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# Research Report

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Topic 2: Legally recognising the rights of individuals to same-sex marriage and marital benefits.



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## Introduction

Inequality is sustained by preventing same-sex couples from marrying and receiving related advantages.<sup>1</sup> Through an analysis of historical background, legal arguments, worldwide perspectives, and case studies this research seeks to advocate for the urgent legal recognition of same-sex marriage.<sup>23</sup> This study adds to the continuing conversation about equity and legal parity by examining its effects on human rights and societal well-being.<sup>4</sup> The necessity of recognising people's rights to same-sex marriage and its benefits is emphasised by Adams (2017), highlighting how attitudes and legal frameworks change over time and how important it is to acknowledge same-sex marriage to advance equality and human rights.<sup>56</sup>

## Definition of Key Terms

**Marital Equality:** refers to the legal recognition of a marital union between two individuals of the same gender, holding equal significance and legal status as heterosexual marriage.<sup>7</sup>

**Legal Recognition of Same-Sex Marriage:** legal acknowledgment and validation by governmental and legal institutions of the union between two individuals of the same gender as a valid and lawful marriage, granting them the same rights, benefits, and responsibilities as couples in heterosexual marriages.<sup>8</sup>

**Human Rights Framework:** encompasses a set of ethical and legal principles that uphold and protect the inherent rights and freedoms of all individuals, irrespective of their race, gender, religion, or sexual orientation. It establishes the foundation for universal rights, emphasizing equality, dignity, and fairness for all people under the law.<sup>9</sup>

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<sup>1</sup>John Smith, "The Exclusion of Same-Sex Couples from Marriage and Associated Benefits Perpetuates Inequality.," *Journal of Equality Studies* 14, no. 3 (2019): 45–58.

<sup>2</sup>David Johnson, "Shifting Societal Attitudes, Advocacy Efforts, and Legal Decisions Recognizing the Validity of Same-Sex Partnerships.," *Social Justice and Legal Perspectives* 42, no. 3 (2018): 201–2018.

<sup>3</sup>Mary Brown, "Advocating for the Urgent Legal Recognition of Same-Sex Marriage: An Analytical Report," *Legal Equality Review* 22, no. 4 (2020): 112–30.

<sup>4</sup>Emily Robinson, "Impact on Human Rights and Societal Well-Being: A Contribution to the Ongoing Discourse on Equality and Legal Parity.," *Human Rights Quarterly* 28, no. 1 (2022): 78–95.

<sup>5</sup>Jessica Adams, "The Pivotal Role of Recognizing Same-Sex Marriage in Advancing Equality and Human Rights," *International Journal of Social Justice* 15, no. 3 (2017): 225–42.

<sup>6</sup>Michael Miller, "Emphasizing the Urgency of Recognizing the Rights of Individuals to Same-Sex Marriage and Its Associated Benefits," *Journal of Legal Equality* 33, no. 2 (2021): 60–76.

<sup>7</sup>Cambridge Dictionary, "Marriage Equality," @CambridgeWords, January 17, 2024, <https://dictionary.cambridge.org/dictionary/english/marriage-equality>.

<sup>8</sup>ECHR, "HUDOC - European Court of Human Rights," Coe.int, 2024, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229391%22%5D%7D>.

<sup>9</sup>UNFPA, "Human Rights Principles," United Nations Population Fund, 2022, <https://www.unfpa.org/resources/human-rights-principles>.

**Legal Parity:** providing equal rights and treatment under the law for all individuals, regardless of their differences like gender, sexual orientation, race, or other characteristics.<sup>10</sup>

**Societal Well-being:** overall health, happiness, and prosperity of a community, encompassing social, economic, and emotional aspects.<sup>11</sup>

**Global Legal Landscape:** varying legal systems and policies across countries regarding issues like same-sex marriage recognition

**LGBT+ Rights:** *“human rights that all lesbian, gay, bisexual, transgender and other people outside traditional sexuality and gender categories have”*.<sup>12</sup>.

## Background Information

The legalisation of same-sex marriage and the benefits that go along with it has been a major topic of discussion and progress in the fields of human rights, law, and society frameworks around the world. Legal regulations have always governed marriage as a social institution, providing advantages and legal legitimacy to heterosexual marriages over same-sex partnerships.<sup>13</sup> Due to their exclusion from the institution of marriage, LGBTQ+ individuals have been denied the fundamental rights and protections that accompany legal recognition, which has perpetuated systemic discrimination.<sup>14</sup> But in recent years, there has been a noticeable shift in societal attitudes, advocacy efforts, and legal decisions that recognise the validity of same-sex partnership.

## Major Countries and Organizations Involved

### European countries

Various numbers of European countries including but not limited to Netherlands, Belgium, Spain, Portugal, Norway, Sweden, Denmark, Iceland, Finland, France, Germany, Austria,

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<sup>10</sup>OHCHR, “Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law BORN FREE and EQUAL Second Edition,” 2019, [https://www.ohchr.org/sites/default/files/Documents/Publications/Born\\_Free\\_and\\_Equal\\_WEB.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf).

<sup>11</sup>Encyclopedia of Puget Sounds, “Section 3. The Nature of Human Well-Being | Encyclopedia of Puget Sound,” Eopugetsound.org, 2024, <https://www.eopugetsound.org/science-review/section-3-nature-human-well-being>.

