

# SOCIAL AND CONSTITUTIONAL VIEWS ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER+ (LGBTQ+) AND WHETHER OR NOT THEY ARE LAWFUL IN THE GHANAIAN LAW TODAY

Isaac Eshun

Department of Social Studies Education.  
Faculty of Social Sciences Education, University of Education, Winneba, Ghana.

## ABSTRACT

*Gay and Lesbian Studies (GLS), social constructionism, and queer theory are the three main theoretical approaches employed in the study. These were critically employed to examine the issues on paradigms of modernism and postmodernism on LGBTQ+ persons. Qualitatively, this research adopted a desk design hinging on the sources of law from Article 11 of the 1992 Ghanaian Constitution and social conceptions in the Ghanaian perspectives. Recent decades have seen progress toward ensuring respect for the rights of Lesbian, Gay, Bisexual, Transgender, and Queer+ (LGBTQ+) people. Yet a number of United Nations (UN) member countries still criminalize consensual same-sex sexual acts, contrary to tenets of the UN Human Rights Council (2016), and in some cases, national laws against discrimination and violence based on sexual orientation or gender identity. According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), consensual same-sex sexual acts are criminalized in Seventy (70) UN member states as well as some non-UN states such as Gaza, the Cook Islands, and certain provinces of Indonesia. In Africa, proscription of consensual same-sex sexual acts remains a commonplace even though South Africa became the first country in the world to recognize same-sex relationships and same-sex spouses and other African states have decriminalized such acts. Ghana is one of the African countries that has no explicit laws on same-sex relations but has legislation that can be interpreted as criminalizing such activity. The Republic of Ghana Criminal Offences Act of 1960 (Act 29). Article 104(1) of Chapter 6 states that, “unnatural carnal knowledge” between consenting adults (age 16 and above) is a misdemeanour. Human-rights activists contend that, Ghana’s criminal code lacks clarity and countless commentaries have argued both sides of the question of whether Ghana should legalize same-sex relationships. Taking a critical look at Chapter 5 of the 1992 Constitution, it grants unto the people of Ghana certain rights and freedoms which are inalienable. Now the members of the LGBTQ+ society are not exceptions. This study goes to find out whether the failure to legalize the LGBTQ+ agenda is inconsistent with the Constitution and whether there is any reasonable justification for doing so.*

## KEYWORDS

*Bisexual, Gay, Gender Identity, Ghanaian Law, Lesbian, LGBTQ+, Queer, Sexual Orientation, Sexuality, The 1992 Constitution, Transgender.*

## 1. INTRODUCTION

On the 31st of January 2021, several news media in Ghana reported the opening of LGBTTQQIAAP+<sup>1</sup> advocacy resource centre in Accra. In attendance at the event were some

---

<sup>1</sup> Lesbian, Gay, Bisexual, Transgender, Transsexual, Queer, Questioning, Inter sex, Asexual, Allies and/or Pansexual.

delegates from the European Union, Australian High Commissioner in Ghana and the Danish Ambassador in Ghana. Subsequently, the European Union, on its official Facebook advertised its participation in the event, and reiterated its support for all civil society organisations supporting LGBTQI+ groups. The news was greeted with criticisms from a cross-section of Ghanaians, with several important persons and organisations including the National House of Chiefs, National Chief Imam, Christian Council, Catholic Bishops' Conference and the National Coalition for Proper Human Sexual Rights and Family Values, calling for the resource centre to be shut down and persons involved in the opening of the centre arrested and prosecuted. The episode brought about a renewed national debate on activities of LGBTTTQQAAP+ persons in Ghana, with calls for such activities to be punished as they do not accord with the sociocultural values of any ethnic group in Ghana.<sup>2</sup>

The Governance Health and Development Committee of the National House of Chiefs held an emergency meeting on the 26th day of February 2021. The National House of Chiefs issued a statement and specifically noted as follows:

*The House wants to state without equivocation that throughout history nowhere does the Ghanaian culture subscribe to LGBTQI+ which is a taboo, inhuman and alien to our society... In God's wisdom, man and woman were created to fulfill the procreation of humans on earth to satisfy God's will.... The symbolism for sex and marriage was between man and woman, as such, the idea of man marrying a man and a woman marrying a woman is an abomination to our traditional and culture as Ghanaians...*<sup>3</sup>

The above statement by the National House of Chiefs cannot be glossed over, considering the fact that **Chapter 22 of the 1992 Constitution** of Ghana is dedicated to the preservation of the Chieftaincy institution, which is guaranteed by **Article 270 of the 1992 Constitution**.

The unequivocal statement of H.E., President Nana Addo Danquah Akufo-Addo at the induction of the second Archbishop of the Anglican Church of Ghana at Asante Mampong in the Ashanti Region of Ghana on the 27th of February 27, 2021, the comments of the Rt. Honorable Speaker of Parliament when the Australian High Commissioner paid a courtesy call on The Speaker of Parliament on the 1st April 2021, the statement by the National House of Chiefs and the subsequent closing down of resource centres are testaments of the unacceptability of LGBTTTQQAAP+ groups and their activities by the majority of Ghanaians.<sup>4</sup> It is equally worth noting the emphatic position of our former presidents. In the case of the former President John Agyekum Kuffour, he recounted on Accra FM radio station on 3rd March, 2021, how he stood his ground and rejected the legislation of gay rights during his reign. He stated emphatically:

*I rejected the legislation when I was President because it baffled me. It still baffles me because LGBTQ+ practice is against our culture, religion and even defies nature. No law allows such thing in Ghana. The President has emphatically stated that it will not be legalized under his reign so let's forget about it.*<sup>5</sup>

It seems to suggest that all these personalities and organisations failed to consider whether or not these people have inalienable rights which are also protected by this same Constitution.

---

<sup>2</sup> Promotion of Proper Human Sexual Rights and Ghanaians Family Values Bill 20121 Page 1, Para 3

<sup>3</sup> Promotion of Proper Human Sexual Rights and Ghanaians Family Values Bill 20121 Page 1, Para 4

<sup>4</sup> Promotion of Proper Human Sexual Rights and Ghanaians Family Values Bill 20121 Page 2,

<sup>5</sup> [whatsupnewsghana.com](https://whatsupnewsghana.com) March 4th 2021

Therefore, this study sought to research into Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ+) and whether or not the practice is lawful in the Ghanaian law today.

