

Sexual Citizenship: a case study in Thailand

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1. Introduction

Thailand has been well known as a paradise for homosexuals and transsexuals for a long time, since there are a large number of gay bars, a thriving homosexual community and increasing numbers of beautiful Thai transsexuals here. However, there is no specific law to support the exercise of their rights, despite the increasing population of individuals of the third sex. They cannot completely enjoy their rights; for example, same sex marriage is not legally enforced and transsexuals cannot gain legal recognition in their new gender.

This article is inspired by the above situation under the heading; “Sexual Citizenship: a case study in Thailand”. The aim of the article is to discuss the laws regarding homosexuals and transsexuals in Thailand and various other countries. Furthermore, the disadvantages of Thai laws will be clarified while the laws in other countries will be examined. Consequently, some suggestions will be provided for developing policies, laws and measures concerning the promotion and protection of LGBTI rights¹.

2. Thailand

2.1 Sexual Citizenship

Currently, the issue of sexual citizenship has attracted considerable interest among academics and activists². It is an issue which spans several fields, for example, politics, economics, sociology, culture, ethics and law. To understand the concept of sexual citizenship, we have to unpack its terms and conditions by basically beginning with the notion of citizenship. Generally, citizens are bound together equally in society and actively participate in common affairs, especially politics, since citizenship rights make it possible for individuals to protect themselves against social threats, to participate in public decision making, to make claims about national policy and culture and so on³.

A sexual citizen is anyone who sees sexuality as central to their status as a citizen and chooses to mobilise around their sexual identity⁴. However, according to Richardson and Weeks, all citizenships are considered to be sexual citizenships since citizenship⁵ is inseparable from identity and sexuality is central to identity⁶. Thus, according to this view, everyone is a sexual citizen, even though; we are not all a similar type of sexual citizen⁷. It is because the notion of citizenship is endlessly deconstructed and reconstructed so there is an inequality and difference among sexual citizens. In addition, sexuality is cross cut by class, race and gender in complex ways⁸, which are also given different weighting with regards to citizenship status⁹.

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¹ LGBTI stands for Lesbians, Gay, Bisexual, Transgender and Intersex

² Bell, D. and Binnie, J. *The sexual citizen: queer politics and beyond* (Cambridge: Polity Press), 2000 p. 1.

³ Seidman, S. “Are we all in the closet?” Notes towards a sociological and culture turn in queer theory’ *European Journal of Cultural Studies*, 1 (1998) p. 189.

⁴ Bell, D. and Binnie, J. *Supra* note 1, p. 33.

⁵ Note that there are fundamental differences in Richardson and Weeks’ formulations. It is because Richardson focus more on the establishment of the ground on sexual citizenship, while, Weeks focus on self-conscious of sexual citizenship.

⁶ Evans, D. *Sexual Citizenship: the material construction of sexualities* (London: Routledge) 1993.

⁷ Bell, D. and Binnie, J. *Supra* note 1, p. 142.

⁸ Field, N. *“Over the Rainbow” money, class and homophobia* (London: Pluto Press) 1995.

⁹ Bell, D. and Binnie, J. *Supra* note 1, p. 33.

Apparently, citizenship is closely associated with a heterosexual concept as can be seen by the hetero-normative modality of sexual citizenship which appears in mainstream political and legal formulations¹⁰. Hence, (homo) sexual citizenship, such as lesbians, gay men, bisexuals, transgender and intersex people (LGBTI), grouped as one form of sexuality¹¹, seem to be a marginalised group which have been treated unequally¹². Many LGBTI find themselves excluded from the social world, 'straight' society, in particular. As outsiders, they then create their own separate spaces with their own separate rituals and customs¹³. However, in reality, it is impossible for them to remain non-citizens and maintain systems of exclusion and discrimination¹⁴.

As a consequence, this group of sexual dissidents have not simply been passive victims, but have played an active role in struggling for their sexual citizenship to be accepted, recognised, integrated and equalled in society¹⁵. The homosexual sphere has been forced to compromise in order to fit into the heterosexual sphere, since the world is dominated by heterosexual culture¹⁶. This can clearly be seen by the dramatic transformation of the LGBTI movement over the past three decades¹⁷. Initially, homosexuals were greatly stigmatised, forced to conceal their sexual orientation or face problems, both legal and in everyday life. Such was the fear and stigma that some were reluctant to push the movement for equality for fear that it would only increase the permanence of the stigmatisation¹⁸. However, through long processes of political and cultural change, the LGBTI community has forged a public face and come forward to claim their rights¹⁹. As a result, some desires have gradually gained legitimacy²⁰ and generally speaking, there is more acceptance in society.

It is worth noting here that, in order to protect public security, it is possible that the state will intervene into private issues, such as sexuality, and make them matters of public interest if that issue is deemed to affect the society as a whole²¹. The AIDS crisis, for instance, whilst creating new political challenges for the LGBTI community, and the resultant strategies for coping with the crisis, led to a sexual revolution. This is because it not only brought about an increased public consciousness of queer culture but also mobilised new forms of homophobia²². Furthermore, the crisis led to a new form of sexual citizenship, which was labelled AIDS citizenship²³. In this case, state interventions, e.g. health promotion and medical campaign, were used in an attempt to provide knowledge of protection to people, as well as to eliminate emerging phobias²⁴.

¹⁰ *Ibid.*

¹¹ De Cecco, J., (ed.) *Bisexual and Homosexual Identities: Critical Clinical Issues*, (New York: Haworth Press), 1984. P. 3.

¹² Bell, D. and Binnie, J. *Supra* note 1, p. 69.

¹³ Bech, H. *When Men Meet: homosexuality and modernity* (Cambridge: Polity Press) 1997 p. 154.

¹⁴ Bell, D. and Binnie, J. *Supra* note 1, p. 146.

¹⁵ Warner, M., *The trouble with normal: sex, politics, and the ethics of queer life*, (New York: Free Press), 1999 p. 46.

¹⁶ Binnie, J., *Globalization of Sexuality*, (London: SAGE), 2004. . 30.

¹⁷ For example, the controversial appearance, negotiations and disputes around queer theory and queer politics, homophobic, lesbian and gay community with respect to other sexual dissidents such as bisexual and transgender people, sex war and so on.

¹⁸ Warner, M. *Supra* note 16, p. 49.

¹⁹ Binnie, J. *Supra* note 17, p. 34.

²⁰ Note that each country has different regulation towards LGTB.

²¹ Bell, D. 'Pleasure and Danger: the paradoxical spaces of sexual citizenship' *Political Geography*, 14, 1995 p. 139-153

²² Bell, D. and Binnie, J. *Supra* note 1, p. 23

²³ For more information see Brown, M. *Replacing Citizenship: AIDS activism and radical democracy* (New York: Guilford) 1997.

²⁴ *Ibid.*

In addition, it should be noted that movements always create hierarchies whether they intend to or not²⁵; for example, the AIDS crisis led to sexual responsibility, which in turn created the notion of ‘good gay citizen’²⁶. Stychin claims that lesbians and gay men are granted the right to be tolerated as long as they stay private and invisible within the boundaries. Hence, it means that lesbians and gay men can be citizens only if they are ‘good’ citizens, whereas ‘bad queers’ are excluded from the discourse of citizenship²⁷. Although the division between ‘a good gay’ and ‘bad queer’ are particular ways of marking sexual citizenship status, questions arise as to who can or cannot be granted the status of sexual citizen and what is the standard necessary to be a citizen in a state that denies citizenship on the basis of sexual preference²⁸. Thus, at present, the categorisation between ‘good gay’ and ‘bad queer’ is no longer the main point of discussion. The present movement calls for the normalisation of LGBTI²⁹, since they want to be seen as normal with some achievements in civil rights and the increasing visibility in the culture³⁰. Indeed, the aim is for free exercise of their sexual citizenship with the respect of their personhood; for instance, same sex marriages and homosexual soldiers.³¹

Generally speaking, LGBTI movements continue to occur across the world during this period of globalisation³² and are increasingly common³³. Nonetheless, the degree of development and impact is uneven and different in each state³⁴. Moreover there are also differences within national boundaries³⁵. Nevertheless, in my opinion, some researchers and theorists fail to consider certain circumstances of homosexual people, since they prefer to focus merely on the West and presume global centrality, whilst ignoring the fact that diverse sexualities exist in other areas of the globe. In other words, the relationship between homosexuality and the nation often gets overlooked, despite the fact that knowledge of the community is needed in order to do research in the field of sexuality³⁶. Therefore this article would like to focus on the study of the LGBTI situation under social and cultural transformations that have occurred in Thailand. Events within Thailand are both interesting and multi-dimensional, and examination of this can provide an opportunity to both broaden the vision and deepen the knowledge in this field.

In order to render our discussion, I would like to give definitions, provided by Peter A. Jackson from his book ‘Dear Uncle Go: Male Homosexuality in Thailand’³⁷, on some specific words regarding Thai’s homosexuals.

Kathoey: a biological male who show varying degree of transgendered behaviour, ranging from effeminacy to complete sex reassignment.

Tom or tomboys: a masculine woman who is sexually involved with a feminine partner.

Dee: (originated from the word ‘lady’) a female partner of a tom.

²⁵ Warner, M. *Supra* note 16, p. 66.

²⁶ Bell, D. and Binnie, J. *Supra* note 1, p. 36.

²⁷ Stychin, C., F. *A Nation by Rights: National Cultures, Sexual Identity Politics, and the Discourse of Rights*, (Philadelphia: Temple University Press) 1998. P. 200.

²⁸ *Ibid.* p. 38.

²⁹ Warner, M. *Supra* note 16, p. 25.

³⁰ *Ibid.* p. 53.

³¹ *Ibid.* p. 46.

³² Bell, D. and Binnie, J. *Supra* note 1, p. 110.

