

A COMPARATIVE ANALYSIS AMONG SOME SELECTED NATIONS IN THE CONTEXT OF HOMOSEXUAL IDENTITY

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Abstract

Individually and collectively, every human being has the right to safeguard, maintain, promote, and revive unique cultural traditions, languages, rituals, festivals, and locations in accordance with international human rights legislation. They have the right to seek, receive, provide, and use resources for all of these reasons without regard to sexual orientation, sex characteristics, gender identity, or gender expression. Three more requirements for member nations are embodied in this collection of nine additional principles. It is the result of a better knowledge of the elements of international human rights legislation and their connections to rising gender-based and sex-based breaches. Even the original Yogyakarta principles, which were established in 2006, carry a caution that, in light of recent advancements in the disciplines of law and its application to people of various personalities, future updates, additions, and alterations may be required.

Keywords

Gender identity, Homosexuality, Foreign travel, Sex-reassignment surgery.

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Introduction

Although homosexuality has a long history, it has always been frowned upon in both Indian and Western cultures. The decriminalization of homosexuality is currently a hot topic of debate. Countries have begun to enact legislation that regulates and decriminalizes such behavior. Though, based on social, cultural, and political attitudes, law enforcement changes from place to country. Until recently, 72 nations criminalized and punished same-sex relationships; 45 of these countries solely prosecute female-to-female relationships. India has lately joined the ranks of 25 other nations that have legalized such partnerships. Luxembourg, the United States, England, South Africa, Sweden, Denmark, Ireland, Spain, Norway, Portugal, Columbia, Mexico, Brazil, Argentina, Germany, Nepal, and other countries have passed legislation protecting gay conduct. Ireland was the first country to recognize a gay marriage by a public referendum. In 2017, Ireland's first homosexual prime minister, Leo Eric Varadkar, was elected. Nepal is the most transgender-friendly country on the Asian continent. In 2017, it granted a transgender couple a marriage certificate. It was groundbreaking. It's fascinating to consider the varying rights and privileges granted to transgender people in various modern countries.

The United States of America

The federal government is responsible for taxation, interstate trade, and foreign travel, thus it grants passports and maintains a register with an identification number for the purposes of taxes, employment, and federal benefits. The state government, on the other hand, is responsible for regulating health care and welfare inside its own borders, as long as it complies with federal law. As a result, birth certificates and identification cards are issued. As a result, Americans have many legally recognized identities that are separate from one another. However, gay legislation in the United States fell more within the control of individual states than the federal government. There was no particular legislation protecting transgender people from discrimination in the federal government. However, several arguments have been made that the Equal Protection Clause of the Federal Constitution, which prohibits discrimination on the basis of gender, should be understood to encompass transgender persons. Executive orders have been issued to ban discrimination against transgender people in the absence of particular laws. The Department of Education issued an order in 2016 mandating schools to use students' chosen names and pronouns and to assist them in having equal access to toilets and lockers according to their gender identification.

It was seen as a portion of liberty guaranteed by the fourteenth amendment's due process clause. The court went on to say that the stigma imposed by the Texas

sodomy legislation is not insignificant, and that no legitimate state interest justifies the law's intrusion into people's personal and private lives. The following are the rights of transgender people:

1. Right to marry: Since the beginning of LGBT campaigns, the marriage right of transgender people in America has been a topic of debate and discussion. In 1953, 'ONE' magazine released an essay on homosexual marriage in which the author discussed marital rights equally. At the same time, he has urged the LGBT community to consider the consequences of getting this right. It is certain that in the 1950s, the thought of a two-man marriage was nothing short of extravagant. The United States Postal Service even delayed the arrival of this magazine for three weeks to investigate if the contents were indecent. In fact, the fight for homosexual marriage began in Hawaii, when three gay couples sought for and were denied a marriage license. They have petitioned the Hawaii Supreme Court to overturn this rejection. Even the court has issued an order asking whether such denial is constitutional. Fearing that same-sex marriages might jeopardize the institution of marriage and their relationship, legislators passed the Defense of Marriage Act (DOMA) in 1996, barring the federal government from recognizing them. Until the year 2000, fourteen states have passed legislation outlawing homosexual weddings. However, the tide began to turn when the Vermont Supreme Court determined in 1999 for the first time that refusing to recognize homosexual marriages was a violation of the state constitution. The Massachusetts Supreme Court, in *Goodridge v. Department of Public Health*, became the first state judicial court to find that the state government is required by the state constitution to allow gays to marry. The nature of battles gradually shifted, and campaigners claiming equality gained the upper hand. As a result, the Supreme Court of the United States decided to put the case to rest in 2015. *Obergefell v. Hodges* is a landmark decision concerning transgender people's marriage rights. The petitioner won in all of the district courts, but the sixth circuit merged the cases and overturned the verdict. The matter was then heard by the Supreme Court. The Supreme Court ruled that denying same-sex couples the right to marry violates the fourteenth amendment's due process and equal protection clauses. Individual liberty includes the right to marry, which can never be taken away from him.

2. Adoption: The freedom to marry and the right to adopt are inextricably linked. When the Supreme Court overturned the ban against gay activity in *Lawrence v. Texas* in 2004, the drive for recognition of these rights gained traction. In the case of adoption and parental rights, there is a split of opinion among courts when it comes to the circumstances that directly impact the child's best interests. If the

court determines that the child's gender identification has no negative consequences, the court will undoubtedly uphold the custody and parental rights of transgender parents. The court affirmed the transgender parents' shared parenting plan in *Mayfield v. Mayfield* because there was no evidence that it would hurt the kid or that they would not be fit, caring, and capable parents. However, in *Cisek v. Cisek*, the court canceled a transgender parent's visiting rights due to a concern of mental and emotional injury to the kid. In other circumstances, the court has even ordered the dissolution of the parent-child connection because the parents are transgender. Thomas Trace Beatie, an American transgender man, gave birth to Susan Juliette Beatie in 2008, making him the first guy to give birth to a girl.

3. The right to fair pay in the workplace: Previously, employment discrimination protection was limited to the government sector, but in 2012, the Equal Employment Opportunity Commission ruled that gender identity-based employment discrimination is also a form of sex discrimination, and that Title VII of the Civil Rights Act of 1964 prohibits it. In 2015, this rule was expanded to include discrimination based on sexual orientation. Despite these verdicts, discrimination based on gender identity or sexual orientation was not specifically prohibited by law. Although discrimination based on sexual orientation and gender identity is prohibited in the private and public sectors in twenty-four and twenty-three states, respectively, as well as the District of Columbia, it is still legal in the private sector. In the United States of America, transgender people were first allowed to join any branch of the military. From 1960 to June 30, 2016, a blanket prohibition was applied. After that, until April 2019, transgender people could only serve in the military provided they were stable for 18 months in their selected gender. A directive type memorandum 19-004 has been in effect since April 12, 2019, prohibiting transgender people from serving in the military unless they are their biological gender.

4. Right to identity: In addition to all of these rights, transgender people can now alter their gender to non-binary, which is indicated by the letter 'X.' Furthermore, no physician's declaration is necessary to change the gender. It was started for the first time in the state of Oregon. ¹⁰⁸ In forty-eight states and the District of Columbia, someone can alter their identification under specific circumstances. ¹⁰⁹ They can alter their names on their identification documents, albeit the process varies by state. Kansas has become the forty-eighth state to allow gender changes on birth certificates, but only when the Governor signs a health department directive. The only two states that currently prohibit altering the gender on a birth certificate are Ohio and Tennessee. Even regulations requiring the use of

the marker “X” on state identification cards and driver’s licenses have been passed, but are awaiting implementation in some states.

The United Kingdom

The main basis of law in England is the British Parliament’s laws and the judgments of the British courts, often known as common law. Until 1950, homosexual behavior was considered a crime under the Criminal Law Amendment Act of 1885, which defined it as “gross indecency.” Edward Montagu Michael Pett-Rivers and Peter Wildeblood were charged with homosexual activity in 1893 and were found guilty. Their conviction caused a ruckus in society. Finally, on August 24, 1954, a committee chaired by Sir John Wolfenden was formed to investigate the legislation pertaining to homosexual offenses. In 1957, the committee issued a report that recommended decriminalizing consensual homosexual behavior between adults in private. It further claimed that the law must preserve order and decency in society and protect its citizens from any injury or harm, but that the government may not meddle in the private realm of citizens’ lives or compel them to adopt any certain behavioral pattern.