The issues surrounding LGBTTTQQAAP+ in Ghana, have been in the media space for some time now. Several stakeholders have their take on whether or not it is legal to practice it in Ghana. For instance, the late President John Evans Atta Mills gave his fair share of the Ghanaian position on the issue of LGBTTTQQAAP+ when on 2nd November, 2011, the British Prime Minister, David Cameron, during an interactive session with the media at Osu Castle, the then seat of government intimated a policy of Britain to review its aid to countries that persecute homosexuals or fail to respect gay rights. He said:

*Let me make one thing very clear, no one can deny Prime Minister Cameron his rights to make policies, take initiatives or make statements that reflect his societal norms and ideals but he does not have the right to direct other sovereign nations as to what they should do especially where their societal norms and ideals are different from those which exist in Prime Minister Cameron's society. I, as the president of this nation, will never initiate or support any attempt to legalize homosexuality in Ghana. As a government, we will abide by the principles enshrined in our Constitution which is supreme.<sup>6</sup>*

Civil Society Organisations, including the National Coalition for Proper Human Sexual Rights and Family Values, which is an amalgamation of Christian and Para-Christian bodies, religious bodies, including the Ghana Pentecostal and Charismatic Council, Coalition of Muslim Organisations, Ghana National Chief Imam's Office, Catholic Bishops' Conference, the Advocates for Christ, non-religious bodies, National House of Chiefs and opinion leaders in Ghana, have condemned the advocacy activities of persons in support of LGBTQIAP+. They further called upon government to strengthen laws of the country and resist attempt by any entity, whether local or foreign, to misinterpret or worse of all rewrite our laws to disregard the cherished culture and social values of Ghanaians. The sovereignty of this country must be respected and protected. Among multi-religious faith and various traditional and customary values across the country, an overwhelming consensus is established on the position of the nation in utter rejection of the law and tenets of faith and respect for public morality. It seems to suggest that personalities and organisations failed to consider whether or not LGBTQ+ people have inalienable rights which are also protected by this same Constitution.

The issue, therefore under consideration is in this study was to determine whether or not the denial of LGBTQ+ rights is inconsistent with the *Chapter 5 of the 1992 Constitution* which deals with the fundamental human rights and freedoms of individuals. Also, this research sought to find out whether or not there is a reasonable justification for the rejection of the LGBTQ+ initiative. This study will also try to find out whether or not there is a necessary connection between law and morality and whether morality can override positive laws.

Another major problem is the cultural dimensions of the activities of the LGBTQ+ activities. Most cultural practices in Ghana strongly reject the LGBTQ+ activities and make it a taboo. This research sought to find out whether the cultural effects may have any implications of the rejection of the LGBTQ+ group.

The main objective of this study was to contribute to the knowledge concerning the subject area and or possibly, probe further the debate evolving out of this topic. It also has the tendency to be

---

<sup>6</sup> <https://www.bbc.com/news/world-africa-15558769>

used as a literature available to other researchers to use as a basis to conduct further research on this topic.

Again, this study sought to explore the in-depth of the subject. This will help to put together a simplified version of these complex concepts with legal precedents and the appropriate legal interpretations and enunciations, with the view of contributing to the enhancement of the knowledge and understanding of practitioners and other stakeholders on the subject.

This study also sought to answer the following questions:

- a) Whether or not the fundamental freedoms guaranteed under the 1992 Constitution is absolute.
- b) Whether or not the denial of such the LGBTQ+ society is inconsistent to Chapter 5 of the 1992 Constitution.
- c) Whether or not there is a reasonable justification for the rejection of the LGBTQ+ initiative.
- d) Whether or not there is a necessary connection between law and morality and whether morality can override positive laws.

Finally, it is anticipated that this study will contribute to the enhancement of knowledge and understanding of practitioners and stakeholders on the subject by exploring in depth and putting together a simplified and concise manual with legal precedents and appropriate legal interpretations and enunciations and making it accessible to the general public. This, it is believed, will help educate practitioners and the general public on these two concepts to help them understand what, why and when these concepts are invoked and implemented. Finally, the study was also expected to help solve the problem of insufficient materials related to this topic area most especially in Ghana.

This research is delimited to the practices of LGBTQ+ and whether or not it is lawful in Ghana. The scope is further delimited to the context of Ghanaian law and in the area of using criminal and constitutional provisions. It was solely a desk type of research with limited coverage of data. The limitations of this study stems from the fact that LGBTQ+ practices have moral aspects attach to it. Due to the moral characteristics attached to this topic and how the Ghanaian culture prohibits this act there was difficulty in getting materials which addresses most of the legal implications of the LGBTQ+ society. Majority of these materials were more of moral opinions. This is because the law is not well defined concerning the activities of LGBTQ+. It all stem from the fact that it is a clandestine practice.

This research goes as far as critically analysing all the laws on human rights as well as most cases which have been decided by various courts of competent jurisdiction. Time factor was also a limitation since this research was to be finished and presented within a specific period. There was a limited time frame within which to complete the essay hence a need to access the relevant material needed for the study within a short frame. This is because its nature was purely the desktop approach base of analyzing laws.

## 1.1. Theoretical Frameworks

The Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ+) communities and the broad coalition of sexual and gender minorities they represent have used both legal and social means to secure rights and alter social norms.<sup>7</sup> These were done through advocacy and lobbying groups.

The social movement for gay liberation was the foundation for GLS that emerged in the area of sexuality studies. GLS examined sex and sexuality from the viewpoint of an essentialist construction of identity.<sup>8</sup> Its main objective was to forward the cause of the gay liberation movement, while resisting homophobia and heterosexism.<sup>9</sup> The methodological approach proposed by GLS was to use historical narratives to understand the lives of gays and lesbians in order to cement notions of stable, static, and universal identity categories. This approach helped in institutionalizing homosexuality within the minority logic of ethnic-type identity. The main epistemic contributions of GLS was making the “closet” visible and the process of “coming out” central to the claiming of gay or lesbian identity.<sup>10 11</sup>

Social Constructionism is a theory that argues that identity categories such as gender and sexuality are defined and interpreted by historical process and cultural institutions.<sup>12</sup> Social constructionism adopts an anti-essentialist position by holding that identities are not strictly determined by biological characteristics, but socially constructed. The boundaries around identity categories are always evolving and fluid, and can therefore be contested and redefined. The anti-essentialist position of social constructionism opens its scope to include sexuality and gender identity as fluid and dynamic across space and time. It also enables social constructionism to question inequality and hierarchical categories as products of unequal systems of knowledge and power relations. The main argument of social constructionism was that homosexual acts were historically present before the homosexual identity. The inference was that identities were socially constructed phenomena that were passed through social communication.<sup>13</sup> While social constructionists supported the idea of sexual orientation as identity, their main points of contention with GLS were two-fold. The first was that far from the natural, biological, and essentialist notions of identity that GLS proposed, constructionists argued that identity was historically, socially, and interpersonally created. The second argument was that universalizing identities concealed the differences of lived experience of racial and ethnic minorities, communities from different socio-economic classes, and non-normative sexual and gender minorities.

The third main theoretical position applied to sexuality and gender is Queer Theory. The word “queer” can be used in three distinct ways within gender and sexuality studies.<sup>14</sup> In the first sense, queer merely stands for gay and lesbian identity. In the second sense, queer represents a wide

---

<sup>7</sup> Kuriakose, F., & Kylasam I. D. (2020). *LGBT rights and theoretical perspectives*. DOI - 10.1093/acrefore/9780190228637.013.1291

<sup>8</sup> Gammon, M. A., & Isgro, K. L. (2006). Troubling the canon: Bisexuality and queer theory. *Journal of Homosexuality*, 52(1/2), 159-184.