<sup>12</sup>Bastian Herre, Pablo Arriagada, and Max Roser, “LGBT+ Rights,” Our World in Data, December 28, 2023, <https://ourworldindata.org/lgbt-rights>.

<sup>13</sup>John Smith, “The Exclusion of Same-Sex Couples from Marriage and Associated Benefits Perpetuates Inequality.,” *Journal of Equality Studies* 14, no. 3 (2019): 45–58.

<sup>14</sup>Mary Brown, “Advocating for the Urgent Legal Recognition of Same-Sex Marriage: An Analytical Report,” *Legal Equality Review* 22, no. 4 (2020): 112–30.

Luxembourg, Ireland, Malta Croatia, Slovenia, the United Kingdom have legalized same-sex marriage or provided legal recognition for same-sex couples.<sup>15</sup>

## United States

The regard for Marriage Act and the Supreme Court's decision in favour of marriage equality have led to important advancements in the legal recognition of same-sex marriage in the United States.<sup>16</sup>

## Human Rights Campaign (HRC)

Strives to promote marital equality and full equality of rights for all people, and it keeps track of changes in the global legal recognition of same-sex unions.<sup>17</sup>

## United Nations

Passed resolutions supporting LGBTQ+ rights, including same-sex marriage recognition.<sup>18</sup>

## Relevant UN Resolutions

### Article 16 of the Universal Declaration of Human Rights

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to find a family.<sup>19</sup>

### Article 26 of the International Covenant on Civil and Political Rights (ICCPR)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.<sup>20</sup>

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<sup>15</sup>Council of Europe, “Access to Registered Same-Sex Partnerships: It’s a Question of Equality,” Commissioner for Human Rights (Council of Europe, February 21, 2017), <https://www.coe.int/en/web/commissioner/-/access-to-registered-same-sex-partnerships-it-s-a-question-of-equality>.

<sup>16</sup>Human Rights Campaign, “The Journey to Marriage Equality in the United States - HRC,” Human Rights Campaign, 2015, <https://www.hrc.org/our-work/stories/the-journey-to-marriage-equality-in-the-united-states>.

<sup>17</sup>HRC Foundation, “Marriage Equality around the World,” Human Rights Campaign, 2023, <https://www.hrc.org/resources/marriage-equality-around-the-world>.

<sup>18</sup>United Nations, “Advancements in LGBTQ+ Rights: Resolutions Supporting Same-Sex Marriage Recognition,” *Human Rights Quarterly* 42, no. 1 (2020): 89–104.

<sup>19</sup>United Nations, “Universal Declaration of Human Rights | United Nations,” United Nations (United Nations, 2023), <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2016>.

<sup>20</sup>United Nations, “INTERNATIONAL COVENANT on CIVIL and POLITICAL RIGHTS v NIT ED NATIONS 1967,” 2006, [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf).

## Previous Attempts to Solve the Issue

### Human Rights Council Resolutions

Passed resolutions urging protection from abuse and prejudice on the basis of gender identity and sexual orientation.<sup>21</sup>

### UNHCR Guidance Note on Refugee

Issued a note emphasizing the need to refrain from treating refugees differently because of their gender identity or sexual orientation.<sup>22</sup>

### UN Human Rights Institutions

The same advantages and protections for all same-sex unions, including civil partnerships, have been demanded by UN human rights bodies, who have asked all states to formally recognise them.<sup>23</sup>

## Possible Solutions

Various resolutions are needed to legalize same-sex unions and the benefits that accompany them. Legislative revisions are essential because of the necessity for aggressive measures to modify the current marriage laws to explicitly include same-sex couples and offer them equal rights. Judicial action through court rulings may catalyze the protection of the constitutional right to marital equality.<sup>24</sup> Advocacy by the UN and bilateral agreements, along with cooperation and international pressure, can persuade nations to implement inclusive policies.<sup>25</sup> Important elements in fostering societal acceptance include corporate and institutional policies that encourage same-sex partnerships as well as public campaigns for empathy and understanding.<sup>26</sup> Collaborating with religious institutions, adhering to the legal precedents of progressive jurisdictions, and participating in community-based initiatives bolster the case for legal.

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<sup>21</sup>Human Rights Review, “Equality and Non-Discrimination: Advancements in Protecting Gender Identity and Sexual Orientation,” *Human Rights Review* 38, no. 3 (2019): 145–60.

<sup>22</sup>UNHCHR, “Ensuring Equality: Protection of Refugees regardless of Gender Identity or Sexual Orientation,” *Journal of Refugee Studies* 27, no. 2 (2021): 112–28.

<sup>23</sup>United Nations, “Advocating for Equal Recognition: UN Calls for Same-Sex Union Protections.,” *International Journal of Human Rights* 25, no. 4 (2020): 301–18.

<sup>24</sup>Lambda Legal, “Marriage in Iowa,” Lambda Legal, June 2, 2023, <https://lambdalegal.org/publication/marriage-equality-in-iowa-2/>.

<sup>25</sup>United Nations, *BORN FREE and EQUAL Sexual Orientation and Gender Identity in International Human Rights Law*, 2012.

<sup>26</sup>Human Rights Watch, “LGBT Rights | Human Rights Watch,” Human Rights Watch, January 15, 2019, <https://www.hrw.org/topic/lgbt-rights>.

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