

# LGBT Law: a comparison between the UK and the USA

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# Outline:

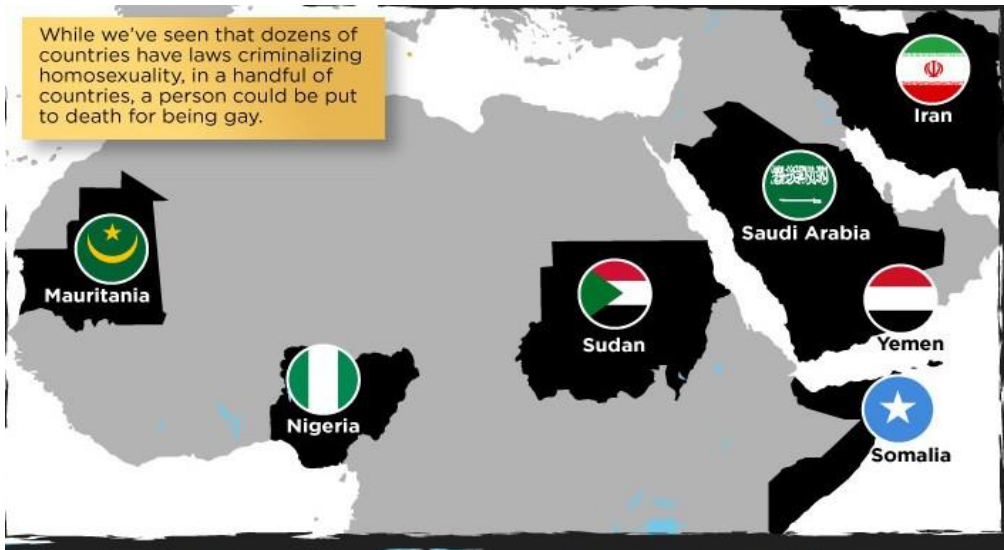
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- What does LGBT law stand for ?
- Development of LGBT law – a global overview
- Worldwide LGBT laws
- Development of LGBT in the UK
- Allan Horsfall
- Development of LGBT in the US
- „A milestone decision?“ – Obergefell v Hodges (2015)
- Obergefell v Hodges (2015): Overview
- Changes after Obergefell v Hodges
- Current situation in the US (2016)
- Similarities and distinctions between the USA and UK relating to LGBT law





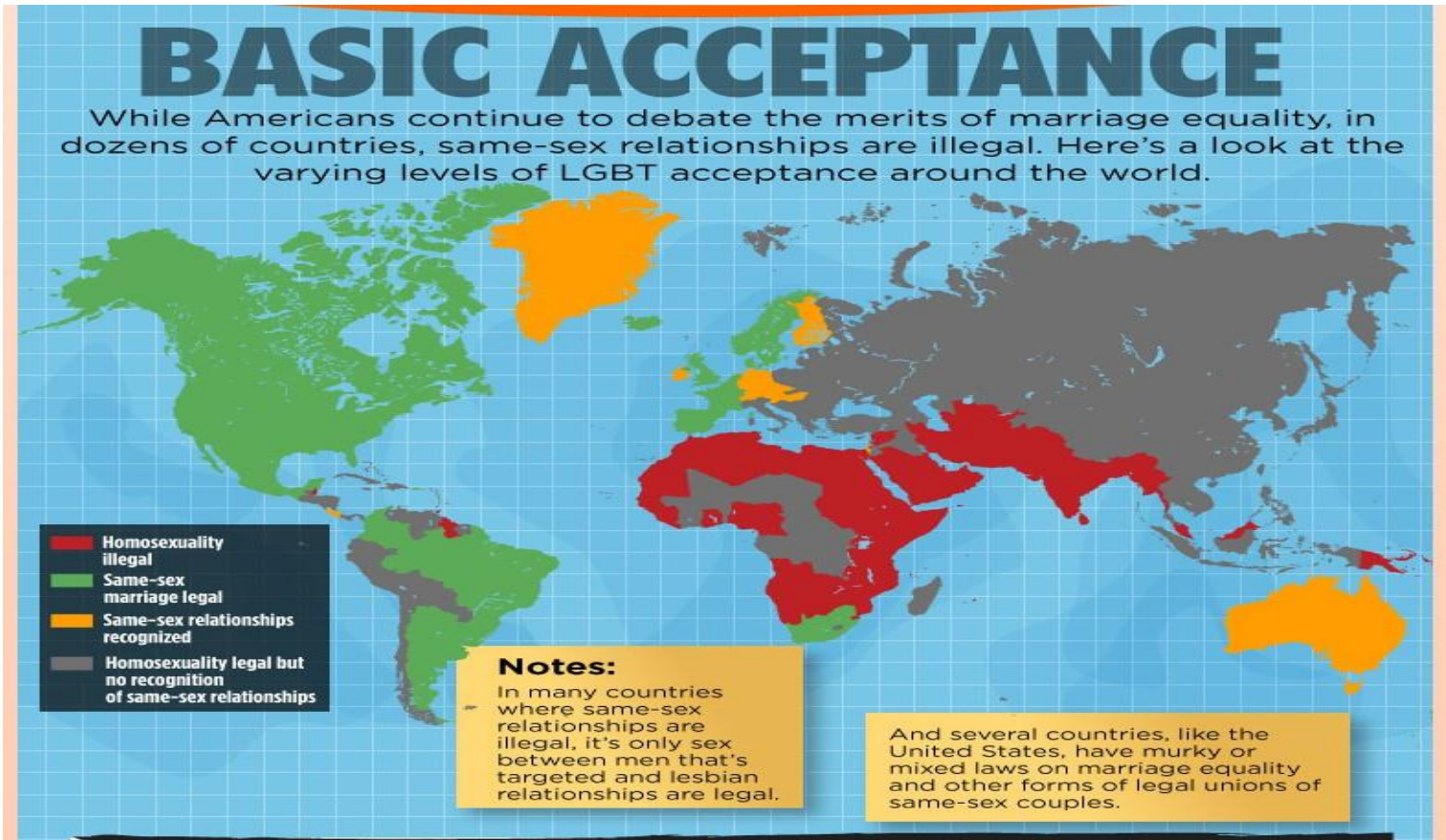
# Development of LGBT law – a global overview