2004 Gender Recognition Act

This Act recognizes transgender people’s right to the identification. This Act allows a person to get a gender recognition certificate after submitting an application to the gender recognition panel. It is made up of legal and medical professionals. Unless the panel determines that the applicant needs an opportunity to be heard, all applications are determined in secret. The applicant must be notified of the grounds for the decision. If your application is denied, you can appeal to the High Court. Before the six-month period has passed since the application was rejected, no new application can be filed. If the judgment appears to be based on fraud, the Secretary of State has the authority to refer the case back to the High Court, which will invalidate the judgment and revoke the certificate. Any individual above the age of 18 of either gender can apply on one of two grounds: a) Living in another legal gender. 128 Or b) Changing gender within the United Kingdom’s territory, also known as normal track, or outside the United Kingdom’s jurisdiction, known as overseas track.

In other cases, such as the death of a partner or spouse, or the annulment of a marriage/partnership for reasons other than the interim certificate, an application to the gender recognition panel for the up-gradation of an interim certificate to a full certificate could be made within six months of the dissolution of marriage or civil partnership. If the panel is pleased with the annulment, it will issue the certificate. Before the 2013 Act, the method was as follows. The Act of 2013 included new

provisions to Section 3 of the Gender Recognition Act of 2004, adding new requirements under clauses 6A-6C. If the applicant is married, he or she must also make a statement under Section 3 (6) (A) on the solemnization of marriage under the laws of England and Wales, Scotland, Ireland, or any other country outside the United Kingdom. Only same-sex weddings in England and Wales are covered by this Act of 2013. As a result, the Act safeguards the continuation of civil partnerships and marriages in England and Wales, and is known as a protected civil partnership and protected marriage, respectively. If the applicant is a party to a protected marriage, the applicant's spouse must make an extra-statutory statement affirming the voluntary continuation of marriage even after the complete gender recognition certificate is issued. If a spouse refuses, the applicant must file a statutory statement saying that the partner has not consented to the continuation of the marriage. If the application contains a statutory statement of permission from the spouse, the panel shall notify the spouse that an application for the issuing of the certificate has been submitted. If the applicant is single or a party to a protected marriage, the panel will give a full gender recognition certificate. If the panel has chosen to award a certificate to the other party as well, the panel may grant a full gender recognition certificate to the applicant in the event of a civil partnership. The continuation of a marriage or civil partnership would be unaffected by the granting of such a certificate. Where the applicant is a party to an unprotected marriage or civil partnership and the spouse has not consented, an interim certificate will be given.

The 2013 Marriage (Same-Sex Couples) Act

This Act gives same-sex couples in England and Wales the right to marry. It allows couples to solemnize their marriage only at registered offices or locations. Same-sex couples are not permitted to marry according to Church of England protocols, but any religious organization that wishes to conduct such marriages may do so. They cannot be forced to engage in such weddings. Furthermore, same-sex marriages can only be performed in religious settings if they have been registered with the authorization of the ruling head. It describes the steps for converting civil partnerships to marriage. It also states that same-sex weddings that take place outside of England will be recognized as same-sex marriages in England. In Ireland and Scotland, same-sex weddings would be recognized as a civil partnership. 138 Couples now enjoy all of the same rights as heterosexual couples, like as adoption, divorce, and so on, thanks to this legislation.