³³ Warner, M. *Supra* note 16, p. 21.

³⁴ Binnie, J. *Supra* note 17, p. 35.

³⁵ *Ibid.* p. 5.

³⁶ *Ibid.* p. 12.

³⁷ Jackson, P. A., *Dear Uncle Go: male homosexuality in Thailand*, (Bangkok: Bua Luang Books), 1995.p.21-25.

Transsexual: a person with the mental urge to belong to the opposite sex that may lead to surgery to modify their sex organs to the opposite sex.

2.2 Background of Thai society and homosexual situation in Thailand

Thailand, a small country situated in Southeast Asia, is divided into four main geographical regions. Each region has its own history, language, traditional literature, religions, local dialect and cultural traditions. However Thailand is unique in terms of ethnic composition because the majority of Thailand's population can be classed as ethnically Thai and identified as Buddhists, further all are governed under the constitutional monarchy system³⁸. From these distinct cultural features, Thailand has undoubtedly become one of the most popular destinations for international tourists.³⁹

However the image of Thailand has changed. Since the late 20th century, Thailand has come to be represented internationally in terms of highly sexualised images rather than depictions of a beautiful culture⁴⁰. In the eyes of many countries, Thailand is an icon of sexuality, due to the fact that Thailand's sex industry is booming for females, males, transsexuals, lesbians and gay men, in particular⁴¹. Jackson noted that Thailand has been advertised as a 'gay paradise' in a number of international gay guides⁴², and Bangkok as the gay capital of Southeast Asia with large numbers of entertainment venues targeting both local and international gay tourists.

Indeed, there are three supporting reasons why Thailand is regarded as a paradise for LGBTI people all over the world. First of all, there are **no legal sanctions against same sex relationships** in Thailand, even sexual relationships. In other countries homoerotic relationships between males are illegal under sodomy laws⁴³. However, lack of legal intervention in their relationships does not mean that Thailand has never attempted to control them⁴⁴. Historically, both male and female homosexuality has been illegal and punishable by fines and/or imprisonment during 1903 to 1956 according to the Thai penal code. However this anti-homosexual clause was never enforced and later was dropped when Thai criminal law was revised in 1956, since it was seen to be irrelevant in the Thai context.⁴⁵ Until now, homosexuality is not mentioned in the criminal law of Thailand⁴⁶. Consequently, the right to be homosexual has never been prohibited or restricted in Thailand⁴⁷.

Secondly, Thailand **does not have a homophobic culture**; therefore, anti-homosexual violence has rarely occurred in Thai society⁴⁸ as it is not a characteristic of Thai people⁴⁹. However the absence of homophobic violence does not mean that homosexuality is regarded as being cultural appropriate or that there has been absolutely no violence against homosexual people in Thailand⁵⁰. In fact, it is possible that homosexual men and women are

³⁸ Jackson, P. A. and Cook, N. M., *Genders and Sexualities in modern Thailand*, (Chiang Mai, Thailand: Silkworms Books), 1999. p.8

³⁹ *Ibid.* p.7.

⁴⁰ *Ibid.* p. 2.

⁴¹ *Ibid.* p. 1.

⁴² *Ibid.* p. 11.

⁴³ *Ibid.* p. 6.

⁴⁴ *Ibid.* p. 10.

⁴⁵ *Ibid.* p. 37.

⁴⁶ *Ibid.* p. 11.

⁴⁷ *Ibid.* p. 11.

⁴⁸ Brummelhuis, H., T. 'Transformation of Transgender: The Case of the Thai Kathoey' in Jackson, P. A. and Sullivan, G. (eds.), *Lady boys, tom boys. rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999. p. 127.

⁴⁹ Jackson, P. A. Supra note 38, p. 161.

⁵⁰ *Ibid.* p. 186.

victims of sexual harassment or violence by the same sex, but this kind of ‘shameful crime’ has not always been reported because the victims feel too ashamed to report it to the police⁵¹. In addition, even if they did report the crimes, the cases might not have been taken seriously by the concerned authorities⁵².

Lastly, **Buddhism lacks a doctrine that specifically prohibits homosexuality** but rather only views it as morally inappropriate⁵³. Indeed, Buddhism believes that homosexuals should not be blamed and should be forgiven. The reason behind this is, in Buddhist philosophy, reborn (rebirth) as a homosexual, kathoey, transvestite and transsexual is the karmic result of having committed heterosexual adultery in a previous life⁵⁴. As the law of karma is a doctrine of cause and effect, consequently, homosexuality has been viewed as a form of suffering upon immoral action in the previous existence, rather than sinful⁵⁵. However, the idea of anti-homosexual Buddhism was raised in the mid to late 1980s when HIV/AIDS was widely defined as a ‘gay disease’⁵⁶, yet the idea dropped away in the 1990s with the redefinition of HIV/AIDS in Thai public discourse as a heterosexual disease. As a consequence, anti-homosexuality as a Buddhist issue has been replaced by ethical issues surrounding heterosexual sexuality⁵⁷.

As a result of the aforementioned reasons, Thailand has become regarded as an unbiased country in its acceptance of all forms of sex⁵⁸. The image of a gay paradise is also affirmed, nonetheless, the reality is more complicated. Thailand is not a paradise for many Thai homosexual and transsexual people since there remains an apparent contradiction⁵⁹. Anti-homosexual views inexplicitly remain in existence in Thai society. Thus the next section will examine the factors that affect Thai attitudes towards LGBT people.

2.3 Thai attitudes towards LGBTI people.

Generally, attitudes towards LGBTI persons range from complete acceptance to explicit disapproval. It depends on a variety of factors such as age, sex, ethnicity, education and some individual experience. In fact, ‘anti-homosexual’ attitudes exist in Thailand⁶⁰. For example, some academia has expressed concern about the spread of homosexuality in Thailand since the media has portrayed homosexuality in a positive light⁶¹. As a result, gayness and lesbianism has become fashionable among Thai youth, who admire and emulate gay lifestyles in an attempt to be modern⁶². This can be seen from the increasing number of young homosexuals, either male or female, gay mannerisms e.g. gay-inspired behaviour, dress, hairstyle and humour in the impressionable youth. Therefore it is believed that the exposure of gay people in the media such as gay stars and gay characters in television series, movies, magazines and newspaper should be controlled because it is claimed to be a bad model for young generations⁶³. Beyond this, in the past, some have thought of homosexuality as a mental disease and a social abnormality⁶⁴. However these conservative views have not

⁵¹ *Ibid.* p. 214.

⁵² *Ibid.* p. 216.

⁵³ *Ibid.* p. 7.

⁵⁴ *Ibid.* p. 220.

⁵⁵ *Ibid.* p. 82.

⁵⁶ *Ibid.* p. 58.

⁵⁷ *Ibid.* p. 58.

⁵⁸ *Ibid.* p. 13.

⁵⁹ *Ibid.*

⁶⁰ Rattachumtho, R. ‘Foreword’ in Jackson, P. A. and Sullivan, G., *Lady boys, tom boys, rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999 p. xiii.

⁶¹ Jackson, P. A. *Supra* note 39, p. 258.

⁶² *Ibid.* p. 259.

⁶³ *Ibid.* p. 43.

⁶⁴ *Ibid.* p. 44.

led to any legal change or the development of any anti-homosexual movement in Thailand⁶⁵. Indeed, there has been no establishment of centralised or special institutions to deal with anti-homosexual activities⁶⁶.

Apart from the negative image, Thailand's culture of face and shame, pressure to get married and the loose structure of the society have also had an impact on the attitudes towards, and the expression of, male and female homosexuality⁶⁷. To begin with the culture of face and shame, it is worth noting here that Thai culture is a culture that places great importance on preserving face, constructing and maintaining positive images, so almost everyone attempts to portray a positive image; e.g. how they appear to others⁶⁸. It is because it is a society based on collective values, thus what others think, becomes a significant social force for ensuring conformity⁶⁹. Therefore, social norms of 'appropriateness' are considered as the proper way to conduct oneself⁷⁰. These expectations cover areas such as behaviour, dress, speech and appearance. As a result, being homosexual or kathoey causes an individual to lose face, since it is not considered as appropriate behaviour in Thailand⁷¹.

Loss of face is a kind of personal tragedy in Thailand. It is much more than an embarrassment because it means one has been judged inappropriate whether in action, appearance or word⁷². So there is a kind of social pressure to limit themselves to the heterosexual sphere⁷³, on the other side, Thai homosexual men and women and transsexuals are likely to be forced to change or keep their non-normative relationships in private⁷⁴ in order to avoid loss of face and ensure conformity to heterosexual norms⁷⁵. However this kind of 'live a lie' circumstance is very complicated to Westerners⁷⁶. These cultural differences between Thailand and the West are likely to have an influence on attitudes to homoeroticism and homosexual men⁷⁷. While Thailand is a culture that places emphasis on 'face' and 'image' as well as the separate private and public realms of one's life, Western societies are a 'guilt culture' that are based on ourselves and thus other's views are not seen as being as important⁷⁸.

On one side, Thai people have been taught to be peaceful, kind and generous. It is also important for Thai people to keep up their image with the appearance of politeness, calmness and respectfulness⁷⁹. Consequently, aggressive or direct opposition against the LGBTI community is unlikely⁸⁰. On the other side, gossip and innuendo can be brutalising in Thai society, where social appearance and face are highly valued⁸¹. In reality, kathoeyes have faced considerably greater criticism and social opposition than gays and lesbians because of

⁶⁵ *Ibid.* p. 259.

⁶⁶ Jackson, P. A. And Sullivan, G. 'A Panoply of Roles: Sexual and Gender Diversity in Contemporary Thailand' in Jackson, P. A. And Sullivan, G., *Supra* note 51, p. 14.

⁶⁷ Jackson, P. A. *Supra* note 39, p. 38.