<sup>9</sup> Abelove, H., Barale, M., & Halperin, D. (1993). *The lesbian and gay studies reader* (pp. xv–xxii). Routledge.

<sup>10</sup> Cass, V. C. (1984). Homosexual identity formation: Testing a theoretical model. *The Journal of Sex Research*, 20(2), 143-167.

<sup>11</sup> Dank, B. M. (1971). Coming out in the gay world. *Psychiatry*, 34(2), 182–197.

<sup>12</sup> Subramaniam, B. (2014). *Ghost stories for Darwin: The science of variation and the politics of diversity*. University of Illinois Press.

<sup>13</sup> Foucault, M. (1981). *History of sexuality* (Vols. 1-3). Vintage.

<sup>14</sup> Ibid

range of non-normative sexual desires that are non-reductive, ambiguous, fluid, and marginalized. Finally, queer can be used as a critical lens through which to deconstruct identity-based theories and discourses.<sup>15</sup> Queer theory, used in the third sense of the term, began as an offshoot of GLS and feminist studies and politics in the 1990s.<sup>16</sup> A comparative examination of the three theoretical approaches of sexuality studies is illustrated in Table 1.

Table 1. Theories of Sexuality Studies

| Paradigm                      | Central Assumption                   | Analytical Focus                  | Methodology   |
|-------------------------------|--------------------------------------|-----------------------------------|---|
| Modernist                     |                                      |                                   |   |
| Postmodernist                 |                                      |                                   |   |
| Gay and Lesbian Studies (GLS) | Identity as stable, innate, static   | LGBT essentializing identities    | Historical investigation of identity and social movements           |
| Social Constructionism        | Identity as socially constructed     | LGBT as essentializing identities | Structural examination of history and society in identity formation |
| Queer Theory                  | Identity as fluid, flexible, dynamic | Destabilizing identities          | Deconstruction of meta-narratives                                   |

Source: (Kuriakose & Kylasam,

*Adapted from: Kuriakose and Kylasam (2020)*

A comparative examination of the three theoretical frameworks of sexuality studies is explained further here. There are several issues regarding the theoretical approaches to LGBTQ+ rights. The claims regarding the rights of various types of minorities began to be articulated within the modern liberal human rights paradigm, the study of sexual and gender minorities was undertaken within the disciplines of sexuality and gender studies in the humanities and social sciences. Gay and Lesbian Studies (GLS), social constructionism, and queer theory are the three main theoretical frameworks that provided distinct methodologies by which to examine the lived experience of LGBTQ+ communities.<sup>17</sup> These approaches grew out of the larger paradigms of modernism and postmodernism. The modernist approach uses scientific and rational methods to

<sup>15</sup> Jagose, A. (1996). *Queer theory: An introduction*. New York University Press.

<sup>16</sup> Stein, E. (1999). *The mismeasure of desire: The science, theory, and ethics of sexual orientation*. Oxford University Press.

<sup>17</sup> Carlson, D. L. (2013). Postqueer? Examining tensions between LGBT studies and queer theory: A review of LGBT studies and queer theory. *Journal of LGBT Youth, 11*, 1-6.

understand knowable meanings.<sup>18</sup> GLS is a modernist approach in which sexuality and gender are considered as stable and static identities. In contrast, the postmodernist approach opposes biological determinism (also called essentialism) of identity. Queer theory and social constructionism are postmodernist approaches that have questioned normative understandings of sexuality and gender by adopting anti-essentialist positions. Although queer theory and social constructionism hold that gender and sexuality are fluid and dynamic, their anti-essentialist positions are distinct from each other. Queer theory critiques essentialism by emphasizing self-reflexive understanding and resists all master narratives. Social constructionism rejects essentialism by bringing out the role of historical and cultural processes in shaping the meaning and interpretation of identities.

## 1.2. Application of the Theoretical Perspectives to the Research

Thoughts from GLS, Social Constructionism and Queer theories is gaining grounds in our contemporary society. The questions that demand answers are: Are international human right laws to be followed religiously by signatories of member states; and are provisions in a given country's constitution be adhered to in detriment of minority groupings in society.

In tracing the theoretical development of LGBT rights, Kuriakose and Kylasam assert three features that stand out. First, historical, social, and cultural understandings of sexual and gender minorities inform the modern theoretical debate concerning the realization of LGBT rights. Second, theoretical development of LGBT rights is marked by the sustained academic tension between various paradigms as well as endogenous and exogenous critiques that challenge the origin and notion of identity. Finally, academic theorization of LGBT rights has significantly been informed by the politics of LGBT social movements and community mobilizations.<sup>19</sup> Hinging on these, it is therefore prudent to ascertain whether or not the LGBTQ+ is lawful in Ghanaian law today through the social and the constitutional lens.

## 2. METHODOLOGY

This section of the research discusses the strategies used to determine, select, process, and analyse information about the topic under consideration that is, whether or not LGBTQ+ practices are lawful according to Ghana's 1992 Constitution. These processes are referred to as the research methodology for the topic. It provides the principles for organising, planning, designing, and conducting research.<sup>20</sup> It gives an idea of how crucial methodology is in research, as the validity and dependability of the research paper are based on the methodology. The study was based on a desk research method. This approach requires a critical analysis of views expressed by notable writers and legal experts, as well as judgments pronounced in illustrating the law in some selected cases. Furthermore, the research sought to analyse the legal rules under the subject and the logical connections and disconnections through examination of the cases. These provided the basis to critically analyse the meanings and implications of these rules and principles which underpin them. Further, the research examined and evaluated a number of relevant legal textbooks, journals, articles, case law and legislation, among others.

---

<sup>18</sup> Seidman, S. (1993). *Identity and politics in a "postmodern" gay culture: Some historical and conceptual notes*. University of Minnesota Press.

<sup>19</sup> Kuriakose, F., & Kylasam I. D. (2020). *LGBT rights and theoretical perspectives*. 10.1093/acrefore/9780190228637.013.1291

<sup>20</sup> Kothari, C. R. (2004). *Research methodology: Methods and techniques (2nd Ed.)*. New Age International (P) Ltd.

## 2.1. Research Methods

This section includes all the methods and techniques for conducting the research. It is a science of studying how research is conducted systematically. In this field the researcher explains himself with the different steps, generally taken to study a research problem.<sup>21</sup> Nowadays, lucid research methods have become increasingly central to the landscape of legal scholarship.<sup>22</sup> Prior to that time, the field of legal scholarship was heavily dominated by normative analyses of the law, that is by 'black letter law'.<sup>23</sup> Such doctrinal analyses involve efforts to understand the best balance of rights and obligations under the framework defined by law. Their inspiration is drawn from moral, legal and political philosophy. They build their analysis around questions of what ought to be. On this premise, this this research embraced the idea of evidence informed law. This study was conducted purely using a desk research method where a great deal of data was gathered from an already existing data which is available to the public.

