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## RIGHTS OF LGBTQ COMMUNITY IN THE CHANGING WORLD WITH SPECIAL REFERENCE TO THE PROTECTION OF SAME SEX MARRIAGE BILL 2022 (US)

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### Abstract

Although the LGBTQ population has long experienced prejudice and marginalisation, there has been a change in recent years towards more acceptance and acknowledgement of Gay rights. In the United States, the Protection of Same Sex Marriage Law 2022 aims to legalise same-sex unions and grant LGBTQ couples full marital privileges. By outlawing discrimination based on sexual orientation or gender identity, this bill also attempts to combat prejudice towards LGBTQ people. This bill seeks to grant legal recognition and protection to same-sex marriages, allowing LGBTQ couples to enjoy the same rights and benefits as heterosexual couples, the passage of this measure will have a substantial positive influence on the lives of many LGBTQ people and their families. Yet, much effort remains to be done to eliminate discrimination and stigma towards the LGBTQ population and to promote equality and acceptance globally.

**Key Words:** LGBTQ, Legal Recognition, Equal Rights, Same Sex Marriage, Protection, Progress, United States.

### Introduction

A vital and engaging subject, The Rights of the LGBTQ Community in a Changing World, with Special Reference to the Protection of Same Sex Marriage Bill 2022 (US), deals with the legal recognition and rights of the LGBTQ population in the country. Its emphasis is on the advancement of LGBTQ rights generally, the rights of the LGBTQ community under this legislation, and the difficulties and issues that have come up as a result of its application. Legal limitations, marginalisation, and discrimination are all issues that lesbian, gay, bisexual, transgender, and queer/questioning people must deal with. The Stonewall riots<sup>541</sup> in New York City marked a turning point in the struggle for Gay rights, and ever since then, members of the LGBTQ community and their supporters have battled for legal protection.

Many nations have different policies towards LGBTQ people, with some making progress and

others continuing to discriminate. The Preservation of Same Sex Marriage Bill 2022 offers legal recognition and protection for same-sex unions notwithstanding the Supreme Court's 2015 decision that same-sex couples have the right to wed in the United States. Although while it permits same-sex partnerships and gives them legal protections including inheritance rights, tax advantages, and access to healthcare, there are still problems and disagreements with how it is being put into practise. Knowing the historical backdrop, contemporary events in the US and throughout the world, and the bill's significance are necessary in order to comprehend the progress achieved towards greater acknowledgment of LGBTQ rights.

The struggle for LGBTQ+ equality and rights extend beyond US borders. In many regions of the world, the LGBTQ+ population still experiences prejudice, marginalisation, and violence, sometimes without any legal safeguards or acknowledgment. Nonetheless,

<sup>541</sup> Duberman, M. B., Stonewall (Penguin Books 1993).

recent developments have given rise to optimism for a more welcoming and inclusive future for all people, regardless of their sexual orientation or gender identity. A little milestone in the continuous struggle for LGBTQ+ rights and equality, the Protection of Same Sex Marriage Law 2022 shows that inclusiveness and acceptance are still attainable.

### Historical Context of LGBTQ rights

In many countries during the nineteenth century, homosexuality was seen as a sin, and those who had same-sex relationships were subject to severe punishments, such as jail or even death. Early in the 20th century, medical professionals started to see homosexuality as a mental illness, which prompted efforts at "conversion therapy" and other harmful therapies.

The fight for Gay rights has been protracted and challenging, but there have been several significant turning points. Alfred Kinsey's 1948 book "Sexual Behavior in the Human Male," which was published by the Society for Human Rights, lay the foundation for the current LGBTQ rights movement. Persecution of Gay people and organisations resulted from an atmosphere of fear and paranoia brought on by the Cold War and McCarthyism.

The current LGBTQ rights movement started to take shape in the 1960s with protests and marches against harassment and discrimination. A police raid on a gay bar in New York City set off the Stonewall riots in 1969, which are seen as a turning point in the struggle for LGBTQ rights in the country.

Throughout the 1970s and 1980s, LGBTQ activists started to push for legal rights and acceptance of same-sex partnerships. Throughout the 1990s and 2000s, several nations started to legalise homosexuality and offer legal protections for LGBTQ individuals, however discrimination and violence remained widespread.