⁶⁸ *Ibid.* p. 41.

⁶⁹ *Ibid.* p. 43.

⁷⁰ *Ibid.* p. 41.

⁷¹ *Ibid.* p. 43.

⁷² *Ibid.* p. 42.

⁷³ *Ibid.* p. 180.

⁷⁴ Sinnott, M. 'Masculinity and Tom Identity in Thailand' in Jackson, P. A. and Sullivan, G., *Supra* note 51, p. 02.

⁷⁵ Jackson, P. A. *Supra* note 39, p. 43.

⁷⁶ *Ibid.* p. 92.

⁷⁷ *Ibid.* p. 185.

⁷⁸ *Ibid.* p. 184.

⁷⁹ Jackson, P., A. *Supra* note 39, p. 42.

⁸⁰ *Ibid.* p. 70.

⁸¹ Sinnott, M. *Supra* note 104, p. 102.

their visible non-normative gender role⁸², whereas gay men do not obviously express their sexuality, thus, they are unlikely to be criticised. Broadly speaking, there are two groups of homosexuality, which are those who fully accept their homosexuality⁸³ and have already prepared to live under criticism⁸⁴; and those who attempt to escape sanction by maintaining a public face of conforming to normative patterns of men and women⁸⁵. This is because to be exposed for non-normative sexual behaviour not only damages the person's public image⁸⁶ but is also a source of considerable shame⁸⁷, since the force of shame that still attaches to this label in Thai discourses⁸⁸.

Pressure to get married is another factor that influences the expression of homosexuality and transgenderism. It is because, basically, family is a very important institution in Thai society⁸⁹. The majority of Thai men and women still live with their parents⁹⁰. It is difficult for Thai homosexuals to give up association with their families since family is still an important part of their lives, furthermore, the restrictions and demands of a home life dominated by heterosexual expectations⁹¹. As a result, most of them have to hide their sexual interest from their families in order to save face; both their own and their family's⁹². Since proper sex roles and parent and community expectations⁹³ still have a big impact on homosexual men and women's lives⁹⁴, some choose to get married in order to be seen as normal and also to ensure some degree of personal economic security⁹⁵. Consequently, the case of married men/women turning out to be gay/lesbians has been increasing in Thailand⁹⁶.

Nonetheless, it is not necessary that homosexual men and women or kathoey have to always hide their own real behaviour. It is possible that they can be accepted since Thai society has a unique character, which is a loosely structured social system⁹⁷. This includes the Thai attitudes of *kreng jai* (consideration), gratitude and moral indebtedness⁹⁸. These factors come between people of different status, e.g. ages, education, wealth. It influences the attitudes of Thai society towards homosexuality with a degree of social acceptance. For example, Dr. Seri Wongmonta, a former academic gay man who publicly acknowledged his sexual interest, is largely admired for his intelligence and his professional success in writing and staging plays with gay themes in Thailand⁹⁹. Therefore this is sufficient to grant him an honoured place in Thai society. Given the above reasons, it can be concluded that Thailand is not really a paradise for Thai homosexual and transsexual people. It is wrong to assume that it is easier to be gay in Thailand simply because there are less severe sanctions than in other societies and inexplicit disapproval in the society¹⁰⁰. The way that people show gestures of

⁸² Jackson, P., A. *Supra* note 39, p. 123.

⁸³ *Ibid.* p. 8.

⁸⁴ *Ibid.* p. 134.

⁸⁵ Jackson, P. A. And Sullivan, G. *Supra* note 94, p. 4.

⁸⁶ Uncle go p. 70.

⁸⁷ Jackson, P. A. And Sullivan, G. *Supra* note 94, p. 11.

⁸⁸ Jackson, P., A. and Cook, N., M. *Supra* note 40, p. 240.

⁸⁹ Jackson, P., A. *Supra* note 39, p. 114.

⁹⁰ *Ibid.* p. 112.

⁹¹ *Ibid.* p. 113.

⁹² *Ibid.* p. 113.

⁹³ *Ibid.* p. 7.

⁹⁴ *Ibid.* p. 62.

⁹⁵ *Ibid.* p. 62.

⁹⁶ *Ibid.* p. 62.

⁹⁷ Jackson, P., A. and Cook, N., M. *Supra* note 40, p. 6.

⁹⁸ Jackson, P., A. *Supra* note 39, p. 123.

⁹⁹ *Ibid.* p. 59.

¹⁰⁰ *Ibid.* p. 13.

respect does not imply that it is considered acceptable and normative behaviour but it may be solely a preservation of social order through the dualism value of face, consideration and presentation of appropriate respect.¹⁰¹

2.4 Current Situation in Thailand

The lives of Thai homosexuals, transsexuals and kathoeyes have much improved over the past decade. The number of gay men continues to grow rapidly, whereas there are no signs of fewer kathoeyes as well as lesbians. They have become increasingly visible in Thailand due to the economic development, urbanisation and the dramatic growth of Bangkok.¹⁰² Furthermore, the development in plastic surgery, more international communication, magazines and social media contributes to the emergence of 'modern' homosexuals, transsexuals and kathoey who openly express pride and confidence in their sexuality rather than hiding it.

As a result, Thai gay subculture has also been growing, for example, a number of gay venues,¹⁰³ gay bars, restaurants, discos, fitness centre and saunas are utilised as informal meeting places.¹⁰⁴ Indeed, there is a huge development in the commercial gay scene across Bangkok, Pattaya,¹⁰⁵ Chiang Mai and Phuket¹⁰⁶ to the point where Thailand has become the most popular gay centre in Asia¹⁰⁷ and one of the world's major gay tourist destinations.¹⁰⁸ Apart from the increasing number of commercial gay venues, the expansion of Thai gay publishing and media has also been an important factor in the development of the gay identity because they have increasingly examined gayness in a positive light rather than only placing emphasis on the negative stereotype of the gay and kathoey, for example, the international beauty pageants, which Thai kathoeyes have often won¹⁰⁹. Further, most of the gay magazines effectively promote the commercial aspects of the male-male sex trade in Thailand¹¹⁰. Thus, the expansion of tourism, the increased availability of various forms of commercial sex, both for men and women, and the increased openness of sexuality are all interrelated and, consequently, contribute to the gradual increase in the number of homosexual men¹¹¹.

However, the big issue now is the increasing public visibility of gay and lesbian youth. They do not keep their sex and sexuality hidden, but rather prefer to reveal themselves.¹¹² Mahidol University, Bangkok, did some research which found that there are lots of children expressing homosexual behaviour and there was a high incidence of being

¹⁰¹ *Ibid.* p. 146.

¹⁰² Murray, S. O. 'Increasingly Gay Self-Representations of Male-Male Sex Experiences in Thailand' in Jackson, P. A. and Sullivan, G., *Lady boys, tom boys, rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999. P. 84.

¹⁰³ For example Patpong area, Silom Road.

¹⁰⁴ Storer, G. *Supra* note 149, p. 153.

¹⁰⁵ Wijngaarden, J., W., D., L., V. 'Between Money, Morality and Masculinity: Bar-Based Male Sex Work in Chiang Mai' in Jackson, P. A. and Sullivan, G., *Lady boys, tom boys, rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999. P. 195. Pattaya is one of a popular tourist destination, known as 'Boys' Town', there are full of commercial gay bars placed alongside the cafes and pubs which have come to typify gay night life in Thailand. Pattaya is very well known for a go-go-dancing; a performance that young men dressed in fancy underwear and sometimes completely naked attempting to dance sensually and make movements like sexual acts.

¹⁰⁶ Rattachumpoth, R. *Supra* note 80, p. xi.

¹⁰⁷ Jackson, P., A. *Supra* note 39, p. 232.

¹⁰⁸ McCamish, M. 'The Friends Thou Hast: Support systems for Male Commercial Sex Workers in Pattaya, Thailand' in Jackson, P. A. and Sullivan, G., *Lady boys, tom boys, rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999. P. 165.

¹⁰⁹ Brummelhuis, H., T. *Supra* note 51, p. 126.

¹¹⁰ Jackson, P., A. *Supra* note 39, p. 244.

¹¹¹ *Ibid.* p. 260.

¹¹² *Ibid.* p. 263.

homosexual, especially among girls in single-sex schools.¹¹³ Tom-dee couples are very common among school girls as it has been viewed as fashionable and a sign of modernity, although it is directly against Thai traditional values.¹¹⁴ However, despite the fact that homosexual and transsexual men/women are more accepted than before, there remain some groups that hide their actual needs and conform to the compulsory heterosexual lifestyles because of the ambiguity in Thai attitudes towards them¹¹⁵.

2.5 The problems regarding LGBTI

In general, as Jackson highlighted, LGBTI issues have usually been overlooked and ignored, since it has often been seen as unimportant.¹¹⁶ This invisibility and lack of social awareness has really affected LGBTI's lives and their quality of life.¹¹⁷ However, ignoring a problem is considered to be a traditional method of 'solving' social issues in Thai society, similar to a sort of tolerant compromise but, in fact, it is a form of cultural suppression and denial of the expression of their rights.¹¹⁸ Consequently, as Jackson noted, the knowledge of sexual minorities in this country is still like an 'infant science'¹¹⁹ since most of the studies that are relevant to homosexuality and transexuality are in the area of HIV/AIDS,¹²⁰ which concern reducing the spread of HIV infection and protecting the well-being of homosexual men, whereas the research on kathoey usually concerns how to help them live in the society.¹²¹

Another problem is that Thailand is not only lacking a sense of gay community but that there is also the absence of a gay movement with objectives of social change or legal reform.¹²² Therefore, Thailand has never experienced a strong movement emphasising LGBTI rights,¹²³ whereas LGBTI movements in the West strongly support their civil and political rights.¹²⁴ Apparently, it is because of the difference in history, culture and attitude regarding homosexuality relationships. However, the western style LGBTI political movements may not be appropriate in Thailand because it is a confrontational approach while Thai cultural traditions attach great value to conciliation and consensus. Aggression and anger are deemed to be embarrassing and very bad manners in Thai society. So it would be counterproductive, rather than beneficial, to adopt the Western style political movement.¹²⁵ While Thailand lacks an explicit gay movement lobbying for gay rights or greater acceptance of gay lifestyles, it has not completely overthrown anti-homosexual attitudes.¹²⁶

Currently, gay communities have developed because of the increasing number of homosexual men and women, including kathoey. However, there are limited funds for social services and social welfare activities directed towards the specific needs of homosexual or transgender people. Despite the fact that homosexual and transsexual people have their own

¹¹³ Jackson, P., A. 'Same-sex Sexual Experience in Thailand' in Jackson, P. A. and Sullivan, G., *Lady boys, tom boys, rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park), 1999. P. 40.