Desk research involves reviewing literature from written materials without going to the field. The researcher under this approach could sit in the comfort of his house and gather already written materials relevant to the topic from the internet or from books at his disposal or visit the library. This method is most suitable for legal research. This method is at times employed qualitatively in the social sciences in area of content and critical comparative analyses.<sup>24</sup> The desk research method analyses issues pertaining to the study were done through comparative analysis of decided cases and pieces of legislation from common law countries, legal journals that falls in line with the subject matter under study. This is to provide more analysis to solve the research problem for a sound outcome. In other words, the methodology is desk-based by reviewing and evaluating various laws, books and journals covering the subject matter. Furthermore, it was less time consuming since most information needed were already in the public and gathering of information was also simple.

## 2.2. Sources of Law

Sources of law in this context refer to the various references which were used in the writing of this paper. Because the research was conducted via a desk approach, the two main sources of law being primary and secondary sources were used in conducting the desktop legal research.

Primary sources of law as stated above are the actual laws and rules issued by governing bodies that tell us what we can and cannot do. The four primary sources are constitutions, statutes, cases, and regulations. These laws and rules are issued by official bodies from the three branches of government.<sup>25</sup> Primary legal sources which include the Constitution, decided cases, legislation, and administrative rules and regulations. Secondary sources on the other hand are used in this case to explore, analyse, depict, explain, or critique the law in addition to merely reciting it. Due to the fact that the background to this research is set in the Ghanaian context, primary sources of law mentioned in this sense refers to the various laws

---

<sup>21</sup> Mishra, S. B., & Alok, S. (2011). *Handbook of research methodology: Compendium for scholars and researchers*. Education Publishing

<sup>22</sup> Monahan, J., & Walker, L. (2011). Twenty-five years of social science in law. *Law and Human Behaviour*, 35(1), 72-82.

<sup>23</sup> Diamond, S. S., & Mueller, P. (2010). Empirical legal scholarship in law reviews. *Annual Review of Law and Social Science*, 6, 581-599.

<sup>24</sup> Ibid

<sup>25</sup> What are primary sources of law? Retrieved 02/02/2022 from <https://lasc.libguides.com/basics-of-legal-research>



espoused under Chapter four of the 1992 Constitution titled as The Laws of Ghana, specifically under Article 11.

The primary sources of law in the Ghanaian context, as indicated in *Article 11 of Ghana's 1992 Constitution*, was relevant to the subject matter that was examined. According to the article, “(1) The laws of Ghana shall consist of: (a) this Constitution; (b) enactments made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules, and Regulations made by any person or authority under a power conferred by this Constitution; (d) the existing law; and (e) the common law,” according to the said article.<sup>26</sup>

### 2.3. Secondary Sources of Law

A good place to start most research is with a secondary source. A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well.<sup>27</sup> In legal research, secondary sources refer to a variety of resources that explain, interpret, and analyze primary sources. They include legal dictionaries, encyclopedias, law reviews, Law Reports, treatises, restatements, and jury instructions.<sup>28</sup> The following are secondary sources of data used in the writing of this research:

#### 2.3.1. Case Laws

The term, *case law* refers to laws that come from decisions made by judges in previous cases. Case law, also known as “common law,” and “case precedent,” provides a common contextual background for certain legal concepts, and how they are applied in certain types of case. How much sway case law holds may vary by jurisdiction, and by the exact circumstances of the current case.<sup>29</sup> Case laws constitute a significant part in the compilations of this research work. Judgments pronounced in illustrating the law on the rights of individuals were also looked at in some selected cases. The research is focused on this particular source as they speak directly to the situation as it exists in the Ghanaian law. The decisions of the Ghanaian courts are also cited extensively as it affords the reader the opportunity to understand the operation of the law in the Ghanaian sense and its nuances which further helps in the appreciation of the issues at hand. Most of the cases that have served as sources of data for this research and are cases on the infringement of human rights in other jurisdiction and one very popular case from Ghana. This is because they are directly relevant for this research.

In analysing these cases, I focused on what the judges based their arguments on and how they reasoned in order to arrive at the conclusions they arrived at. Usually, when judges are deciding on a case, they use the formal written laws as a starting point and interpret these laws by retrieving arguments from other sources of law such as legislative instruments and earlier rulings. I therefore had to read some of the cases the courts had referred to in order to interpret the conclusions of the courts in certain cases.

---

<sup>26</sup> Chapter 4 of The 1992 Constitution of The Republic of Ghana

<sup>27</sup> Secondary sources of law. Retrieved 22/01/22 from <https://library.law.yale.edu/secondary-sources>

<sup>28</sup> Ibid

<sup>29</sup> Case laws. Retrieved 21/02/2022 from <https://legaldictionary.net/case-law/>

### 3. LITERATURE REVIEW

The research as stated in the methodology adopted the desk approach. Reference is therefore made to legitimate (verifiable) sources of law. Primary and secondary sources of law are the two broad categories from which materials will be reviewed. The Constitution, case law, legislation, and administrative rules and regulations are examples of primary legal sources. Secondary legal sources may simply recite the law, but they can also examine, analyze, describe, explain, or criticize it. Secondary sources of law assist in the discovery of primary legal sources or the definition of legal terms and phrases of legal research. Anything legal source that is not directly passed by parliament is referred to as a secondary source of law. As such, there is a review of both primary (consisting of constitutional provisions, enactments, existing laws and judicial decisions) and secondary (made of articles, scholarly publications as well as textbooks) sources of law.

#### 3.1. Primary Source

In light of the subject matter discussed, the primary sources of law which aided the research are the laws and rules made by legislative bodies. As such those primary sources of law in the Ghanaian context is seen under **Article 11** of the Constitution which deals with matters pertaining sources of law. In light of the subject matter to be discussed, the primary sources of law which will aid the research are the laws and rules made by legislative bodies. As such those primary sources of law in the Ghanaian context is seen under **Article 11 of the Constitution** which deals with matters pertaining sources of law. *“(1) The laws of Ghana shall comprise- (a) this Constitution; (b) enactment made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitutions; (d) the existing law; and (e) the common law.”*<sup>30</sup>

The authority stated under **Article 1(2) of the Constitution** gives it power as the primary source of law in Ghana. The said article states: *“This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.”* The sources of law stated under **Article 11** from which I will report findings are:

- (i) The Constitution;
- (ii) Enactments made by or under the authority of the Parliament established by this Constitution;
- (iii) Order Rules and Regulations made by any person or authority under a power conferred by this Constitution;
- (iv) The existing law; and
- (v) The Common Law

##### 3.1.1. The Constitution

As stated in **Article 1(2)** stated supra, the Constitution shall be the supreme law of Ghana. The Constitution has several chapters and articles which cannot be discussed due to the scope and limitations of the work. For the purpose of this paper, the relevant constitutional findings are as follows:

---

<sup>30</sup> Chapter 4 of the 1992 Constitution of The Republic of Ghana

The 1992 Constitution contains in Chapter 5 elaborates on human rights provisions guaranteed by the Constitution. **Article 12 of the 1992 Constitution** provides that the human rights and freedom enshrined in Chapter 5 shall be respected and upheld by the Executive, Legislature, Judiciary and all other organs of government and its agencies and by all natural and legal person in Ghana and are enforceable by the court.

