individuals often face rejection and discrimination within their families and communities, leading to issues such as homelessness, isolation, and mental health struggles. **Legal Recognition and Protections:** While the decriminalization of same-sex relations was a significant victory, LGBTQIA+ individuals still lack legal recognition and protections in various areas, including marriage, adoption, inheritance, and employment.⁶

Healthcare Access: LGBTQIA+ individuals may encounter barriers to accessing healthcare, including discrimination and lack of awareness among healthcare providers.

LGBTQIA+ rights remain a contested issue in India's political and legal spheres, with ongoing debates, activism, and legal challenges seeking greater recognition, equality, and protection for LGBTQIA+ individuals.

Advocacy organizations and civil society continue to push for legislative reforms and social change to advance LGBTQIA+ rights and combat discrimination and stigma. Efforts continue to address legal, social, and cultural barriers and promote inclusivity, diversity, and human rights for every person, regardless of sexual orientations or gender identities.

COMPARATIVE STUDY

The Indian courts have the tendencies to quote international cases and the Indian government

⁶ Prachi Agrawal, *Out And Proud: A Comparative Analysis of LGBTQ Rights Protection*, Manupatra, 2023

submission against same sex marriages share a lot of connections with argument developed in international jurisdictions. In addition, in each of the jurisdictions studied here (United States, United Kingdom and Canada) the judicial system has played an important role to facilitate the recognition of same sex marriages.

All over the world, nations are in various situations in regards to homosexuality and same sex marriages. Till 2022, same sex marriages were legal in above 30 nations, mostly in EU countries and US states. In Asia, only one country - Taiwan - allow it, and attitudes and law elsewhere are split. If India's court sanctions same sex marriages, the nation would supplant the USA as the largest democracy with this right for LGBTQ couple.⁷

UK recognizes same-sex relationships and give s for pathway to legalize applicants relationship. It is an important step as it serves as the legal sanctions the parties to have spousal and family privileges. In 2013, Parliament ratified the Marriage (Same Sex Couples) Act which initiative civil marriages for same sex couple in England and Wales.⁸

In Wilkinson vs. Kitzinger⁹ case, where two women who had married in Canada sought to have their marriage recognized in England as the marriage rather than as the civil partnerships, as given by the Civil Partnership Act 2004. The judge emphasized the parliamentary intent to make a total secular establishment. But outside this not unimportant dissimilarity, civil partnership was designed, he said, to be as close to marriages as possible.

The aspect of civil partnerships was also identified in Baynes vs. Hedger¹⁰. This landmark case considered the question of whether the unregistered couples were living together as civil partner, in the situation of the claims for succession right on the death of the couple.

The accessibility of lawfully recognized same sex marriages in US expanded from Massachusetts in 2004 to every 50 states in 2015 via different court rulings, state legislations, and direct popular votes. States each have specific marriage law, which should stick to ruling by the Court of US that identify marriages as the basic privilege assured by both the Due Process Clauses and the Equal Protection Clauses of 14th Amendments to the US Constitution, as first set up in 1967 landmark civil rights case of Loving vs. Virginia¹¹.

⁷ <https://time.com/6247937/india-same-sex-marriage-supreme-court/>

⁸ <https://smartmove2uk.com/indian-supreme-court-verdict-on-same-sex-marriage/>

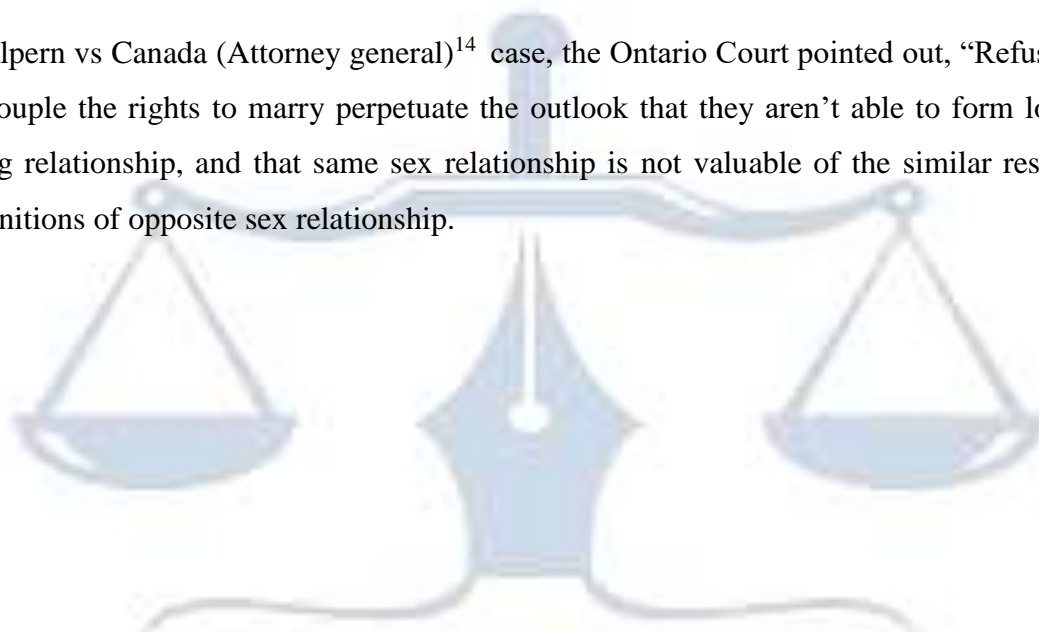
⁹ [2006] EWHC 2022

¹⁰ [2008] EWHC 1587

¹¹ 388 U.S. 1 (1967)

In Jun 2013, US Supreme Court struck down DOMA for infringing the 5th Amendment to the US Constitution in the landmark civil right case of United States vs. Windsor¹², managing federal recognitions of same sex marriages, with federal advantages for married couple linked to either the states of residence or the states in which the marriages were solemnized. In Obergefell vs. Hodges¹³ the Court held that the Constitution assures rights to same sex marriages. This case denotes the the love story of Jim Obergefell and John Arthur, who got married in 2013. After the death of Arthur, Ohio denied to register Obergefell as his partner on the death certificate. In the ruling, Justice Kennedy denoted: “It would misinterpret the man and woman to say they disregard the concept of marriage. J. Kennedy summed up that the basic rights to marry can’t be restricted to heterosexual couples.

In Halpern vs Canada (Attorney general)¹⁴ case, the Ontario Court pointed out, “Refusing same sex couple the rights to marry perpetuate the outlook that they aren’t able to form loving and lasting relationship, and that same sex relationship is not valuable of the similar respects and recognitions of opposite sex relationship.



¹² 570 US 744 (2013)

¹³ 576 US 644 (2015)

¹⁴ 2003 CanLII 26403 (ON CA)