¹¹⁴ Jackson, P., A. *Supra* note 39, p. 291.

¹¹⁵ Rattachumpoth, R. *Supra* note 80, p. xvii.

¹¹⁶ Jackson, P., A. *Supra* note 39, p. 13-14.

¹¹⁷ *Ibid.* p. 64.

¹¹⁸ Rattachumpoth, R. *Supra* note 80, p. xvii.

¹¹⁹ Rattachumpoth, R. *Supra* note 80, p. xviii.

¹²⁰ Jackson, P., A. and Cook, N., M. *Supra* note 40, p. 16.

¹²¹ Jackson, P., A. *Supra* note 168, p. 30.

¹²² McCamish, M. *Supra* note 159, p. 185.

¹²³ *Ibid.* p. 113.

¹²⁴ *Ibid.* p. 261.

¹²⁵ *Ibid.* p. 267 and p. 291.

¹²⁶ *Ibid.* p. 290.

special needs and require specific social services, especially youth homoeroticism, e.g. counselling service, psychologists, doctors, school counsellors, sex educators and family planning workers. Moreover, social services of any form, whether publicly or privately provided, are extremely limited. Hence, it is important to understand these groups and their special needs and implement effective social services to treat and cure as well as support the LGBTI community.

3. Sexual Citizenship in a Global Framework: Examples of domestic and international law regarding LGBTI rights.

At present, the LGBTI situation around the world is varied, ranging from reasonably supportive to actively stigmatised. Therefore this section will examine the status of LGBTI in other regions of the world in order to analyse the global trend and appropriately apply it to Thailand. My discussion will be divided into three main regions: Africa, Asia and Europe and others. First of all, I would like to begin with the African Continent.

3.1 Africa

Generally Speaking, homosexuals, either male or female, are illegal in a number of African countries.¹²⁷ Some states explicitly specify their punishment by law whereas some do not apparently refer to homosexuality.¹²⁸ Moreover the degree of enforcement varies dependent upon each state. To illustrate this point, sexual contact between members of the same sex is criminalised in Cameroon. Indeed, the penalties will be doubled if a person under the age of 21 is involved in this sexual act.¹²⁹ However, the law banning homosexuality is rarely used and specific examples of harassment of gays and lesbians by the population or by government agents have not been found. Thus LGBTI can continue to peacefully survive in Cameroon.¹³⁰

By way of contrast, homosexuality in Egypt is not illegal under the law since it is not explicitly mentioned in the law. However, homosexuality could be *de facto* illegal if the act is against public morals and violates the teaching of religion. Thus, the government and policemen often arrest homosexual people by referring to a moral violation. Particularly, nowadays, the Egyptian government and security forces have become increasingly homophobic; as a result, LGBTI people in Egypt are living in fear. They have to be closeted and gather underground.¹³¹

In fact, Egypt has been urged to stop torture and detention of homosexual men since the landmark case 'Cairo 52' was disclosed to the international stage.¹³² The Human Rights Watch 144 pages report, 'In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct' reveals that Egypt violates a large number of basic human rights under international human rights law.¹³³ The case contributes to the controversial issue and attracts international attention. Due to the fact that there was no internal support, international

¹²⁷ For example Cameroon, Ghana, Morocco and Tunisia. However it should be noted that, in some countries, only male homosexual is illegal such as Kenya, Nigeria and Zimbabwe.

¹²⁸ The punishment range from fine to death. The death sentence e.g. in Mauritania and Sudan. Life sentence e.g. Tanzania, Uganda, Sierra Leone.

¹²⁹ Section 347 of the Cameroon Penal Code.

¹³⁰ <http://www.uscis.gov/graphics/services/asylum/ric/documentation/CMR03001.htm>.

¹³¹ Mukul Davichand 'The cost of being gay in Egypt' World voice Norway 17 December 2001 <http://www.worldvoices.no/eng/news/gayinegypt.asp>.

¹³² In May 2001, the police arrested 52 men on the Cairo queen boat floating discotheque party based on morality and moral panic but now under law.

¹³³ It is including the right to privacy, freedom from discrimination, freedom of torture, freedom of expression, freedom from arbitrary arrest and detention, freedom of association and assembly and the right to fair trial. See Human Rights Watch report, March 1st 2004, 'In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct' ([http://hrw.org/reports/2004/egypt0304/.](http://hrw.org/reports/2004/egypt0304/))

organisations, such as Amnesty International and Human Rights Watch, the German parliament and French president all called for the Egyptian government to respect LGBTI rights.¹³⁴ Unsurprisingly, the government response to the international criticism was to defend their policies by stating that homosexuality is a moral perversion.¹³⁵ Up until now, the Egyptian government continues to arrest persons suspected of consensual homosexual conduct.¹³⁶

Furthermore, in the past, strong anti-homosexual attitudes were expressed by the President of Zimbabwe, Robert Mugabe. After shutting down a book exhibition organised by the Association of Gays and Lesbians of Zimbabwe (GALZ), the president openly declared that homosexuals have no rights at all.¹³⁷ Indeed, he said that homosexuals are unnatural, degrade humanity and are worse than pigs and dogs. Moreover, Mugabe blamed homosexuality for many problems and allowed anyone to arrest homosexuals and hand them over to the police because they offend both the law of nature and the morals of religious beliefs. They are not viewed as African because it is deemed that homosexuality is an idea imported from the West.¹³⁸ Mugabe's opinion strongly affects Zimbabweans. As a consequence, Zimbabwean LGBTI have been commonly threatened with violence and repeatedly raped, bribed, detained and beaten by the authorities.¹³⁹ Suicide in this community is high. Actually, there is no statutory law which prohibits homosexual activity in Zimbabwe, but sexual acts between consenting adult of the same gender are prohibited by common law as well as other laws.¹⁴⁰

'Nigeria's Anti-Gay Bill' also demonstrates the growing climate of homophobia in Africa. A law banning same sex couples from marriage was expanded to include punishing anyone who supports or attends a same-sex wedding. It also invalidates the marriage licenses of same sex couples that are legally conferred in other countries. Moreover a protest in favour of LGBTI civil rights, setting up an organisation advocating gay rights or being a member are also recognised as crimes.¹⁴¹ The Anti-Gay Bill initiated debate around the world, mostly in disagreement with Nigeria, because the Bill violates freedom of expression and freedom of association and assembly as guaranteed by international human rights law as well as the African Charter on Human and People's Rights.¹⁴²

However, not every country in Africa has an anti-homosexual attitude; South Africa seems to be far more supportive than most other countries in the region.¹⁴³ First of all, South Africa is distinct by being the first country in the world to explicitly prohibit discrimination

¹³⁴ <http://www.sodomylaws.org/world/egypt/egnews46.htm>. (September 5 2001) and <http://uk.gay.com/news4939>. (11 February 2002)

¹³⁵ <http://www.sodomylaws.org/world/egypt/egnews131.htm>. and <http://www.sodomylaws.org/world/egypt/egnews97.htm>.

¹³⁶ Gaytimes.co.uk 'Lesbian and Gay Egypt' (See <http://www.gaytimes.co.uk/gt/listings.asp?action=ShowCountry&CID=348>)

¹³⁷ Philips, O., 'Zimbabwe' in West, D., J. and Green, R. (eds.) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York)

¹³⁸ Africa Action, Africa Policy E-Journal, 'Africa Human Rights, Gay Rights' April 3 1996 (See <http://www.africaaction.org/docs96/jmin9605.htm>)

¹³⁹ Kai Wright, 'Under African Skies, Part II: Lesbians admonished with 'sew them up': organizing challenges for Zimbabwean women come from outside, within gay community' may 5 2000, kaiwright: sex race health journalism (See http://www.kaiwright.com/gayzimbabwe_more.php?id=103_0_25_0_M.)

¹⁴⁰ Behind The Mask, 'same-sex smooch banned in Zimbabwe Law Reform' July 12 2006. (See <http://www.mask.org.za/article.php?cat=zimbabwe&id=1249>)

¹⁴¹ 365gay.com, 'Nigeria Toughens Criminalisation of Gay Marriage Bill' 13 April 2006, (See <http://www.365gay.com/Newscon06/01/01190nigeria.htm>)

¹⁴² Uk.gay.com, 'Nigeria broadens anti-gay bill' 17 April 2006 (See <http://uk.gay.com/headlines/9843.>)

¹⁴³ Botha, K. and Cameron, E., 'South Africa' in West, D., J. and Green, R. (eds) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 5.

based on sexual orientation in its constitution.¹⁴⁴ In addition, the Employment Equity Act 2006¹⁴⁵ and Promotion of Equality and Prevention of Unfair Discrimination Act 2002¹⁴⁶ also protect South Africans from unfair labour discrimination on the basis of sexual orientation. Most importantly, South Africa has already given legally permission for same sex marriage and granted them with the same rights as heterosexuals. Consequently, it makes South African the first nation in the continent to allow marriage between same sex people¹⁴⁷.