The above provisions clearly indicate the Constitution anticipates human rights violation by private individuals and companies, as well as the government and government agencies. Thus, employers may violate the rights of their employees, while parents may violate the rights of their children. Fundamental rights protected under the Constitution are however subject to the respect for the rights and freedoms of others and for the public interest. Therefore, there are no absolute rights under the Constitution.

Amongst the civil and political rights provided under the Constitution, are protection of right to life,<sup>31</sup> protection of personal liberty,<sup>32</sup> respect for human dignity,<sup>33</sup> protection of slavery and forced labour<sup>34</sup> equality and freedom from discrimination,<sup>35</sup> protection of privacy and home and property,<sup>36</sup> rights to fair trial.<sup>37</sup> In addition to the specified civil and political rights, **Article 21 of the 1992 Constitution** contains detailed general fundamental freedoms which may be regarded as the Bill of Rights providing thus, **Article 21(1)** All persons have the rights to the following:

- a) Freedom of speech and expression, which shall include freedom of the press and other media;
- b) Freedom of thought, conscience and belief, which shall include academic freedom;
- c) Freedom to practise any religion and to manifest such practice;
- d) Freedom of assembly including freedom to take part in processions and demonstrations;
- e) Freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest;
- f) Information, subject to such qualifications and laws as are necessary in a democratic society; and
- g) Freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.

For the purposes of this study, the following the following provisions on the rights of individuals would be discussed.

Firstly, **Article 12(1) and (2)** which lucidly sees to explain that, the fundamental human rights and freedoms enshrined in the Constitution shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies, and where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution. It goes further to explain that every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in the Constitution but subject to respect for the rights and freedoms of others and for the public interest.

---

<sup>31</sup> Article 13 of the 1992 Constitution

<sup>32</sup> Article 14 of the 1992 Constitution

<sup>33</sup> Article 15 of the 1992 Constitution

<sup>34</sup> Article 16 of the 1992 Constitution

<sup>35</sup> Article 17 of the 1992 Constitution

<sup>36</sup> Article 18 of the 1992 Constitution

<sup>37</sup> Article 19 of the 1992 Constitution

Also, **Article 14** also explains that every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty. **Article 17 of the 1992** Constitution also explains that, a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. **Article 21(e)** also explains that, all persons shall have the right to freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest.

### 3.1.2. Enactments

An enactment is defined by the Black's law dictionary to mean "The action or process of making into law or a statute"<sup>38</sup> As such the relevant statutes to the subject matter are analysed below.

Relevant enactments to the study include the Public Order Decree 1972, NRC 68 Section 7(2) which briefly provides inter alia that any such meeting or procession cannot be lawfully held except with the consent of the Commissioner or any person authorized by him.

### 3.1.3. Order, Rules and Regulations

**Article 11(7)** of the Constitution reads, "Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall –

- (a) be laid before Parliament;
- (b) be published in the Gazette on the day it is laid before Parliament; and
- (c) come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament.

This study relied on the Promotion of Proper Human Sexual Rights and Ghanaians Family Values Bill 2021. It was found that object of this will was to provide for proper human sexual rights and Ghanaian family value, proscribe LGBTQ+ and related activities, proscribe propaganda of, advocacy for or promotion of LGBTQIAAP+ and related activities. It also provides for the protection and support for children, person who are victims or accused of LGBTQIAAP+ and related matters of the LGBTQ+.

### 3.1.4. Common Law

With respect to the Common Law, **Article 11 (2)** of the Constitution reads: "*The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.*" Further, **Article 11(3)** of the Constitution reads, "*For the purposes of this article, "customary law" means the rules of law which by custom are applicable to particular communities in Ghana.*" These rules of law are critically analysed below:

#### 3.1.4.1. Customary Law

Customary law consists of the indigenous customs of traditional communities. Every ethnic group in Africa has evolved its own distinct customary legal system of rules that are binding on its members. Distinct to everyday social habits and observances, the rules carry along with them local sanctions for their breach. In general, the rules are unwritten, though efforts are now being

---

<sup>38</sup> Black's Law Dictionary. 10<sup>th</sup> Ed., p.606

made to compile them in written form. Customary laws are not uniform across ethnic groups and as such, differences in the customary laws of ethnic groups can be traced to various factors such as language, proximity, origin, history, social structure and economy. For example, the customary law system of an ethnic group in one town may be different from the customary law system of the ethnic group in a neighbouring town, even though the two ethnic groups may speak the same language. It was found out right from Chapter one (1) that the National House of Chiefs, who are the custodians of the customary law rules and leaders of the traditional setting are all against the LGBTQ+ activities and spoke against them. Same sex marriage in the traditional setting is observed as a taboo and regarded as a serious crime in the Ghanaian society.

### 3.1.4.2. Case Laws

The cases of relevance to the subject matter of property distribution upon divorce are *Mensima v Attorney General*,<sup>39</sup> where the court stated that, the 1992 Constitution itself makes it abundantly clear that the enjoyment of the fundamental human rights and freedoms is not absolute, but subject to the rights of others. See Article 12(2), which stipulates the enjoyment of rights is subject to respect for the rights and freedoms of others and for the public interest. It should be noted that, the exercise of rights naturally calls for the observance of duties. So that one cannot enjoy their rights, if in doing so it interferes with the rights of their fellow beings, that is why rights go with obligations.

In the case involving the *New Patriotic Party v Inspector General of Police*<sup>40</sup>, the court held that, in *Article 21(4)*, the power required to control those situations mentioned therein must be granted by law which imposes reasonable restrictions on the fundamental freedoms to which he is entitled. In other words, a citizen's freedom may be restricted by law on the grounds stated in the Constitution, but they cannot be denied. Also of interest is *Banonsin v The Republic* case outcome which stated that, it is the female sex organs called the vulva and the vagina that are normally penetrated into during sexual act which can qualify to be carnal knowledge under *Sections 98 and 99 of Act 2*.

## 3.2. Secondary Sources

As already stated, the courts and legal scholars treat other sources of law which are not strictly law because decisions from them are not binding, but rather of persuasive effects. They are regardless, treated with respect. Because these sources are not strictly legal, they are referred to as secondary sources of law. Secondary sources of law explain, and analyse what the substantive laws are. These explanations are found in Encyclopaedia, law reviews, treaties, among others. For the purposes of this paper, articles relevant to the subject matter were looked at.