LGBTQ rights have advanced significantly in recent years, with same-sex marriage being legal in many nations and improved safeguards

against discrimination in areas like employment and housing. Nonetheless, the fight for total acceptance and equality goes on.

### Recent Developments in LGBTQ Rights in the US

The Supreme Court's historic decision allowing same-sex marriage and the adoption of state-level anti-discrimination laws are just two of the enormous advancements in LGBTQ rights that have occurred in the US in recent years. But, there have also been setbacks, such as the Trump administration's attempts to scale back protections for transgender people and the ongoing court disputes around LGBTQ people's rights in the workplace and public places. Notwithstanding these obstacles, there is still a powerful and active movement in the US supporting LGBTQ rights.

### Overview of LGBTQ rights in the US

The LGBTQ community in the US has gone through a protracted and difficult battle for their rights. LGBTQ individuals have historically faced prejudice, repression, and violence. However, in recent decades, there has been a tremendous improvement in the legal recognition and protection of LGBTQ people.

The Obergefell v. Hodges<sup>542</sup> ruling by the Supreme Court in 2015, which made same-sex marriage lawful nationwide, was a key turning point. Advocates for LGBTQ rights, who have long struggled for the right to an equal marriage, hailed this decision as a significant triumph.

The adoption of federal legislation banning discrimination against LGBTQ people, such as the Employment Non-Discrimination Act and the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, was another significant milestone. In addition, several states have passed legislation preventing discrimination against Gay persons in settings including work, housing, and public places.

<sup>542</sup> Obergefell v. Hodges, 576 U.S. \_\_\_\_ (2015) (No. 14-556), 135 S. Ct. 2584, 192 L. Ed. 2d 609, 2015 U.S. LEXIS 4250.



LGBTQ people still face substantial obstacles in many facets of life, despite recent advancements. LGBTQ persons are still the target of discrimination and violence, particularly transgender and gender nonconforming people. In addition, certain politicians and interest groups are still working to undo the progress that the LGBTQ rights movement has accomplished.

### Progress and setbacks in LGBTQ rights in the US

Throughout the past few decades, the campaign for LGBTQ rights in the US has advanced significantly, but there have also been setbacks and continued difficulties.

In 2015, the United States Supreme Court legalised same-sex marriage nationally, allowing LGBTQ couples to marry in all 50 states. In *Bostock v. Clayton County*<sup>543</sup>, the US Supreme Court declared in 2020 that discrimination based on sexual orientation or gender identity is a type of sex discrimination and hence illegal under federal law. The "Don't Ask, Don't Tell"<sup>544</sup> policy was overturned in 2010, enabling Gay people to serve openly in the military. The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, enacted in 2009, expanded existing hate crime legislation to include crimes motivated by sexual orientation and gender identity. In recent years, there has been a greater acknowledgement of transgender people's rights, including access to healthcare and legal recognition.

LGBTQ individuals continue to endure discrimination and violence, especially transgender and gender nonconforming persons, and the Trump government has reduced LGBTQ rights. Some states have approved or attempted to pass legislation prohibiting transgender persons from using the toilet that corresponds to their gender

identification, while others have passed legislation permitting companies and individuals to refuse service to LGBTQ people based on religious convictions. Conversion treatment, adoption rights, and the protection of LGBTQ individuals from discrimination are other hotly debated issues.

### The Protection of Same Sex Marriage Bill 2022

The United States Senate made history on November 29, 2022, when it passed landmark legislation that codified protections for same-sex and interracial marriages at the federal level.

Despite President Biden's assurances that he will sign the legislation into law as soon as it passes the House of Representatives, the Senate's action creates a significant roadblock.

This law explicitly recognises marriages between people of different races or of the same gender. For federal purposes, the bill would replace the current definition of marriage as a union between a man and a woman with one that would recognise any marriage between two individuals that is valid under state law. (In *United States v. Windsor*, decided by the Supreme Court in 2013, it was ruled that the preexisting regulations were unconstitutional).

Further, the Act forbids discrimination on the basis of race, ethnicity, or national origin in granting full faith and credit to, or recognising any right or claim relating to, a marriage that took place in another state, including a marriage between two people of the same sex. (In *Loving v. Virginia* (1967)<sup>545</sup> the Supreme Court ruled that states could not outlaw interracial marriages, and in *Obergefell v. Hodges* (2015) it ruled that states could not outlaw same-sex marriages.) The law creates both a public and private remedy for violations. The DOJ (Department of Justice) can file a civil suit.

