

**Forum:** *Youth Action Committee*

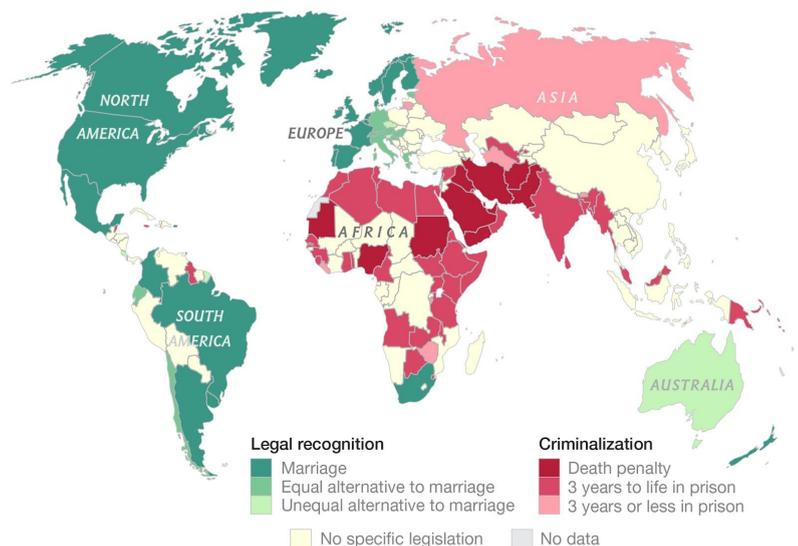
**Issue:** *The question of ensuring equal rights in public and private accommodation for the LGBTQ community*

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## Introduction

Article 26 of the International Covenant on Civil and Political Rights reads “All persons are equal before the law... [the] law shall prohibit any discrimination... [on] any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Everyone, despite their gender identity or sexual orientation, should enjoy equal rights and protection against discrimination under the International Covenant on Civil and Political Rights. No one shall live under the fear of discrimination due to one’s different status. Although the international law protects LGBT rights, many individuals are still living in fear due to their sexual orientation or gender identity. The inability to support LGBT rights mainly came from the cultural stigmatization of homosexual relationships and the anti-LGBT sentiments rooted in religions or cultures.



**Caption #1: LGBT Criminalization Map**

## Definition of Key Terms

### Homosexuality

According to the United Nations, homosexuality is defined as romantic or sexual attraction or behavior among members of the same sex.. As of January 2018, 72 countries ruled sexual relationship

between males illegal and 45 countries ruled sexual relationship between females illegal. 13 countries have death penalties for homosexuality. Only 24 and 28 countries recognize homosexual relationships as marriage or partnership, respectively. Most of these nations are western democracies with a secular government.

## **LGBTQ+ Community**

The phrase LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer, and Others) community generally refers to a broad coalition of groups that is diverse with respect to gender, sexual orientation, race/ethnicity, and socioeconomic status. It is important to note that all members of the LGBTQ+ Community are the same and have the same needs.

## **Public / Private Accommodation**

As defined by the United States Law, public accommodation is any facilities used by the public. This is commonly referred as public areas such as stores, rental establishments, educational institutes, recreational facilities, and service centers. Private accommodation refers to lands and buildings owned by individuals, such as individual households. Most laws protecting people from discrimination falls under public accommodation rather than private accommodation.

## **Background Information**

The history of homosexuality can be first dated back to Ancient Greece. The term itself was derived from Greek and Latin with homo, "same", as in sexual acts between members of the same sex.

## **LGBT Rights During Early 20th Century**

The first notable massacre against members of the LGBT community is the Nazi Germany's persecution against homosexuals. In 1933, the Nazis intensified the persecution of German male homosexuals. Persecution ranged from the dissolution of homosexual organizations to internment in concentration camps. The Nazis persecuted homosexuals as part of their campaign to racially and culturally purify Germany. Gay men were targeted for persecution because they were viewed to be carriers of a contagion that weakened society and did not contribute to the Aryan race. Between 1933 to 1945, around 100,000 men were arrested for violating Nazi's laws against homosexuality, and of which, approximately 50,000 were sentenced to prison. An estimate of 5000 to 15000 men were sent to concentration camps of similar charges of an unknown number of them perished. The Nazi Party's campaign against homosexuals was just a mere start of the rugged history of LGBT rights.