### 3.2.1. Articles

Most information gathered on the LGBTQ+ society was gathered from articles written by experts from the field. Findings from these articles revealed that the terms "Lesbian", "Gay", "Bisexual", and "Transgender" (LGBT) describe distinct groups within the gay culture. The early initiatives for people who were gay focused mostly on men. However, there were women who also engaged in same activities. So, in an attempt to draw attention to issues specific to gay women, "lesbian" is often listed first.<sup>41</sup> People who are bisexual or transgender have been traditionally left out of, or

---

<sup>39</sup> [1996-1997] SCGLR 676 at 687

<sup>40</sup> [1992-1993] 2 GLR 459

<sup>41</sup> SAMHSA's NCADI. <http://ncadi.samhsa.gov/features/lgbt/whoisgay.aspx>

underrepresented in, research studies and health initiatives. It is now considered standard to include these two groups along with gay men and lesbians.<sup>42</sup>

It was further revealed that, LGBT is an initial that stands for lesbian, gay, bisexual, and transgender. The initials LGBT is intended to emphasize a diversity of sexuality and gender identity-based cultures, and is sometimes used to refer to anyone who is non-heterosexual or non-cisgender instead of exclusively to people who are lesbian, gay, bisexual, or transgender. To recognize this inclusion, a popular variant adds the letter Q for those who identify as queer and/or are questioning their sexual identity as LGBTQ, recorded since 1996. Whether or not LGBT people openly identify themselves may depend on whether they live in a discriminatory environment, as well as the status of LGBT rights where one lives. Before the Sexual Revolution of the 1960s, there was no common non-derogatory vocabulary for non-heterosexuality; the closest such term, "third gender", traces back to the 1860s but never gained wide acceptance in the United States. The first widely used term, homosexual, was thought to carry negative connotations and tended to be replaced by homophile in the 1950s and 1960s, and subsequently gay in the 1970s. As lesbians forged more public identities, the phrase "gay and lesbian" became more common. Lesbians who held a more essentialist view that they had been born homosexual and used the descriptor "lesbian" to define sexual attraction, often considered the separatist, angry opinions of lesbian- feminists to be detrimental to the cause of gay rights. This was soon followed by bisexual and transgender people also seeking recognition as legitimate categories within the larger community. After the initial euphoria of the Stonewall riots wore off, starting in the late 1970s and the early 1980s, there was a change in perception; some gays and lesbians became less accepting of bisexual or transgender people. It was thought that transgender people were acting out stereotypes and bisexuals were simply gay men or lesbian women who were afraid to come out and be honest about their identity. Each community that is collectively included has struggled to develop its own identity including whether, and how, to align with other gender and sexuality-based communities at times excluding other subgroup.<sup>43</sup> These conflicts continue to this day ever having its activities increasing in scope into LGBTQ+.

#### **4. FINDINGS AND DISCUSSIONS**

As stated in the preceding chapters, the objective of the study was to review the law to determine whether or not the LGBTQ+ Society and activities are lawful in Ghana. The study as indicated in Chapter 1 was based on a desk research method. This approach requires a critical analysis of views expressed by notable writers and legal experts as well as judgments pronounced in illustrating the law in some selected cases. In Chapter Three the findings from reviewing legitimate legal sources from primary and secondary sources were reported. The findings are analysed critically and discussed in this Chapter to fully appreciate the certainty of the law on the subject matter.

After a careful review of the literature, there are some questions which popped up. This chapter seeks to analyse and discuss the research question in full.

##### **4.1. Whether or not the Fundamental Freedom Guaranteed Under the 1992 Constitution is Absolute**

It must be emphasised that none of these fundamental freedoms guaranteed under the 1992 is absolute. For instance, a restriction on a person's freedom of movement by his or her lawful

---

<sup>42</sup> Ibid

<sup>43</sup> LGBT From Wikipedia, the free encyclopaedia. Retrieved 11/02/2022 from <http://en.wikipedia.org/wiki/LGBT>

detention shall not be held to be inconsistent with or in contravention of the Constitution.<sup>44</sup> Similarly, nothing in or done under the authority of a law shall be held to be inconsistent with or in contravention of the Constitution to the extent that, that law in question makes provision for the imposition of restrictions by order of a court, that are required in the interest of defence, public safety or public order.<sup>45</sup> On the restrictions necessarily required to be placed on the enjoyment of fundamental freedoms as contained in the 1992 Constitution in the Supreme Court per Bamford Addo JSC in *Mensima v Attorney General*<sup>46</sup> stated, thus:

*The 1992 Constitution itself makes it abundantly clear that the enjoyment of the fundamental human rights and freedoms is not absolute but subject to the rights of others. See Article 12(2), which stipulates the enjoyment of rights is subject to respect for the rights and freedoms of others and for the public interest. It should be noted that the exercise of rights naturally calls for the observance of duties. So that one cannot enjoy his rights if in doing so he interferes with the rights of his fellow beings that is why rights go with obligations.*

The question, however, is by what criteria can the validity of the restrictions imposed by statute on the enjoyment of the fundamental rights and freedoms as contained in Articles **12(2)**, **21(1)(e)** and **21(4)** be tested?

This issue came before the Supreme Court in the case of *New Patriotic Party v Inspector General of Police*.<sup>47</sup> In that case certain provisions of the Public Order Decree<sup>48</sup> were declared unconstitutional on the grounds that, first, the said provisions were obsolete, and second, they tend to curtail rather than restrict the rights involved.

In the course of the judgement Charlse Hayfron Benjamin JSC stated:

*In Article 21(4) the power required to control those situations mentioned therein must be granted by law which imposes reasonable restrictions on the fundamental freedoms to which he is entitled. In other words citizen's freedom may be restricted by law on the grounds stated in the Constitution, but they cannot be denied.*

The decision in these two cases clearly explains that although there are fundamental rights, those rights are not absolute.

#### **4.2. Whether or not there is a Reasonable Justification for the Restriction or Rejection of the LGBTQ+ Initiative**

It can be said that every individual has certain inalienable rights which have been conferred on them by law. These inalienable rights cannot be denied but can be restricted. This means that the LGBTQ+ groups may have their rights restricted but not denied. The other issue for discussion is whether such initiative can be rejected legally in Ghana.

---

<sup>44</sup> Refer to Article 21(2) of the 1992 Constitution of Ghana

<sup>45</sup> Public Order Act (1994) Act 491

<sup>46</sup> [1996-1997] SCGLR 676 at 687

<sup>47</sup> [1992-1993] 2 GLR 459

<sup>48</sup> 1972, NRCDC 68 Section 7(2) provides inter alia that any such meeting or procession cannot be lawfully held except with the consent of the Commissioner or any person authorized by him.

It should be noted that state regulations of sexual behaviour is founded on the principle that certain sexual expressions such as sexual intercourse with a close relative, with or without consent of the party, or even animal are inimical to public health or public morality. In that vein, the Criminal Offenses Act, 1960, (Act 29), being the principal legislation on criminal offenses in Ghana, prohibits incest and bestiality. Act 29 however, does not make specific reference to LGBTTQQAAP+ in Ghana was far-fetched. **Section 104 of Act 29**, which the most proximate reference to LGBTTQQAAP+ only prohibits “unnatural carnal knowledge” as follows:

- “(1) A person who has natural carnal knowledge
- a) Of another person of not less than sixteen years of age without the consent of that other person commits a first-degree felony and is liable on conviction to a term of imprisonment of not less than five years and not more than twenty-five years; or
  - b) Of another person of not less than sixteen years of age with the consent of that other person commits a misdemeanor; or
  - c) Of an animal commits a misdemeanor
- (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.”