The act also refrains from recognizing marriages involving more than two individuals under federal law. It does not interfere with any

<sup>543</sup> *Bostock v. Clayton County*, 590 U.S. \_\_\_ (2020) (No. 17-1618), 140 S. Ct. 1731, 207 L. Ed. 2d 218, 2020 U.S. LEXIS 3252.

<sup>544</sup> Associated Press, Obama Signs Repeal of 'Don't Ask, Don't Tell' Policy, NBC News (Dec. 22, 2010), [http://www.nbcnews.com/id/40717051/ns/politics-more\\_politics/t/obama-signs-repeal-dont-ask-dont-tell-policy/](http://www.nbcnews.com/id/40717051/ns/politics-more_politics/t/obama-signs-repeal-dont-ask-dont-tell-policy/) (last visited Mar. 6, 2023).

<sup>545</sup> *Loving v. Virginia*, 388 U.S. 1 (1967), 87 S. Ct. 1817, 18 L. Ed. 2d 1010, 1967 U.S. LEXIS 1088.

rights or benefits unrelated to marriage, compel religious organizations to offer services or goods for the recognition or celebration of marriage, or alter any religious freedoms or conscience protections already established by the Constitution or federal law.

### **What does the Respect for Marriage Act accomplish to safeguard same-sex unions?**

The Act accomplishes a few crucial tasks:

The Federal Defense of Marriage Act is first repealed. This rule, which was passed in 1996, forbade the federal government from acknowledging same-sex unions that had been legally consummated under state law. Also, it granted states permission to reject same-sex unions formed in other states.

Moreover, it forbids governments from rejecting same-sex unions that were legitimately contracted in another state. It's also significant to highlight that it applies to interracial marriages in the same way.

This legislation eliminates the federal government's role in determining which marriages are legal by establishing the general principle that the federal government will recognise a marriage if it was legal in the state in which it was consummated. It further emphasises that religious groups are under no obligation to take part in marriage celebrations or solemnization ceremonies if they choose not to.

### **Is the legislation flawed in any way?**

States are not required by this act to grant same-sex couples marriage licences. States are presently required to do that under the Supreme Court's 2015 ruling in *Obergefell v. Hodges*, which held that failing to grant such permits violates the U.S. Constitution. Nevertheless, it becomes more difficult to compel states to grant same-sex couples marriage licences if that ruling is overturned by a right-wing court.

By mandating those states to recognise weddings carried into elsewhere, this law

somewhat circumvents the issue. Yet, this rule poses obstacles for individuals who lack the resources to travel elsewhere to get married.

It might be difficult to see why this would be a huge concern in a tiny state like New Jersey that is close to many other states. Now picture yourself as a low-income resident of the centre of a big, conservative state like Texas. Due to their inability to pay the expenses of access, persons in poverty are unable to exercise the rights to which they are ostensibly entitled, creating a serious issue of economic justice.

### **What does the legislation entail for those who are already married and reside in a state that prohibits marriage of LGBTQ+ people?**

In states with restrictions, LGBTQ+ persons who are already married would stay that way. In 32 states lacking equal marriage laws, LGBTQ+ persons who wish to get married must go outside of those states, and their home state must recognise their union.

Liz Seaton, the director of policy for the National LGBTQ Task Force, noted that several states would presumably come under intense pressure not to enforce their prohibitions on gay marriage. According to Seaton, the majority of people in this nation are in favour of marriage equality. "The existence of outdated laws does not obligate the state to enforce them."

### **How come this measure has been referred to as historic?**

There have only ever been two LGBTQ+ laws approved by Congress. The Maryann Shepard and James Byrd Jr. Hate Crimes Prevention Act, which was approved by the legislature in 2009, raised the penalties for offences motivated by sexual orientation, gender identity, and race. Because several analysts discovered that hate crime legislation frequently disproportionately increase the incarceration of people of colour, while showing little evidence of reducing violence, that bill has come under criticism. The law "Don't Ask, Don't Tell," which required LGBTQ+ military service personnel to hide their sexual

orientation, was abolished by Congress the following year.

According to supporters, the Respect for Marriage Act represents both an unprecedented display of bipartisan support for queer rights and the most significant piece of pro-LGBTQ+ legislation ever passed by Congress. While only a small portion of what we need, this law is unique, according to Seaton, since it codifies safeguards for LGBTQ families—at least those who choose to get married into the US Code.