- Still nearly 80 countries that have a total prohibition on same-sex relations (over half of them are members of the Commonwealth)
- Some countries even have death penalties or life imprisonment i.e. 25 years jail in Trinidad and Tobago
- Serious troubles in some countries: new anti-LGBT laws established to distract the public ('enemy within theory') from the economic failings and corruptions in their own country
- Trans people statistically the highest number of victims when it comes to anti-LGBT violence



# Worldwide laws:



○ Trend towards greater equality, i.e.:

○ Seychelles: repealed anti-gay laws

○ Vietnam: lifted ban on same-sex marriage 2015

○ Taiwan: elected first woman president (supporter of same-sex marriage)

○ Rising global acceptance of same-sex relations (inlc. In developing countries):

○ Uruguay: acceptance of homosexuality of 34% -Ecuador: 2%

○ Legal recognition for same-sex marriages: Uruguay: 57% - Guatemala: 12%

# Development of LGBT in the UK

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- Buggery Act 1533 (First recorded victims of the Buggery Act)
- Offences against the Person Act 1828
- Sexual Offences Act I 1956
- Sex Discrimination Act 1975
- Sex Discrimination Act 2002
- Sexual Offences Act II 2003
- Right of Civil partnership 2005
- Equality Act 2010
- Legalization of same-sex marriages 2014



## Buggery Act 1533:

- Act for punishment of the vice of Buggery
- Act of Parliament of England during reign of Henri VIII
- First civil sodomy law
- Dealt by the ecclesiastical courts
- Buggery as unnatural sexual act against will of God and man
- Replaced by Offences against the Person Act 1828

## First recorded victims of the Buggery Act:

Walter Hungerford

→ July 1540, sex offence and treason, hung

Nicholas Udall

→ 1541, headmaster of school, sex offence, jail sentence for 1 year

Mervyn Tuchet

→ Was not hung, grand order of priority, beheaded

John Pratt and John Smith

→ Last victims of buggery, nov. 1835, Newgate jail London

## Offences against the Person Act, 1828

- Also Lord Lansdown's Act
- Act of Parliament of UK
- Only applied to England and Wales
- Replaced clause XXVI of Magna Carta
- Penalty to rape was death until 1841
- Act made it easier for victims to prosecute the rapists
- Replaced by Offences against the Person Act 1861

## Sexual Offences Act, 1956

- Act of Parliament of UK
- Consolidated English criminal law relating to sexual offences
- Term of art
- Gives different penalties for sexual offences
- Also in reference to LGBT
- especially about children
- Mostly replaced by 2nd Sexual offences Act 2003



## Sex Discrimination Act 1975

- Act of Parliament of UK
- Protected men and women
- Concerned protection in employment, training, education, harassment and provision of goods and services
- Introduced other amendments and rulings of the European Court of Justice
- Fully repealed by Equality Act 2010

### Sex Discrimination Act 2002:

- Act of Parliament of UK
- Purpose to exempt selection of candidates in parliamentary elections
- Allows political parties to select candidates based on their gender to increase representation of women in British politics
- Originally scheduled to run until end of 2015
- Extended until 2030 under the Equality Act 2010

### Sexual Offences Act II 2003:

- Replaced older sexual offences laws with more specific and explicit wording
- Created several new offences