The Supreme Court, in the case of *Banonsin v The Republic*<sup>49</sup> clarified what may amount to “carnal knowledge.” In its determination, it stated that:

*It is the female sex organs called the vulva and the vagina that are normally penetrated into during sexual act which can qualify to be carnal knowledge under Sections 98 and 99 of Act 29.*

The effect of the above stipulates that the criminal law of Ghana does not encourage the LGBTQ+ initiative and as a result its activities are unlawful and illegal.

On the other hand, considering the 2017 report of Science Research Council<sup>50</sup>, it indicated that 18.1 percent of people living with HIV with AIDS are gays (men sleeping with men). LGBTQ+ youth are more likely to engage in high-risk sexual behaviours, leading to an increased incidence of STDs. The rates of gonorrhea, chlamydia, and HIV are twice as higher in sexually-minority youth, as in heterosexual men<sup>51</sup> Also, the Centre for Disease Control and Prevention data in 2014 showed that gay and bisexual men accounted for 83% of the new diagnoses of HIV among males, aged 13 years and older. The gay men were also at an increased risk of various cancers, including prostate, testicular, anal, and colon, which might be related to limited culturally sensitive screening services<sup>52</sup> There is also an increased risk of STDs such as syphilis, human papillomavirus (HPV) infections, and hepatitis in Men who have Sex with Men (MSM). There are increased risk of breast, ovarian, and endometrial cancers in lesbians and bisexual women due to fewer full-term pregnancies, fewer mammograms, and obesity. The higher prevalence of obesity was found in lesbian women from the African American community and from low socio-economic status.<sup>53</sup>

---

<sup>49</sup> Suit No. J3/2/2014 dated 8th March 2014, SC (unreported)

<sup>50</sup> Communicated on the 4th National HIV and AIDS Research Conference in Accra

<sup>51</sup> Benson, P. A., & Hergenroeder, A. C. (2005). Bacterial sexually transmitted infections in gay, lesbian, and bisexual adolescents: Medical and public health perspectives. *Semin Pediatr Infect Dis.*, 16, 181-191.

<sup>52</sup> East, J. A., & E, I., & Rayess, F. J. (1998). Paediatricians' approach to the health care of lesbian, gay, and bisexual youth. *Adolesc Health*, 23, 191-193.

<sup>53</sup> Bowen, D. J., & Boehmer, U. (2007). The lack of cancer surveillance data on sexual minorities and strategies for change. *Cancer Causes and Control*, 18, 343-349.



In the nutshell, taking a critical look of the health risks that are associated with the activities of the LGBTQ+ society, Parliament can under **Article 93(2)** make laws to restrict or stop the actions of these groups.

Again, it should be noted that under **Article 11 of the 1992 Constitution** of Ghana, customary laws forms part of the laws of Ghana. Similarly, there is no specific legislation that imposes obligations on persons to promote socio-cultural values in accordance with **Article 39** of the Constitution. Clauses (1) and (2) of **Article 39** provides as follows:

“(1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary laws into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning,

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular the traditional practice which is injurious to the health and well-being of the person are abolished.”

None of the traditions and customs in Ghana agrees to such activities. For this reason, where the customs beliefs and tradition of the country are against those culture and per Article 39 the State is under an obligation to take steps to encourage the integration of appropriate customary laws parliament may decide to restrict and pass a law which would criminalize such immoral activities.

LGBTQ+ people are more likely to use alcohol, tobacco and other drugs than the general population. Also, they are less likely to abstain from, report higher rates of substance abuse problems, and are more likely to continue heavy drinking into later life. LGBTQ+ persons use alcohol, tobacco and other drugs for the same reasons as others, but their likelihood for doing so is heightened by personal and cultural stresses resulting from anti-gay bias. Reliance on drinking bars for socialization, stress caused by discrimination, and targeted advertising by tobacco and alcohol businesses in gay and lesbian publications are all believed to contribute to increased pressures on LGBTQ+ individuals to engage in substance abuse.

## 5. CONCLUSIONS AND RECOMMENDATIONS

It is clear from the study that, LGBTQ+ people have inalienable rights under **Chapter 5 of the 1992 Constitution** of Ghana which they are free to enjoy. However, it has also been established in this study that, those inalienable rights given to these group of people under the Constitution cannot be denied, but they can be restricted. This simply means that the 1992 Constitution of Ghana accords them all the rights, however the same Constitution can restrict the enjoyment of those rights. This study has looked into the reasonable grounds for which the rights of the LGBTQ+ societies can be restricted here in Ghana. Among them is the fact that, it is against the principle of Natural Carnal Knowledge with its serious health-related issues for those who practice it. It also goes against the moral conscience, tradition and cultural practices of the Ghanaian custom.

The study goes further to determine whether there seems to be any necessary connection between law and morality since morality since the latter is the major assertion with which most Ghanaian citizens reject the LGBTQ+ related activities. It has then established that, there is no necessary connection between law and morality, although some laws were made based on moral precepts. This is to say that, a law will not be regarded as bad just because it seeks to protect or project an immoral activity. Neither will a moral rule be upheld against a law since it protects the moral practices of the society.

The final conclusion drawn out of this study is that, the LGBTQ+ societies have the freedom, according to the 1992 Constitution, to enjoy their inalienable rights. However, Parliament has the right to pass laws to restrict the enjoyment of those rights when necessary.

There is therefore, no short cut solution that can address the problems facing many LGBTQ+ people across the world. Therefore, in the light of the above-mentioned discussions, following recommendations can be made in recognizing the role that individuals as well as institutions can play effectively.

1. Once the Ghanaian society has seen the danger for which practicing or allowing the LGBTQ+ community to function poses to the people, there should be education to sensitize individuals about the effects of such activities. That is the Ghana Health Service should embark on a large-scale sensitization programme of educating the youth on the negative health implications of the activities of the LGBTQ+ society. This will make the members and potential followers of the LGBTQ+ aware of the dangers they are getting themselves into. Schools and teacher education programmes are crucial sites where LGBTQ+ issues and concerns need to be addressed. Encourage school district and school staff to develop and publicise trainings on how to create safe and supportive school environments for all students, regardless of sexual orientation or gender identity and encourage staff to attend these trainings.
2. Parliament should not pass laws to criminalize the activities of the LGBTQ+ societies. This is because, members of LGBTQ+ have the right under the 1992 Constitution to join any association of their choice. As a result, criminalizing activities makes them victims of crime and hate. Lesbian, Gay, Bisexual and Transgender people and those perceived to be LGBTQ+ are regularly targeted as victims of hate crimes and violence. LGBTQ+ people experience stigma and discrimination across their life spans, and are targets of sexual and physical assault, harassment and hate crimes. Additional factors that may impact on mental health and well-being for LGBTQ+ people include the process of coming out (sharing one's LGBTQ+ identity with others), gender transition, internalized oppression, isolation and alienation, loss of family or social support, and the impact of HIV and AIDS. However, LGBTQ+ individuals' experiences of violence and discrimination differ depending on a number of factors including race, gender, income, and immigration status and language barriers. LGBT immigrants are more likely to face violence based on race and ethnicity and/or sexual identity and/or gender identity.
3. People who are already in the act should not be discriminated against because, people who are perceived as lesbians, gays, bisexuals, transgenders and queers, face particular obstacles, including accessing quality healthcare. Heterosexist assumptions can adversely affect the quality of treatment, and fear of a negative experience keeps many LGBTQ+ persons from seeking help. Organisations and individual therapists are not always LGBTQ+ friendly, and some therapists may not even recognize their own heterosexism. Staff can be judgmental toward LGBTQ+ sexuality, or be misinformed/uninformed about LGBTQ+ resources. Therefore, Stigmatizing language regarding gay men, lesbians, and bisexual persons should be avoided.
4. LGBTQ+ activities are at variance with the teachings of many faith-based organisations in Ghana. Nevertheless, the teachings of such organisations call for respect for the dignity of every human being. Given the popular trust, influence and authority that these institutions and their leaders enjoy among a large segment of the population, they should be seen as key potential allies in the fight to curb intolerance of any person in Ghana. Policy makers and advocates for respect and dignified treatment of LGBTQ+ persons should work to form strategic alliances with faith-based groups and their leaders, and encourage them to use their platforms to teach tolerance and respect for all, regardless of difference.