3.2 Europe and others

In order to analyse the situation of sexual citizenship in Europe and other regions (Australia, New Zealand, Canada and United States), I would like to divide the analysis into four main points: sex change, same-sex relationships, military policy regarding LGBT and the development of anti-discrimination law based on sexual orientation. To begin with sex change recognition, the UK Gender Recognition Act 2004 is a good example in this field. It gives transsexual people the legal right to live in their acquired gender with full recognition in law for all purposes. Transsexual people will be able to change their legal gender to the new one.¹⁴⁸ A gender recognition certificate will be issued to them as evidence of the legal recognition of their gender change which includes the applicant's name and both the previous and new legal gender.¹⁴⁹ It can be used wherever a birth certificate and a passport are used.

Secondly, same sex relationships can be recognised by law in a number of forms,¹⁵⁰ e.g. same-sex marriage, civil union, common law marriage, domestic partnership, registered partnership and cohabitation. Each type of relationship offers varying amounts of benefit, dependent on the domestic law in each state. Denmark is claimed to be the first country in the world to legalise same-sex unions of any kind. (1989) Nowadays, same-sex marriages are legally recognised in several countries such as the Netherlands, Belgium,¹⁵¹ Spain, Canada¹⁵² and the United States. Most of them are fully equivalent to opposite sex married couples. They are granted the same rights as heterosexual couples, including adoption.

Civil unions, registered partnership, domestic partnership, cohabitant and other legal recognitions of same sex couples are recognised in a number of states,¹⁵³ for example, Austria, Czech Republic, Germany, Sweden, France, Italy, the United Kingdom, and New Zealand. These terms aim to allow same-sex couples access to the legal rights, responsibilities and benefits of their relationship. Most of them grant a number of rights nearly equal to marriage whereas some allow only minimum benefits. Thus, it really depends on each state's policy. However I would like to highlight on certain states: The Czech Republic (domestic partnership and registered partnership) is the second post-communist country, after Slovenia, in Europe that legally recognises same sex families. The couples are

¹⁴⁴ Section 9 (3) of the Constitution of the Republic of South Africa 1996.

¹⁴⁵ Article 6 (1) of the Employment Equity Act 1998. (as amended in 2006)

¹⁴⁶ Section 1 (1) (vii), 6, 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (as amended in 2002)

¹⁴⁷ CNN.com, 'South Africa on road to allowing same-sex marriage' August 24 2006

¹⁴⁸ Section 1 of the Gender Recognition Act 2004.

¹⁴⁹ Section 4 of the Gender Recognition Act 2004.

¹⁵⁰ For example same-sex marriage, civil union, common law marriage, domestic partnership, registered partnership and cohabitation

¹⁵¹ Reekie, A., 'Belgium' in West, D., J. and Green, R. (eds) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 294-295.

¹⁵² Although Canada is the fourth country to legalize same-sex marriage, it is the first country to legalize without a requirement from residences. See Civil Marriage Act 2005.

¹⁵³ For example, Austria (unregistered cohabitation), Czech Republic, Germany, Sweden, France, Italy (some regions), the United Kingdom, New Zealand, Australia (the state of Tasmania), the United States (the state of Connecticut and Vermont for civil unions, California, Maine, New Jersey and the District of Columbia for domestic partnerships, and Hawaii for the reciprocal beneficiary law.)

granted a number of rights e.g. inheritance, spouse privilege and hospital, but adoption is not allowed,¹⁵⁴ whereas same-sex adoption in Germany¹⁵⁵ (registered partnership), Denmark (registered partnership) and Australia (the state of Tasmania) is limited to only the partner's biological children. Beyond this, Sweden (registered partnership) grants same-sex couples the same rights as heterosexual marriages, including adoption of children both from Sweden and outside the country.

While civil union is normally used for same-sex couples, French *pacte civil de solidarité* or civil solidarity pacts (PACS) are not specifically for same-sex couples only, but they are open to unmarried heterosexual couples as well.¹⁵⁶ Nowadays, they have become an increasingly popular choice among all couples. Couples who enter into a PACS contract are afforded most of the legal protections and responsibilities of marriage, however, without the inclusion of adoption. In contrast, the UK Civil partnership Act 2004 only applies to same-sex couples and they are virtually entitled to all the rights and responsibilities of full marriage including adoption.¹⁵⁷ In other words, it can be said that civil union in the UK is similar to marriage but just technically different. Civil union becomes legal on the signing of the registration. There is no requirement to change their surname and it is not possible to dissolve a civil partnership on the grounds of non-consummation or adultery. Moreover, no dissolution can be made within 1 year of the formation of the civil partnership. More apparently, New Zealand's Civil Union Act 2004 has been described as very similar to the Marriage Act with the word "marriage" replaced by "civil union".

Third, military policy regarding LGBTI, on the one hand, the countries that do not ban homosexuals from military service are, for example, Austria, Belgium, Czech Republic, Denmark, France, Germany, Netherlands, Sweden, New Zealand and Canada. Homosexual people in these countries are free to serve openly in the Armed Forces. Canada, for instance, allows them to serve openly and live on-base with their partners. Moreover, military chaplains have been allowed to bless same-sex unions and to perform these ceremonies on a military base in Canada, consequently, they have also granted spousal benefits to same-sex couples. On the other hand, homosexuals are banned from serving as military in some countries¹⁵⁸. In this regard, mental illness is the reason that is most used to bar homosexuals from serving in the country. Besides, gay sexual conduct can be a crime under military law, thus, they will be discharged immediately if their sexual orientation is discovered. However, it may be difficult to prove homosexuality in the country where it is compulsory for every man to be a soldier.

Meanwhile, some countries have special policies towards this problem such as the United States of America and Russia.¹⁵⁹ In the U.S., the policy of 'Don't ask, Don't tell' was created by the President Bill Clinton as a promise to allow all citizens, regardless of sexual orientation, to serve openly in the military. So it has been an official policy in the American

¹⁵⁴ Czech Registered Partnership Act 2006.

¹⁵⁵ Hoffmann, R., Hutter, J., and Lautmann, R. 'Germany' in West, D., J. and Green, R. (eds) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997.

¹⁵⁶ Fillieule, O., and Duyvendak, J., W., 'Gay and Lesbian Activism in France: Between Integration and Community-Oriented Movements' in Adam, B., D., Duyvendak, J., W., and Krouwel, A., (eds) *The Global Emergence of Gay and Lesbian Politics: National Imprints of a Worldwide Movement*, (Philadelphia: Temple University Press) 1999.

¹⁵⁷ Rights include property rights, the same exemption as married couples on inheritance tax, social security and pension benefits, and also the ability to get parental responsibility for a partner's children as well as responsibility for reasonable maintenance of one's partner and their children, tenancy rights, full life insurance recognition, next-of-kin rights in hospitals, and others.

¹⁵⁸ such as Cyprus, Turkey and Greece.

¹⁵⁹ Kon, I., S., 'Russia' in West, D., J. and Green, R. (eds) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 227.

armed forces since 1994. The principle of this policy is to compromise between the armed forces and the homosexual military since the armed forces will no longer ask about their sexual orientation during the recruitment. Further, the commander will not investigate any serviceman or woman's sexual orientation without evidence, whereas homosexual servicemen and women agree that they will not engage in homosexual sex acts, or do anything that discloses his or her sexual orientation that they are a homosexual while serving in the United States armed forces.

Additionally, the reason beyond this official regulation is homosexuals were often the target of various types of harassment by their fellow service members and it is believed that the homosexual characteristic may be incompatible with military service. Recently, there was an attempt to propose the Military Readiness Enhancement Act which would end the policy of Don't Ask, Don't Tell. The Bill has been introduced in the US House of Representatives during several sessions between 2005 and 2009. It would have amended title 10 of the United States Code to include a policy of non-discrimination on the basis of sexual orientation, replacing the policy known as "Don't ask, don't tell" (DADT), which banned disclosing one's homosexuality while serving in the Armed Forces. The Bill remained stalled in committee each time it was introduced. In 2010, its backers succeeded in repealing the DADT policy effective from September 2011, without establishing a non-discrimination policy.

Fourth, the development of anti-discrimination laws regarding sexual orientation, basically, everyone is protected equally under the law however sexual citizenship is a vulnerable group in need of special protection from the state. In general, there is no country in this group that has a law against homosexuality. The laws regarding protection of LGBTI are greatly developed within this group, both at the national level as well as locally. Historically, Quebec is the first jurisdiction in the world to prohibit discrimination based on 'sexual orientation' in the public and private sectors.¹⁶⁰ At present, 'sexual orientation' is added as a grounds of non-discrimination under their constitution e.g. Sweden,¹⁶¹ whereas a number of states concern sexual orientation with the issue of employment and service, e.g. Austria,¹⁶² France (both public and private sector), Germany,¹⁶³ Ireland,¹⁶⁴ Netherlands,¹⁶⁵ the United Kingdom¹⁶⁶ and some link sexual orientation with other issues e.g. Austria,¹⁶⁷ Sweden,¹⁶⁸ Canada.¹⁶⁹

3.3 Asia

Asian attitudes towards homosexuality can be divided into two groups: the Islamic group in South Asia and the Middle East and non-Islamic group in South East Asia. These two groups have different beliefs and attitudes towards homosexuality. To begin with, the circumstance in South Asia and Middle East, generally, almost every country in South Asia and the Middle East are Muslim and believe in the Islamic religion. Islamic law is the principle law that governs this region, besides, it will generally be the basis of all government rules and regulations. From the religious perspective, Islam affords equal rights and

¹⁶⁰ The Quebec Charter of Human Rights and Freedoms 1977.

¹⁶¹ Swedish Constitution since 2002.