Denmark

Denmark is known for its high level of living democracy and universal social measures, such as free medical care and education for all. Danish citizens

are thought to be the happiest people on the planet. Danish legislation, administrative regulations, and recommendations make up the statutory legal framework. The same structure governs transgender people's legal status. Gender and sex are not differentiated in the Danish language. The term 'Kon' is used to describe both biological and social elements. In Danish, transgender people are called 'Trankonnet,' while transsexual people are called 'transseksuel.' Transgender people are seen as having a gender identification problem rather than a sexual orientation problem. In 2005, the word "transgender" was introduced into Danish law for the first time, with no clear understanding. In 2014, Danish legislation addressing the legal status of transgender people underwent a significant transformation, with legal gender being distinguished from biological gender, and there being no requirement for legal and biological gender conformity in many areas of law. The CPR number (Central Person Registry) is used in Denmark to identify a person's legal gender (CPR-Loven). This is a ten-digit number that serves as a personal identification number for all citizens. The gender of the holder is determined by the final digit; if it is even, it is female; if it is odd, it is male. Gender may usually be deduced from this number. All Acts granting rights and responsibilities based on gender simply mention the CPR number. The Passport Act (Passover) and the Name Act (Navneloven) both provide that a person's first name cannot be the same as his gender. As a result, the Ministry of Social Affairs has already released a list of authorized boy and girl names. The CPR, Passport Act, and Name Act have all been loosened as a result of the 2014 revision.

Even if a person is legally male but possesses a female organ, assisted reproductive procedures can help him get pregnant and give birth to a kid. 145 In Denmark, transgender people have the following rights:

1. The ability to marry: In 2012, the Marriage Act, which controls such connections, was changed to put same-sex and opposite-sex marriage on an equal basis. However, there is a caveat: in same-sex marriages, gender-specific rights and responsibilities do not apply. A wife can engage in any legally enforceable arrangement on behalf of her husband, just as in a traditional marriage, but same-sex marriages are limited to agreements pertaining to household or kid requirements. 146 However, since 1933, same-sex sexual practices have been legalized. 147

2. Adoption rights: In Denmark, the Children Act controls parental obligations and responsibilities. The notion of two parents is firmly supported by the Children Act. In 2013, the ability for children to have two parents was expanded to include two moms. The Children Act refers to biological gender rather than legal gender when it comes to parenthood; a person who has given birth to a child is

always a mother to the kid, even if the legal gender is male. Even if a mother is married to a man who was a father at birth, even though his legal gender is female, that man will always be a father. Adoption rights are provided in Denmark to both single parents and couples. In terms of adoption approval, the Danish Adoption Act of 2010 makes no distinction between couples of the same gender and couples of the opposite gender.

3. Right to equal treatment in the workplace: The Equal Treatment Act of 1996 prohibits discrimination based on sex, sexual orientation, race, color, religion, or political belief. Although gender identity is not specified as a forbidden reason, the court determined in 2015 that it should be added to the list. In addition, the Board for Equal Treatment Law was passed in 2008. It establishes a body to investigate allegations of discrimination based on sex, ethnicity, color, political beliefs, sexual orientation, and other factors. Aside from that, Denmark has a hate crime law that stipulates harsh penalties for offenses committed on the basis of sexual orientation or gender identity. 150

4. Right to identify: As previously stated, gender identification in Denmark is determined by the CPR number. The procedure has been loosened since the 2014 revision. The right to identify of transgender people is also recognized.

Conclusion

Following an examination of the United Nations' worldwide actions against discrimination against the LGBT community, it is obvious that the attitude of representative members at the UN has shifted. Even the top centralized institution working in the field of human rights is attempting to achieve true equality. The Yogyakarta Principles are, without a doubt, the result of the so-called human rights mandate that was established in 1945. The 2017 amendment, which included more Yogyakarta Principles, demonstrates more tolerance and acknowledges the diversity of gender identity and expression. This chapter addresses the study topic, "Do transgender people have appropriate legal protection in nations like the United Kingdom, the United States, or Denmark?" Even affluent countries such as the United States of America and the United Kingdom, including Denmark, the happiest country in the world, have liberalized norms and regulations, acknowledging the presence of many sexualities and gender identities. Without a doubt, they are doing their best to provide a comfortable society for this group. Basic human rights such as marriage, adoption, and work have already been legalized in these countries. This chapter backs up the claim that despite being a member of the United Nations, India has not followed the criteria set out in international agreements forbidding discrimination based on sexual orientation or gender identity. But still many issues are unresolved

and they will definitely be resolved as efforts are continuously being made by the member countries at the United Nations.

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