## Gender Recognition Act 2004:

- Act of Parliament of UK
- Allows transgender people to change their legal gender
- Came into effect on 4th April 2005
- People acquire a new birth certificate
- affording them full recognition of their acquired sex in law for all purposes, including marriage
- Main exceptions: right of conscience for Church of England and descent of peerages remain unchanged

## Right of Civil Partnership

- Allows same-sex couples to obtain essentially the same rights and responsibilities as civil marriage
- Same property rights
- Same exemption on inheritance tax, social security and pension benefits
- Same ability to parental responsibility for a partner's children

## Equality Act 2010

- Act of Parliament of UK
- Codify numerous array of Acts and regulations
- Formed basis of anti-discrimination law
- Protected discrimination in employment
- Requires equal treatment in access to employment
- Equality Act did not change the law
- Act does not apply to Northern Ireland

# Legalisation of same-sex marriages 2014

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- Now same sex marriages are legal in UK
- England and Wales: passed by Parliament of UK in July 2013, came into force on 13th of March 2014, first marriage on 29 th March 2014
- Scotland: passed by Scottish Parliament in February 2014, took effect 16th December 2014, first marriage was that day too
- Northern Ireland: Same-sex marriages are not allowed, married same-sex couples are treated as civil partnerships



# Allan Horsfall

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- Born 1927
- British gay rights campaigner and founder of the North West Committee for homosexual Law Reform
- Described as one of the truly great pioneers of LGBT equality in Britain
- Ran CHE Campaigne 1971-1974 and became president for life
- Died 2012





# Development of LGBT in the US

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- 1924: Society for Human Rights (Chicago) was established
- 1962: Illinois becomes first state in the US to decriminalize homosexual acts between consenting adults in private
- 1969: Stonewall riots
- 1973-1978: Harvey Milk
- 1982: Wisconsin: outlaws discrimination on the basis of sexual orientation
- 1993: 'Don't ask, don't tell' policy instituted for US military
- 2000: Vermont: First state which legally recognizes civil unions
- 2003: Lawrence v Texas
- 2004 (7 May): Massachusetts: Same-sex marriage becomes legal
- 2007 (Nov): House of Representatives approves bill for ensuring equal right in workplace
- 2013: U.S. v Windsor
- 2015 (June 26): Obergefell v Hodges



# Obergefell v Hodges (2015): overview

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○ Marriage Equality

○ Important background cases:

I. Windsor v United States (2013) (DOMA)

II. Bowers v Hardwick (1986)

III. Lawrence v Texas (2003)

IV. Roe v Wade (1973)

V. Loving v Virginia

Meaning and scope of the 14th Amendment:

Main issues relating to this amendment:

Do same sex couples have the right to marry in every state ?

Must the States grant licenses to same sex couples ?

Must the States recognize and allow marriages that have been licensed and performed rightfully and legal out-of-state ?

# „A milestone decision ?“ : Obergefell v Hodges, June 2015

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# Changes after Obergefell v Hodges (2015)

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End of the debate whether same-sex marriage is legal or constitutionally required

- Endpoint of the following 20-year trajectory in which the Supreme Court gradually expanded the scope of rights for America's LGBTQ+ community

Changes in adoption rights

# Current situation in the US (2016)

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- North Carolina's Anti-LGBT law: "bathroom bills":
- State enacted legislation requiring people to use public bathrooms that correspond with their gender showing on their birth certificate  
→ CONFLICT for transgender men and women
- U.S. Department of Justice filed a lawsuit because state law violates federal laws





# Similarities and distinctions between the US and UK relating to LGBT law

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USA

## Public Opinion:

More than 50% of the citizens think gay couples should have the same rights as hetero couples

## Discrimination Protection:

- Federal system
- 32 of 50 states have no comprehensive anti-discrimination law
- An Equality Act is in the works (since 2016)

UK

## Public Opinion

More than 50% of the citizens think gay couples should have the same rights as hetero couples

## Discrimination Protection:

- Protection Act 2010

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## USA

### Recognition

- Supreme Court decision on June 26, 2015
- Same-sex marriage is legal in all 50 states

### Adoption and family planning:

- Same-sex couples are allowed to adopt
- Various states allowed it prior to the Supreme Court decision

## UK

### Recognition:

- Civil Partnership
- - Same-sex marriage

### Adoption and family planning:

- Adoption and Children Act 2002 (England and Wales)
- Similar legislation in Scotland in 2009
- Human Fertilisation and Embryology Act 2008

# Similarities and distinctions between the US and UK relating to LGBT law

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## USA

### Military Service:

- „Don't ask, don't tell“
- „Don't ask, don't tell“ Repeal Act of 2010

## UK

### Military Service:

- LGBT people have been allowed to serve openly since 2010
- Discrimination on a sexual basis has been forbidden since 2010

### Role of the EU

- The EU has been a positive force for LGBT rights