¹⁶² Labour Code (amended in 2004)

¹⁶³ Equal Treatment Law on June 29th 2006.

¹⁶⁴ Employment Equality Act, 1998 and the Equal Status Act 2000.

¹⁶⁵ The Equal Rights Law 1993.

¹⁶⁶ 2003

¹⁶⁷ Police Security Act 1993.

¹⁶⁸ Sweden Penal Code.

¹⁶⁹ Canadian Immigration Act (amended in 1978).

opportunities for all, however, certain restrictions are imposed on some groups of people since it violated the principles defined in the Qu'ran.¹⁷⁰

According to Islamic law, homosexuality is a great sin against the supreme will of God,¹⁷¹ therefore, homosexuality is considered as a crime. If anyone is homosexual or involved in same sex acts, they will be punished with a variety of levels of penalty, depending on the state's policy as well as the facts of the case. For example, sodomy is still a capital crime in Afghanistan. Those who are involved in a homosexual relationship will be punished¹⁷² and the penalties will be increased if the victim is under eighteen years old, if the defendant is in a position of authority over the victim or if the defendant repeatedly committed the crime. Simply being engaged in watching such activities in public is also punishable.¹⁷³ In some countries the maximum penalty is death e.g. Yemen, United Arab Emirates, Saudi Arabia, Iran and Iraq.

Recently, it should be highlighted that legal recognition for sex change has been allowed in Iran because the government views transgendered people as disabled and suffering from a gender identity disorder. So a sex change operation is a way to cure a gender identity disease. Moreover they will be able to get a new identity card. However same-sex marriage is still not permitted within Islamic countries since it is opposed by religion. Under Islamic Shari'a law, traditional marriage must occur between two Muslim adults of opposite sex only.¹⁷⁴ Sexual activity outside the traditional heterosexual marriage is criminalised. Same-sex marriage or any kind of civil union may be used as evidence to initiate criminal investigations. However, on this point, Richardson argues that it would be wrong to call an Afghan man homosexual since their decision to have sex with men is not a reflection of what westerners called gender identity. They have sex with men because they find themselves in a situation where men are more available as sexual partner than woman. It is thus believed that it is something they do, but not something they are.¹⁷⁵

The situation of homosexuality is not positive in the Middle East region. In general, many states have no laws against discrimination on grounds of sexual orientation. Thus, homosexuals are usually violated by both the community and authority. At a basic level, their freedom and privacy is really restricted. In Saudi Arabia, for example, a publication, television station, film, internet website or anything related to homosexual rights would be banned or blocked. Movie theatres and nightclubs are prohibited, indeed, satellite TV is illegal. Furthermore, the government can, with a court order, search homes, vehicles and intercept private communications. As a result of these treatments, Saudi Arabia has received huge criticism in the international sphere; nevertheless, the government has now loosened its restrictions, but still argues that it is in conflict with the principles of Islam. Therefore most homosexuals live in secret because of the fear of being punished and violated. Public discussion about homosexuality is banned; consequently, no homosexual rights organisations exist.

In contrast, I found it interesting that Michael Luongo, a New York gay journalist has a totally opposite idea towards Afghanistan. He found Afghanistan is a good place to visit and has a gay friendly environment in its own special way. According to his experience, the reality seems in opposition to what would be imagined. He found men dressing like women and happily dancing on the street or even asking to have sex with him directly. He also

¹⁷⁰ Jami, H. 'Condition and Status of Hijra (Transgender, Transvestites and etc.) in Pakistan' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 9.

¹⁷¹ *Ibid.* p. 12.

¹⁷² Article 427 of the Penal Code 1976.

¹⁷³ Article 512 of the Penal Code 1976.

¹⁷⁴ The Afghanistan law of marriage 1971

¹⁷⁵ Richardson quoted in Maura Reynolds, Los Angeles Times, April 3, 2002.

visited cruising areas and was very impressed by the environment to the point where he recommends gay people visit Afghanistan.¹⁷⁶ This is totally in conflict with the international image of this region. In fact, Israel is the only Middle East Asian state that openly supports LGBTI rights, especially legal recognition of same-sex couples. Even though same-sex civil partnership is under the process of legislation, at present, Israel allows foreign partners of its homosexual citizen to receive a residence permit, alongside extending spousal benefits and pensions to the partners of homosexual employees, granting legal recognition to same-sex couples in financial and other business matters and most recently allowing a lesbian couple to legally adopt each other's children.¹⁷⁷ It should be noted that while Israel allows homosexual people to serve openly in the armed forces, other Middle Eastern countries do not allow them to do so by referring to mental illness.

The situation in South Asia seems less severe than that found in the Middle East. For example, while India still maintains the provision that criminalises homosexuality because it is deemed unnatural sex and sodomy,¹⁷⁸ it is rarely enforced in reality. However, it should be noted that lesbian punishment is more severe than that given to gay men due to the gender bias in Indian society.¹⁷⁹ Additionally, there is no legal recognition of same sex couples in India. These marriages have no legal recognition under Indian law. Nevertheless, it does not mean that less stringent enforcement of the law will lead to freedom from violence against LGBTI in South Asia. Even in India, there are still cases of violence against homosexuals. Furthermore, it can clearly be seen from the case of male transgender individuals in Pakistan, 'hijra', who are marginalized in the society.¹⁸⁰ People's attitude towards hijra is both discriminatory and biased. Despite the fact that their rights are equally protected under law as a human being, hijras are denied any quota in employment on the basis of their handicap and also they are deprived of their opportunities to study because of people's attitude towards them. They are also denied health assistance so they end up with self-remedies, including hormone taking without prescription and using silicone injections.¹⁸¹ Moreover some families even give their children who are born with sexual deformities to the hijra community since they believe that their child is hijra and it is a shame and embarrassment to have hijra in the family.¹⁸²

It should be highlighted that sex and gender are recognised as male and female only in Islam.¹⁸³ So children who are born with sexual deformity will be assigned a sex according to their dominant sex characteristics and it will be recorded on the birth certificate which cannot be changed since there is no law that provides for transgender individuals to change identity or legal documents to their reassigned sex.¹⁸⁴ However, in reality, most of them want to be recorded as the male sex in their identity documents because Pakistan is a patriarchal society¹⁸⁵ and the birth of a male child is regarded as a time of honour.¹⁸⁶

¹⁷⁶ For more information see his website at <http://www.gayafghanistan.com>.

¹⁷⁷ Article 25 of the Adoption Law. 10 July 2005 Supreme court.

¹⁷⁸ Section 377, India Penal Code

¹⁷⁹ Khan, S., 'Culture, Sexualities, and Identities: Men Who Have Sex with Men in India' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*, (New York: Harrington Park Press) 2001. p. 99-116.

¹⁸⁰ Jami, H. *Supra* note 276. p. 3.

¹⁸¹ *Ibid.* p. 14.

¹⁸² Murray, S., O., and Khan, B., 'Pakistan' in West, D., J. and Green, R. (eds.) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 123-124.

¹⁸³ Jami, H. *Supra* note 276. p. 9.

¹⁸⁴ *Ibid.* p. 13

¹⁸⁵ *Ibid.* p. 6.

¹⁸⁶ *Ibid.* p. 7.

Within the Asia region, South East Asia seems to be located somewhere in the middle on the scale between homophobic and liberal. These states accept LGBTI to some extent, whereas there are still some limitations. In China, the policy to open up in 1970s is thought to have changed Chinese's attitudes and behaviours towards homosexuality.¹⁸⁷ Chinese people became more tolerate of same sex practice.¹⁸⁸ Further, anti-gay violence was rare. Additionally, more individuals have identified him/herself as gay or lesbian and more gay venues have emerged in Beijing since the communist party lost their control.¹⁸⁹ This circumstance affects Chinese society until now; as can be seen by how many women now do not hesitate to identify themselves as lesbians based on gendered understanding of sexuality. This is because cultural change and rapid media technology advancements have increased understanding of Western concepts and these have been applied locally.¹⁹⁰ However it should be noted that marriage is seen as compulsory for women under Chinese tradition. Thus, some of them may still get married whereas some completely refuse to marry and come out as lesbians to their parents.

Currently, the internet plays an important role for homosexual people in China. It is a new way to communicate and find friends, partners and support. It is a safe and efficient way that is less likely to be discovered by parents, friends and society.¹⁹¹ It is like a new world for homosexuals where they will no longer be isolated, as they can find someone in the same situation that they will be able to consult with.¹⁹² Apart from this, the internet can broaden their knowledge in many areas, e.g. law, health and the gay scene worldwide. In addition, some websites provide a question and answer section to give them counselling in many problems on a voluntary basis.¹⁹³ The internet, moreover, is important for community building among homosexuals as well, since these sites frequently organise activities, i.e. performing shows and sport events.¹⁹⁴

However the police can intervene and shut down the sites in order to censor websites that contain pornography, anti-government speech and politically sensitive material.¹⁹⁵ Further, certain words are not allowed, e.g. sexually explicit language, so it has resulted in the emergence of coded language which is commonly used by gay men and lesbians in China.¹⁹⁶ It is estimated that there are around 300-400 websites for LGBTI in mainland China.¹⁹⁷

In China, there is no explicit law against homosexuality or same sex acts between consenting adults whereas there is also no law protecting LGBTI from discrimination. However, the recent criminal law reform repealed a provision which had been used to prosecute gays¹⁹⁸ and provided the same age of consent.¹⁹⁹ Moreover homosexuality was

¹⁸⁷ Ruan, F., F., 'China' in West, D., J. and Green, R. (eds.) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 63-65.

¹⁸⁸ Shan, C. W., 'Homosexuality and the Cultural politics of Tongzhi in Chinese Societies' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001. p. 35.

¹⁸⁹ Ho, L. 'Opening up: Articulating a same-sex identity in Beijing' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 7.