## The Start of LGBT Rights Movement

As the civil rights movement won new legislation outlawing racial discrimination in 1965, the first gay rights demonstrations took place in Philadelphia and Washington D.C. The turning point liberation came on June 28, 1969, when patrons of the popular Stonewall Inn in New York's Greenwich Village fought back against police raids of their neighborhood bar. Many consider the Stonewall riots to be the starting point for the modern gay liberation movements and LGBT rights has been commemorated since the 1970s with pride parades held every June in the United States. The Netherlands became the first country to recognize same-sex marriage in 2000.

## Contemporary/Modern History of LGBT Rights

After the 1960s Civil Rights Movements, the advocacy for LGBT rights grew exponentially. Illinois became the first state in the United States to remove its sodomy laws. After a decade, Sweden becomes first country in the world to allow transsexuals to legally change their sex, and provides free hormone therapy in 1972. Later in 1979, Sweden became the first country to remove homosexuality as an illness, and in 1988, Sweden also became the first country to pass laws protecting homosexual regarding social services, taxes, and inheritances. In 1989, Denmark first enacted laws that allowed registered partnership laws for same-sex couples. In 1993, the "Don't Ask Don't Tell" policy was enacted, which mandated that the military could not ask servicemembers about their sexual orientation, hence, allowing homosexuals to serve in the US military. Finally, in 2001, the Netherlands finally became the first country to legalize LGBT marriages and joint adoptions. Until now, 26 countries, including Argentina, Australia, Belgium, Brazil, Canada, Colombia, Denmark, England, Finland, France, Germany, Iceland, and more, have also made the same decision. However, 72 countries still rule sexual relationship between males illegal and 45 countries rule sexual relationship between females illegal. 13 countries have death penalties for homosexuality.

## Systematic Oppression against the LGBT Community

Systematic oppression in our society still exists against the LGBTQ community despite the advancement of LGBTQ rights. Over 1 in 4 LGBT youth who come out to their parents are forced to leave home. Today, between 20-40% of the estimated 1.6 million homeless youth in the U.S. identify as LGBT. 90% of LGBTQ students have experienced harassment in the past year, and 44% of students reported being physically harassed and 22% reported being physically assaulted at school in the past year because of their sexual orientation. Moreover, Suicide rates for LGBT youth are estimated to be up to four times higher than their heterosexual peers. Clearly, there is some kind of systematic oppression against LGBTQ that's causing these depressing facts. A study by Columbia University analyzed the institutional and personal homophobia in Sub-Saharan Africa explain variations in Sub-Saharan homophobia through the lens of Inglehart's post-materialist theory, which suggests that societal interests

change from material to social, and survivalist to individualist, as countries economically develop. This study suggests that economic development, religiosity, and colonialism play important roles in the development of African homophobia. Increases in economic development improves individual tolerance of homosexuality in a micro level. The religious culture in the region appears to work in conjunction with economic development, and negatively impacts homophobic state structures. However, institutional and personal homophobia seem to diverge in how they are affected by colonial influence. Institutional homophobia is found to have British influence and personal homophobia seemed to be greater in both French and British former landholdings. Hence, this study shows that the institutionalized homophobia is rooted in the country's economic development, its devotion to religion, and its history.

## Key Issues

### Violence Against LGBT

#### *Killings, Rape, and Other Acts of Discriminatory Violence*

Homophobic and transphobic violence has been recorded in all regions. Such violence may be physical or psychological. These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms. According to the Organization for Security and Cooperation in Europe, homophobic hate crimes and incidents often show a high degree of cruelty and brutality and include beatings, mutilation, castration, and sexual assault. LGBT persons are among the victims of so-called "honor" killings, carried out against those seen by family or community members to have brought shame or dishonor on a family. While women are generally the targets of these punishments, these attacks can be directed at individuals of any sex. Non-lethal violence directed at individuals on the basis of their sexual orientation or gender identity is less consistently documented largely because of underreporting and a protection gap in terms of existing mandates. Nonetheless, several mandate holders have highlighted individual cases and voiced concern at the prevalence of such violence. Instances of lesbians being attacked, raped, forcibly impregnated and otherwise punished are due to the fact that sexual orientation come from many factors. Many of these come from prejudices and myths, including lesbian women would change their sexual orientation if they are raped by a man. Treaty bodies have also expressed concern about rhetoric used to incite hatred and related violence. Such language can be used by political leaders to stir up homophobic sentiment and at risk to facing more violence and discrimination.