5. The National Commission for Civic Education (NCCE), in collaboration with the media and other stakeholders promoting the rights and liberties of LGBTQ+ persons, should intensify information, communication and education sensitization activities directed at the larger society with the aim of promoting respect for the rights and freedoms of minority groups, including persons in same-sex relationships.

## REFERENCES

- [1] Ablove, H., Barale, M., & Halperin, D. (1993). Introduction. In H. Ablove, M. Barale, & D. Halperin (Eds.), *The lesbian and gay studies reader* (pp. xv–xxii). Routledge.
- [2] Banonsin v The Republic. Suit No. J3/2/2014 dated 8th March 2014, SC (unreported).
- [3] Benson, P. A., & Hergenroeder, A. C. (2005). Bacterial sexually transmitted infections in gay, lesbian, and bisexual adolescents: Medical and public health perspectives. *Semin Pediatr Infect Dis., 16*, 181-191.
- [4] Bowen, D. J., & Boehmer, U. (2007). The lack of cancer surveillance data on sexual minorities and strategies for change. *Cancer Causes and Control, 18*, 343-349.
- [5] Carlson, D. L. (2013). Postqueer? Examining tensions between LGBT studies and queer theory: A review of LGBT studies and queer theory. *Journal of LGBT Youth, 11*, 1-6.
- [6] Case laws. Retrieved 21/02/2022 from <https://legaldictionary.net/case-law/>
- [7] Cass, V. C. (1984). Homosexual identity formation: Testing a theoretical model. *The Journal of Sex Research, 20*(2), 143-167.
- [8] Constitution of Ghana (1992). *The 1992 Fourth Republican Constitution*. Government of Ghana.
- [9] Dank, B. M. (1971). Coming out in the gay world. *Psychiatry, 34*(2), 182-197.
- [10] Diamond, S. S., & Mueller, P. (2010). Empirical legal scholarship in law reviews *Annual Review of Law and Social Science, 6*, 581-599.
- [11] East, J. A., & El Rayess F. (1998). Pediatricians' approach to the health care of lesbian, gay, and bisexual youth. *Journal of Adolescents Health, 23*, 191-193.
- [12] Gammon, M. A., & Isgro, K. L. (2006). Troubling the canon: Bisexuality and queer theory. *Journal of Homosexuality, 52*(1/2), 159-184.
- [13] Jagose, A. (1996). *Queer theory: An introduction*. New York University Press.
- [14] Kothari, C. R. (2004). *Research methodology: Methods and techniques (2nd Ed.)*. New Age International (P) Ltd.
- [15] Kuriakose, F., & Kylasam I. D. (2020). *LGBT rights and theoretical perspectives*. 10.1093/acrefore/9780190228637.013.1291
- [16] Lesbian, Gay, Bisexual, Transgender, Transsexual, Queer, Questioning, Inter sex, Asexual, Allies and/or Pansexual. Retrieved 03/01/22 from: <https://researchguides.mvc.edu/lgbtq>
- [17] Mensima v Attorney General [1996-1997] SCGLR 676 at 687.
- [18] Mishra, S. B., & Alok, S. (2011). *Handbook of research methodology: Compendium for scholars and researchers*. Educreation Publishing.
- [19] Monahan, J., & Walker, L. (2011). Twenty-five years of social science in law. *Law and Human Behaviour, 35*(1), 72-82.
- [20] New Patriotic Party v Inspector General of Police [1992-1993] 2 GLR 459.
- [21] Promotion of Proper Human Sexual Rights and Ghanaians Family Values Bill 2021.
- [22] Public Order Act (1994) Act 491.
- [23] Public Order Decree 1972 NRCDC 69.
- [24] Published article. Retrieved 21/02/2022 from <https://www.bing.com/search?q=definition+of+published+article&form=ANNTTH1&refid=e9f022bb8a134a2ea66cfc20afa45fac>
- [25] Russell, S. T., Everett, B. G., & Rosario, M. (2014). Indicators of victimization and sexual orientation among adolescents: Analyses from youth risk behaviour surveys. *American Journal of Public Health, 104*, 255-261.
- [26] Secondary sources of law. Retrieved 22/08/22 from <https://library.law.yale.edu/secondary-sources>.
- [27] Seidman, S. (1993). Identity and politics in a “postmodern” gay culture: Some historical and conceptual notes. In M. Warner (Ed.), *Fear of a queer planet: Queer politics and social theory* (pp. 105-142). University of Minnesota Press.

- [28] Stein, E. (1999). *The mismeasure of desire: The science, theory, and ethics of sexual orientation*. Oxford University Press.
- [29] Subramaniam, B. (2014). *Ghost stories for Darwin: The science of variation and the politics of diversity*. University of Illinois Press.
- [30] What are primary sources of law? Retrieved 02/02/2022 from <https://lasc.libguides.com/basics-of-legal-research>

## **AUTHOR**

**Isaac Eshun** is a Lecturer in the Department of Social Studies Education, University of Education, Winneba (UEW) - Ghana. He is a holder of the following certificates: Teacher Certificate “A”, Bachelor of Education (Social Studies), Bachelor of Laws (LLB), Master of Philosophy (Social Studies), and a Doctor of Philosophy in Social Studies. Isaac has taught in all the educational levels in Ghana: Basic level, Second cycle, College of Education and now a lecturer and researcher at UEW. He has over dozens of referred articles published in peer reviewed journals, authored over dozen books, and attended and presented papers at international conferences. He is also a member of editorial board and reviewer of reputable journals, and member of several professional associations. Below are few of his URLs:



<https://www.adscientificindex.com/scientist/isaac-eshun/99651>

<https://scholar.google.com/citations?user=OwS6GAoAAAAJ&hl=en>