¹⁹⁰ Engebretsan, E. 'Lesbians Identity and Community Projects in Beijing: Notes from the field on study and theorizing same-sex culture in the age of globalization' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 3.

¹⁹¹ *Ibid.* p. 1.

¹⁹² Jiang, H. 'ICCGL: Cultural Communication via the internet and GLBT community building in China' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 2.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.* p. 4.

¹⁹⁵ Ho, L. *Supra* note 308. p. 10.

¹⁹⁶ *Ibid.* p. 9.

¹⁹⁷ Jiang, H. *Supra* note 311. p. 2.

¹⁹⁸ Criminal Code of People's Republic of China 1997 Article 293.

¹⁹⁹ Criminal Code of People's Republic of China 1997 Article 236 (2.)

removed from the list of illnesses.²⁰⁰ Nevertheless, same sex marriage is still forbidden. So it has led to the existence of heterosexual marriage between lesbians and gay men, as can be seen from a number of advertisements posted on sites by gay people looking for lesbians to marry on the internet.²⁰¹

In Taiwan, the status of 'tongzhi' (lesbian, gay and queer) has been improving at a reasonable rate. Before this, the LGBTI movement appeared to be low and change was hard to achieve.²⁰² However recently, a new LGBTI civil movement has emerged pushing an agenda of sexual citizenship which uses human rights, civil rights and citizenship. It claims for equal protection by law, equal rights in employment, parenting, social status, access to welfare provisions and partnership rights or even same sex marriage, (Weeks 1998 p. 37).²⁰³ The legal reform progress is very limited as well.²⁰⁴ Although the government of Taiwan announced a plan to legalise same sex marriage in 2003, currently, only some jurisdictions in Taiwan recognize symbolic same sex unions.

Japan has no anti-homosexuality laws²⁰⁵ so homosexual relations between consenting adults in private space are not a crime.²⁰⁶ However, it does not mean that same sex marriage is allowed in Japan,²⁰⁷ since the Japanese Department of Registration declares that marriage licenses are only valid for heterosexual couples. It should be noted that Japanese civil rights law does not protect against discrimination based on sexual orientation or gender identity, but the city government of Tokyo does protect against discrimination in employment based on sexual identity. Additionally, homosexuality is no longer considered a mental disease and the Japanese Self Defence Force does not bar volunteers on the basis of sexual orientation.

Similarly to Japan, homosexuals are protected with anti-discrimination laws on grounds of sexual orientation in South Korea.²⁰⁸ Further there is also no law against homosexual activities. However it should be noted that, although serving in the military is compulsory for all men, homosexuals are not allowed to serve in the armed forces as it is regarded as a personality disorder or a behaviour disability; consequently they will be excluded from serving in regular service.²⁰⁹ In contrast, the situation of homosexuals in North Korea is unclear since North Korea is a socialist society whose government control the country image to the outside world. Most internal affairs are kept in secret. All information received is from the official website of the government which concludes that 'the government recognise that many individuals are born with homosexuality as a genetic trait and treat them with due respect.' 'Homosexuality has never been subject to repression. They are treated with harmony and morals.' But the government rejects popular gay culture in the west in the belief

²⁰⁰ Jiang, H. *Supra* note 311. p. 1.

²⁰¹ Ho, L. *Supra* note 308. p. 14.

²⁰² Chao, Y. A., 'Drink, Stories, Penis and Breasts: Lesbian Tomboys in Taiwan from the 1960s to 1990s' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001.

²⁰³ Chu, W., C., R. 'Queering Taiwan and its future: from an agenda of mainstream self-enlightment to one of sexual citizenship' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 12.

²⁰⁴ *Ibid.* p. 3.

²⁰⁵ Matthews, J. 'Queer Japanese Identity: An anti-disciplinary approach to construction of identities in Japan' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 4.

²⁰⁶ Note that some local governments have raised the age of consent for homosexual conduct to eighteen on the grounds of protecting the youth.

²⁰⁷ Pinkerton, S. D. and Abramson, P., R., 'Japan' in West, D., J. and Green, R. (eds.) *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 75-76.

²⁰⁸ Article 31 of the National Human Rights Committee Law. Note that South Korea, Japan and Israel are the only countries in Asia that Homosexuals are protected with anti-discrimination laws.

²⁰⁹ Jin, S., D., 'Mapping the Vicissitudes of Homosexual Identities in South Korea' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001.

that it will 'embrace consumerism, classism and promiscuity.'²¹⁰ However the truth is doubtful since it is only the information provided from the side of the government.

Back to Thailand's neighbourhood, Singapore seems to be the most interesting example of action towards LGBTI. Basically, Singapore is a homophobic society²¹¹ since homosexual acts are criminalised, under the Penal Code.²¹² Apart from this, homosexuality can be criminalised under other miscellaneous acts, for example, Article 294A and 354 of the Penal Code and section 19 and 20 of the Miscellaneous Offences (Public Order and Nuisance) Act. However it should be noted that lesbians have never been convicted even though Section 377 applies to both heterosexual and homosexual couples. It shows oppression of male homosexuality²¹³; nevertheless, the law is rarely enforced. Moreover, homosexuality and transgenderism are listed as a condition in the Singapore Armed Forces 'Directory of Diseases' and many recruits are assigned only to clerical work at army bases.

However on July 4, 2003 the Singapore Prime Minister, Goh Chok Tong declared that gay men and women (Singaporeans and foreigners) are now welcomed to work with the government. The statement seems to be taking a step forward to give more rights to gay Singaporeans but it has caused controversy concerning the reason behind the government's action. Some people think it is because Singapore's economy is failing²¹⁴ and so the government views the policy as a benefit in making Singapore more attractive to migrating potential foreign professionals.²¹⁵ Moreover it is a positive image to also incorporate transgressive gay Singaporeans into nation building projects. Whatever the real reason is, it helps to keep the People's Action Party (PAP) in power.²¹⁶ It is this idea of 'tolerance creates the open' that the government hopes will make foreigners find Singapore more attractive and settle down there, which in turn would improve the economy.

As a consequence, a question arises concerning the sincerity of the government because, in fact, gay Singaporeans had already worked as civil servants before the statement was made.²¹⁷ In addition, if the government really wanted to carry this statement into the long term, the law against homosexuality should be eliminated otherwise homosexual people could still be viewed as a criminal in the government.²¹⁸ Some people view the statement as just 'a performance'²¹⁹, while some think that it is possible that the Prime Minister has seen global trend and found that it is not good to ignore the trend and remain homophobic. The statement seems to make a promise that Singapore will become a better place for all gay people living there.²²⁰

In the case of Malaysia, which is considered to be a conservative society under Islamic law, the situation for LGBTI is quite good. Even though, it is interesting to note that a

²¹⁰ <http://www.korea-dpr.com/faq.htm>

²¹¹ Leong, L., W., T., 'Singapore' in West, D., J. and Green, R. *Sociolegal Control of Homosexuality: A Multi-Nation Comparison*, (New York: Plenum Press) 1997. p. 141.

²¹² Tan, C. K. K. 'Turning the lion city pink: Interrogation Singapore's new gay civil servant statement' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 2.

²¹³ Murray, A., J., 'Let Them Take Ecstasy: Class and Jakarta Lesbians' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001.

²¹⁴ Tan, C., K. K. *Supra* note 333 p.4.

²¹⁵ *Ibid.* p. 7.

²¹⁶ *Ibid.* p. 1.

²¹⁷ Khung, R., H., H., 'Tiptoe Out of the Closet' The Before and After of the Increasingly Visible Gay Community in Singapore in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001. p. 90.

²¹⁸ Tan, C., K. K. *Supra* note 333 p. 7.

²¹⁹ *Ibid.* p. 6.

²²⁰ *Ibid.* p. 8.

former Deputy Prime Minister, Anwar Ibrahim, was jailed for homosexuality.²²¹ For the Philippines, it is similar to Thailand since both possess vibrant transgender communities, although, the situation of transgender people in Thailand is much better because Filipinos appear to be comfortable with gay people only when they fit certain stereotypes and behave well.²²²

Laos is influenced by Thailand in many perspectives, e.g. culture and economics.²²³ Research found that Laos's society is very tolerant because there is high level of acceptance in Laos's families and the community.²²⁴ There is little parental pressure as well as peer pressure. They tend to be confident and popular among friends, both male and female.²²⁵ Most of them work as women, such as beauticians and hairdressers, while some choose to work as sex workers, namely, prostitutes.²²⁶ However knowledge on health is required because it seems that they do not know enough.²²⁷ Moreover educational materials should be designed specifically targeting kathoeyes.²²⁸ While in Cambodia, homosexuals are not as naturally accepted as in Laos. There remain some difficulties preventing their legal recognition. It is interesting to note that King-father, Narodom Sihanouk, showed his agreement with same sex marriage, stating that it should be allowed in Cambodia and transsexuals should be accepted and well treated in Cambodia. Unfortunately, Cambodia uses a constitutional monarchy system so he has no executive powers. Thus same sex marriage is still not legal in Cambodia.

4. Certain observations and suggestion in developing Thai law concerning LGBTI rights

Generally speaking, Thai peoples have been protected under the current Constitution of the Kingdom of Thailand which affirms that a person can invoke human dignity or exercise his or her rights and liberties in so far as it is not in violation of the rights and liberties of other persons or contrary to this Constitution or good morals.²²⁹ Indeed, the Gender Equality Act 2015 ensures also the protection of persons of all sex as well as assures that unjust discrimination against a person should not be permitted.²³⁰ However, in practice, the principles of equality and protection from all types of discrimination for transsexual peoples have not been completely accomplished; they have been victims of discrimination in a number of forms.