#### *Torture and Other Inhumane Treatments*

The Special Rapporteur on torture for the UN noted that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectation. Discrimination on the grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which contributes to the process of torture.” In 2010, the Special Rapporteur noted that, in detention facilities, there was usually a strict hierarchy, and that those at the bottom of the hierarchy, such as LGBT persons, suffered double or triple discrimination.

## Discrimination Practices Against LGBT

### *Employment*

Under international human rights law, states are obligated to protect individuals from any discrimination in access to and maintenance of employment. The Committee on Economic, Social, and Cultural Rights has confirmed that the International Covenant on Economic Social and Cultural Rights (ICESCR) “prohibits discrimination in access to and maintenance of employment on the grounds of sexual orientation.” According to the Committee, “any discrimination in access to the labour market or to means and entitlements for obtaining employment constitutes a violation of the Covenant.” However, only fifty-four states have laws prohibiting discrimination in employment based on sexual orientation. In the absence of such laws, employers may be able to fire, refuse to hire or promote people simply because of their sexual orientation or gender identity. Discrimination in workplace can lead to harassment and violence as surveys indicate verbal harassment of LGBT employees is commonplace. When employees hear jokes about sexual orientation or gender identity, they perceive them as signals of exclusions. Of closeted employees, 31% fear losing connections with coworkers and 23% fear they might not be offered development or advancement opportunities. Nearly one in ten LGBT employees left a job because the environment was unwelcoming. More than half (53%) of LGBT workers hide their sexual orientation in their workplace. Moreover, according to National Center for Transgender Equality, the US transgender population faces a rate of unemployment three times higher than the general population. Over a quarter of the transgender population said they were not hired, were fired, or were not promoted in 2015 due to their gender identity or expression. 80% of the transgender population who were employed in 2015 experienced harassment or mistreatment on the job, or took steps to avoid it. Despite this, many countries still prioritize religion or tradition over LGBTQ rights. For example, states such as Indiana in the United States passed Religious Freedom Restoration Act (RFRA) that would allow people to use it to bypass local nondiscrimination laws. For example, after the passage of RFRA, employers in Indianapolis, which protects LGBTQ people in its local nondiscrimination law, could try to say the

local civil rights law violates RFRA-protected right to discriminate LGBTQ people, and therefore justify firing an employee over their sexual identity.

### **Healthcare**

Article 12 of the ICESCR provides that States parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social, and Cultural Rights has indicated that the Covenant proscribes any discrimination in access to healthcare and the underlying determinants of health on the grounds of sexual orientation and gender identity. The criminalization of homosexuality may deter individuals from seeking health services for fear of revealing criminal conduct, and results in services, national health plans and policies not reflecting the specific needs of LGBT persons. In countries where no criminal sanctions exist, homophobic, sexist, and transphobic practices and attitudes on the part of healthcare institutions and personnel may nonetheless deter LGBT persons from seeking services. In many countries, transgender persons face particular difficulties in their access to healthcare. Gender reassignment therapy is often prohibitively expensive and state funding or insurance is rarely available. Healthcare professionals are often insensitive to the needs of transgender persons and lack necessary professional training.

### **Education Systems**

Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading them being refused admission or being expelled. LGBT youth often experience violence and harassment, including bullying, in schools from classmates and teachers. Isolation and stigma generate depression and other health problems and contribute to truancy, absenteeism, children being forced out of school, and attempted or actual suicide. A survey done in the United Kingdom found that almost 65 percent of LGBT youth had been bullied in schools because of their sexual orientation and more than a quarter had been physically abused.