### **Debates and Arguments related to Same-Sex Marriage Bill**

In late November, 12 Republican senators and a small percentage of House Republicans endorsed the Respect for Marriage Act. Given that a slim majority of Republicans now oppose same-sex marriage, this illustrates how quickly the politics of the issue have transformed. A increasing number of individuals are in favour of it, and younger voters are becoming more tolerant of it. Republicans emphasised "religious liberty," and the majority of the traditional wording supporting marriage between "a man and a woman" was omitted from the discussion.

The Respect for Marriage Act is a piece of proposed legislation that would safeguard the right to practise one's religion without interfering with same-sex marriage benefits. Republicans said that the law would demonstrate to the American people that Congress loves and respects them all equally, while opponents said it may violate their right to freedom of religion. When the Supreme Court overturned *Roe v. Wade*<sup>546</sup>, there were fears that the court may take up the case *Obergefell v. Hodges* again. As a result, the bill's supporters argued that Congress should take action to preserve same-sex unions before the court might take *Obergefell* up again. Cynthia Lummis of Wyoming, a Republican, did state on the Senate floor in November that the Bible mandates marriage to be between a man and a woman.

Cynthia Lummis of Wyoming, who did proclaim on the Senate floor in November that the Bible demands marriage be between a man and a woman, actually voted in support of the bill, claiming that the term "marriage" has a secular definition distinct from its biblical connotation.

With 8 out of 10 citizens thinking that transgender persons experience prejudice and a majority supporting legislation that protect trans people from housing and job discrimination, recent discussions over transgender rights have attracted national attention. People also frequently hold the view that society does not require any further action to embrace transsexual persons. According to a survey by Pew, 36% of individuals thought society hasn't gone "far enough" to embrace transgender people, and a large majority of Republicans agreed. Even among adults who acknowledged transgender discrimination, the majority felt that society had gone "too far" or been "about right" in defending trans rights, while a minority felt that society hasn't gone far enough. Given that same-sex marriage is a more recent subject than transgender rights, these differing opinions are not surprising.

### **Conclusion**

Although the LGBTQ community's rights have advanced significantly, much work remains. A key step towards guaranteeing that same-sex couples have the same legal recognition and protection as heterosexual couples is the Protection of Same Sex Marriage Law 2022 in the US. The LGBTQ community still suffers a number of difficulties, including stigma, discrimination, and limited access to services like healthcare and education as well as work possibilities.

The evolving nature of society has revealed a change in sentiments towards the LGBTQ population, with more individuals coming to embrace and support their rights. Nonetheless, being LGBTQ is still widely seen as a vice or a criminal in many regions, and members of the community endure harsh discrimination and violence.

<sup>546</sup> *Roe v. Wade*, 410 U.S. 113 (1973), 93 S. Ct. 705, 35 L. Ed. 2d 147, 1973 U.S. LEXIS 159.



Campaigns for education and awareness can aid in fostering acceptance of the LGBTQ community. Legislative changes are required to guarantee that LGBTQ people are protected from discrimination in all spheres of life, such as the workplace, the classroom, housing, and healthcare. Governments should try to legalise same-sex marriage and decriminalise homosexuality. Governments and civil society groups may collaborate to offer LGBTQ people support services including access to healthcare, legal assistance, and mental health support. Religious authorities may help advance tolerance and acceptance of the LGBTQ community. Interaction with religious authorities can aid in fostering community-friendly attitudes.

Promoting and defending the rights of the LGBTQ community may be made possible with the help of international collaboration. Governments and civil society groups may collaborate to advance human rights and guarantee that LGBTQ people are safe from discrimination and violence.

Many trends and events are expected to influence the worldwide trajectory of LGBTQ rights. They include rising support and acceptance from younger generations, legislative safeguards and reforms, more visibility and representation of LGBTQ people in the media, politics, and other spheres of public life, as well as a deeper understanding and acceptance of them.

There is cause for optimism about continuous progress towards greater recognition and protection of LGBTQ rights, notwithstanding the complexity and variety of the future possibilities for LGBTQ rights in the US and throughout the world. The road to a more just and equitable society for all people, regardless of their sexual orientation or gender identity, is still long and requires constant action, lobbying, and political participation.

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