4.1 Sex change

Thai transsexuals cannot get legal recognition of their sex change under current Thai law, despite the fact that there are a number of them who undergo the gender reassignment surgery and live with their male partner whereas in neighbouring countries; e.g. Japan and Singapore such changes have been accepted in important official documents, such as ID cards, drivers licences and passports. However, in Thailand, sexual legal status at birth cannot

²²¹ Baba, I., 'Gay and Lesbian Couples in Malaysia' in Sullivan, G., and Jackson, P., A., (eds.) *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001. p. 143-144.

²²² Tan, M., L., 'Survival Through Pluralism: Emerging Gay Communities in the Philippines' in Sullivan, G., and Jackson, P., A., *Gay and Lesbian Asia: cultural, identity*. (New York: Harrington Park Press) 2001.

²²³ Doussantousse, S. and Keovongchith, B. 'Male Sexual Health: Kathoey in the Laos PDR, South East Asia, explore gender minority' Paper from 1st International Conference of Asian Queer Studies' Bangkok, Thailand, 7-9 July 2005. p. 2.

²²⁴ *Ibid.* p. 8.

²²⁵ *Ibid.* p. 4.

²²⁶ *Ibid.* p. 5.

²²⁷ *Ibid.* p. 7.

²²⁸ *Ibid.* p. 8.

²²⁹ Interim Constitution of the Kingdom of Thailand B.E. 2557.

²³⁰ Section 30 paragraph 2 of the Constitution of the Kingdom of Thailand B.E. 2540.

be officially changed which results in many of the following difficulties, e.g. failure in the relationship after the male partner found out that she was not a biological woman, the difficulties in living their lives in the future, e.g. employment, travelling, because they are legally classified as male in every official documents, despite living their lives as female.

Brummelhuis points out that, in fact, kathoeyes have undergone sexual operation because of gender identity rather than sexual orientation. Therefore sexual desire is not the dominant motivation for them in having a sex change but their ambition is to be accepted or loved as a female.²³¹ However, the fact that no amendments have been made to either the civil or criminal legal codes for legal acquisition of a new gender contributes to immigration to European countries, since there they would be able to obtain a passport describing them as a female.²³² Besides, the opportunity may arise to become a registered wife with a western man and a citizen of that country, which also broadens their opportunities to make money out of their acquired beauty.²³³ Thus complete acceptance as a female is very meaningful for kathoeyes.²³⁴ Therefore, legal reform should be considered in Thailand in order to recognise the changed gender status of newly acquired gender and postoperative transsexuals.²³⁵ This should be seriously taken into account since it is one of the special needs of individuals who have undergone sex change operations and the reality is that there is a gradual increase in the number of people, both male and female, who undergo sex change operations due to the advancement of medical technologies.

4.2 Discrimination in employment and the workplace

Although the law prohibits discrimination against transsexual persons, they still face both implicit and explicit discrimination in applying for jobs, job offers and promoting their position. To illustrate the fact, in job selection, the actual qualifications of a particular candidate are only a secondary criterion. Normally the employers prefer to offer a job to a straight candidate rather than transsexual since homosexual orientation is widely considered a disadvantage. Also the employer attempts to avoid the following problems that may arise in the workplace, e.g. sexual harassment, conflict with customers and colleagues. Further, job promotion is often based on personal favouritism. Despite being hard working or very productive workers, they still face obstacles to promotion due to biased ideas. Besides, the denial of social acceptance is another kind of control mechanism at work. For example, Dr Seri Wongmontha was attacked for his openness about his homosexual preference to the point where he had to resign from his position. This type of discrimination is evidence of the subtle but persistent cultural violence which haunts members of sexual minorities in Thailand.

Therefore, most transsexuals end up working in the private sphere in a traditionally female profession, particularly fashion design and as makeup artists. It is because their special talents are more positively accepted in these fields, thus they can work more happily in such kind of career. However, Thailand shows good trends in terms of employment. The military is an interesting example of the positive trend towards transsexuals. This is because in the past, transsexuals and gays were barred from serving in the military under the mental disorder exemption. However, recently, the restriction has been removed due to a complaint

²³¹ Brummelhuis, H., T. 'Transformation of Transgender: The Case of the Thai Krathoey' in Jackson, P. A. and Sullivan, G. (eds.) , *Lady boys, tom boys. rent boys: male and female homosexualities in contemporary Thailand*, (New York: Harrington Park Press), 1999. p. 128.

²³² *Ibid.* p. 133.

²³³ *Ibid.* p. 128.

²³⁴ *Ibid.*

²³⁵ Jackson, P. A. And Cook, N. M., *Genders and Sexualities in Modern Thailand*, (Chiang Mai, Thailand: Silkworms Books), 1999 p. 237.

from the LGBTI community that it is discrimination against them and incompatible with the human rights standard. Moreover, the word ‘mental disorder’ that was marked on their certificate had a profound effect on their lives despite the fact that the modern Thai psychiatrists do not consider homosexuality to be a mental illness.²³⁶

In the entertainment arena, kathoey often appear in Thai television soap operas, movies, talk shows and game shows as guests or co-hosts. It should be noted that their image is viewed as a source of humour and as objects of ridicule, which is actually a misperception. However, there remain a number of positive images, as it is widely known in Thailand that one of Bangkok’s top models, Ornapa Kritsadee, is a kathoey, but she has been very successful in her career. Similar examples include transsexual singers Mum Laconic and Jern Jern Boonsongnern.²³⁷

4.3 Same sex marriage and adoption

At present, there is no law to recognise same sex marriages, as in the UK, but in practice, a number of same sex couples are living together or have held their wedding without legal acceptance. This does not seem to be a problem; however difficulties arise when they want to adopt children because, according to the custom, it is regarded as inappropriate and might affect the child’s future and cause more homosexuality since it is believed that the child might get confused. Moreover, the Thailand Civil and Commercial Code Law B.E. 2519 only accepts marriage between a man and a woman, thus, it should be considered whether same sex marriage is suitable for the characteristic of Thai society or not.

It should be noted that, in fact, same sex marriage has already happened in many parts of Thailand. Marriage ceremonies between same sex couples are performed in upcountry villages even today, as can be seen from the news, with friends and family attending and the couple subsequently living as husband and wife. As a result, it shows that same sex marriage law may well apply to Thai society, since it has already unofficially occurred in many areas of the country. Thus, legal reform concerning same sex marriage should be recognised, including access to the spousal benefits, similar to heterosexual couples, e.g. tax benefits, social welfare and insurance benefits. In this regard, the Ministry of Justice has been drafting the Civil Partnership Act since 2013. The review and discussion concerning this Act is still ongoing.

5. Conclusion

In conclusion, the situation of sexual citizenship in Thailand is moving in a positive direction. Generally speaking, homosexuality is neither illegal under Thai law nor immoral according to Buddhist teachings and homophobic violence appears to be almost non-existent. In this regard, it can be witnessed in various attitudes towards homosexuals in Thailand ranging from disagreement by conservative people (mostly old age people) to open acceptance, especially by young people. Apparently, there has been a dramatic increase in the number of homosexuals as well as transsexual teenagers. Nevertheless, this increase in numbers does not imply that they are well accepted by their family and society, since Thailand has a culture of dualism face and the attitude of ‘kreng jai’ (consideration), they may not express their real negative feeling towards homosexual people but rather happily show their acceptance instead.

Despite the fact that Thai homosexuals are treated much better in Thailand than many other states, there are still some homosexual people that hide their sexuality and marry someone of the opposite sex. It is because of the culture of losing face and shame. They are

²³⁶ See <http://365gay.com/newscon05/08/081005thaiArmy.htm>.

²³⁷ See <http://www.thai-blogs.com/index.php?blog=8&cat=290>.

afraid to suffer from the bad impact from society; e.g. ridicule and criticism, thus they decide to keep their sexual orientation a secret. Indeed, these people attempt to protect their image since 'image' is something considered as very important. Besides, some may not disclose his/her sexual orientation and live as heterosexuals because of pressure from family, particularly those who come from very traditional families.

Homosexuals are free to live their lives with little discrimination or harassment. There is a large gay scene in Bangkok. Homosexual behaviour between consenting adults is not regarded as a criminal offence.

According to the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and Interim Constitution B.E. 2557 (2014), Thai citizens are equally protected; however, this is not true in reality. There is a conflict between law and practice. In fact, LGBTI as a group of sexual citizenship are treated less favourably than heterosexual citizenship both in law and in reality. Furthermore, Thailand has no legislation that offers legal recognition for same sex couples, either in the form of same sex marriage, civil union or registered partnership despite the fact that there are several couples that are de facto married and stay together. Additionally, adoption is also not allowed for homosexual couples since the law only allows married opposite sex couples to have adoption rights.

Sex change is also not allowed in Thailand; therefore, it is not possible for men or women who want gender reassignment to change their identity in official documents. This causes a lot of problems, for example, travel and job applications, and leads to the problem of immigration since transsexual people both male to female or female to male tend to move to a country that will grant their new gender. It is because the aim of undergoing sexual reassignment is because they want to acquire the new gender identity not because of sexual desire.

A non-discrimination provision based on sexual orientation is needed to protect the equality of LGBTI people in employment. In Thailand, homosexual people are not banned from serving in the armed forces since the condition of 'mental illness' has withered away. However they still encounter many difficulties in getting a job. Being LGBTI, especially transsexual, is seen as a disadvantage to getting a job offer. Even if they graduate from a top university, if they openly disclose their sexual orientation, it is a high possibility that they will not get the job they would like.

For all the reasons stated above, Thai laws need to be revised. The government also has to play an active role in addressing these problems and implementing the law and effective enforcement by consulting with LGBTI rights organisations since only then will their voice be heard and it helps the government to address the problem in a way that most reflects the needs of the LGBTI community. Above all, the government has to raise social awareness and change the attitudes of Thai people towards homosexuality. It should be born in mind that it is necessary to work with and prepare public opinion for change.