### **Restriction on Expression, Association, and Assembly**

Under article 19 of International Covenant on Civil and Political Rights, “everyone shall have the right to freedom of expression” The Covenant also affirms that “everyone shall have the right to freedom of association with others..” and that “ the right to peaceful assembly shall be recognized.” Under the Covenant, State parties may only limit these rights only insofar as restrictions are provided for by law and necessary to protect rights of others. Various members within the United Nations have addressed restriction on rights of people whose advocacy address sexuality and gender issues. Where states require legal registration of non-governmental

organization, LGBT groups have had application rejected and legal registrations revoked. Police have raided offices of LGBT groups and confiscated computer hard drives and contact lists of clients and supporters, thereby exposing others to risk of harassment or violence. LGBT defenders and supporters of related rights have also been subjected to violence and harassment when convening meetings or cultural events, or participating in LGBT marches. In 2010, the European Court of Human Rights fined the Russian Federation for violating rights related to assembly, discrimination and remedy after the state banned LGBT parades in Moscow on the grounds of public safety. The Court stated that “mere existence of a risk is insufficient for banning the event”.

### *Denial of Recognition*

In some countries, states provides benefits for married and unmarried heterosexual couples but denies these benefits to unmarried homosexual couples. Examples include pension entitlements, the ability to leave property to a surviving partner, the opportunity to remain in public housing following a partner’s death, or securing residency for a foreign partner. Lack of recognition of the same-sex relationships and absence of legal prohibition on discrimination can also result in same-sex partners being discriminated by private actors such as healthcare providers or insurance companies. Discrimination in housing is an important aspect caused by denial of recognition. Members of LGBTQ community have been discriminated when they are told that they cannot put both partners’ names on a homeowner’s insurance policy. LGBTQ members can be subjected to discrimination in private and public accomodation whereas employers can evict a gay man in the suspicion of him having AIDs. A transgender woman can be asked by the landlord to stop dressing in women’s clothing in the common areas of the property.

### *Gender Recognition*

In many countries, transgender persons are unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they encounter many practical difficulties, including when applying for employment, housing, bank credit, or State benefits, or when travelling abroad. Regulations in countries sometimes even mandates a compulsory sex reassignment surgery as a condition of recognition. Some states also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individuals is married. Gender recognition also plays an important role for transgender persons in public and private accomodation in the context of usage of public bathrooms. In many parts of the world, governments have passed laws restricting the right of transgender persons through requiring people to go to bathrooms according to their birth certificate. Hence, transgender persons would

not be able to use the bathroom they desire and be forced to go to bathrooms according to their biological gender.

## Major Parties Involved and Their Views

### Saudi Arabia

Saudi Arabia has long been the opponent against LGBT rights. According to the Saud Criminal Code, homosexual activities are illegal and can be punished with death penalties. Saudi Arabia is known for publicly executing homosexuals under sodomy laws with flogging, imprisonment, and death penalty. On January 1, 2002, 'Ali bin Hittan bin Sa'id, Muhammad bin Suleyman bin Muhammad, and Muhammad bin Khalil bin 'Abdullah, all Saudi citizens were executed solely for their sexual orientation. The Saudi Arabian Ministry of Interior issued a statement announcing that these three were convicted of homosexual acts, and other additional charges of luring children and harming others.

### United States of America

After the ruling of *Lawrence v. Texas (2003)* and *Obergefell v. Hodges (2015)*, the United States of America has struck down its sodomy laws against homosexual sexual relationships and legalized LGBT marriage. The Supreme Court of the United States ruled the right for LGBT couples to marry under the Equal Protection and Due Process clause under the fourteenth amendment to the United States Constitution. However, it is still legal to discriminate against members of the LGBT Community in 30 states. Many LGBT citizens have found themselves denied of employment, evicted from housing, or denied of service in certain shops. These are the very laws protected under Civil Rights Act of 1964 and Fair Housing Act, which protects people from discrimination on the basis of race, color, national origin, religion, and sex. Notably, sexual orientation and gender identity is not listed under this list. In fact, many US states have tried to pass legislations that would actively discriminate against LGBT people. States have tried to nullify local civil rights protections, promote conversion therapies, and pass religious refusal laws against LGBT people.



## Timeline of Relevant Resolutions, Treaties and Events

Date	Description of event
April 1952	<p><b>Homosexuality as a mental illness</b></p> <p>The American Psychiatric Association's diagnostic manual lists homosexuality as a sociopathic personality disturbance.</p>
April 27th, 1953	<p><b>Homosexuals Banned From US Federal Government</b></p> <p>President Dwight D. Eisenhower signs an executive order that bans homosexuals from working for the federal government, saying they are a security risk.</p>
June 28th, 1969	<p><b>The Stonewall Inn Riot</b></p> <p>Police raided the Stonewall Inn in New York City. This sparked massive protests and demonstrations across America which later becomes known as the impetus for the gay civil rights movement in the United States.</p>
June, 1979	<p><b>Limited Recognition of Same-sex couples</b></p> <p>The Netherlands adopts an "Unregistered Cohabitation" scheme as a civil status in rent law, becoming the first country where same-sex couples could apply for limited rights.</p>
December 21st, 2000	<p><b>The Netherlands First Recognizes Same-Sex Marriage</b></p> <p>Queen Beatrix of the Netherlands signed into law the first same-sex marriage bill in the world. The law came into effect on 1 April 2001.</p>
July 20th, 2005	<p><b>Canada Legalized Same-Sex Marriage</b></p> <p>Canada became the first country outside Europe and the fourth country in the world to legalize same-sex marriage nationwide after the enactment of the Civil Marriage Act.</p>
June 17th, 2011	<p><b>First UN Resolution on LGBT Rights</b></p> <p>A/HRC/RES/17/19 was passed, becoming the United Nations' first resolution that affirms the rights of LGBT individuals.</p>
May 24th, 2017	<p><b>Taiwan Ruled Same-Sex Marriage Legal</b></p>

Taiwan's High Court ruled the ban on same-sex marriage violates personal freedom and equal protection. Taiwan's president has asked the Ministry of Justice to come up with a legal framework for complying with the decision.

### **Australia Legalized Marriage between Same-sex Couples**

December 7th, 2017 Australia's Parliament voted to legalize same-sex marriage on December 7th, 2017 after years of political jockeying and fierce public debate.

## **Relevant UN Treaties and Events**

- Human Rights Council resolution - Human rights, sexual orientation and gender identity, 17 June 2011 **(A/HRC/RES/17/19)**
- Human Rights Council resolution - Human rights, sexual orientation and gender identity, 26 September 2014 **(A/HRC/RES/27/32)**
- Protection against violence and discrimination based on sexual orientation and gender identity, 30 June 2016 **(A/HRC/RES/32/2)**

## **Evaluation of Previous Attempts to Resolve the Issue**

The international community has continuously taken more serious measures in combating homophobia and transphobia by eliminating discrimination in the modern society. Over the past decade, LGBT rights have rapidly advanced as the social concept of homosexuality has slowly been accepted by the public. Since 2001, more than 24 states have recognized same-sex marriage and more than 12 states have decriminalized same-sex relationships since 2007. Many governments have passed bills and legislation trying to establish anti-discrimination laws for the protection of LGBT persons.

However, for many countries, human rights situations have worsened for LGBTQ persons with more than 70 states criminalizing same-sex relationships between males and 45 states against same-sex relationships between females. One major aspect of this issue that has remained unchanged is the importance of traditional and cultural values. Countries that do not support LGBTQ rights are found to have a more conservative political ideology that are rooted with traditions and religions. LGBTQ discrimination lies way beyond direct and structural violence. The homophobic sentiments are usually rooted in their main religion, political ideology, or culture. The United Nations and the international community has failed to address this aspect of the issue, thus, has failed to appease conservative countries on softening their cultural violence against the LGBTQ community.

## Possible Solutions

With many factors causing discrimination within the status quo, ensuring equal rights for LGBTQ persons may be quite challenging. Essentially, countries should call for official changes that would promise equal protection for the LGBTQ community. To ensure LGBTQ rights, governments should aim at these two goals. First, providing equal protection from discrimination in employment, healthcare, and school systems. The government should actively pass anti-discrimination laws in the fields of employment, healthcare, and school systems. Private businesses cannot deny service to any customers solely based on their sexual orientation or gender identity. For healthcare, the government should create a set curriculum and training programs on the special needs of LGBT persons. If the health care curriculum includes training for LGBTQ persons' needs, doctors would be able to provide them with proper treatments that they need. In addition, schools implementing rules against bullying or any kinds of abuses of violence would mitigate the discrimination against LGBTQ persons in the education system. Schools may also implement more socially-aware content that would be able to educate individuals to learn how to accept the LGBTQ community. Second, making sure that countries do abide by international laws against killings or other discriminatory violence against LGBTQ persons. As international laws such as the ICCPR are legally binding, the United Nations needs to ensure that states are abiding the rules set in these protocols.

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