

## SAME-SEX MARRIAGE, CIVIL MARRIAGE AND COHABITATION: THE LAW, THE RIGHTS AND RESPONSIBILITIES

### **Abstract**

Generally, marriage is believed to be the union of two persons. However, very little attention is paid to its validity which attracts rights and responsibilities. This paper examined the law surrounding marriage rights and responsibilities attached if any, depending on whether the marriage is valid or not. The paper employed qualitative method of legal research as it placed reliance on primary sources of law materials such as the Marriage laws of various jurisdictions. It also placed reliance on secondary sources of law material which include books on marriages, articles in journals as well as articles on the internet. The paper observed that many intending couples make erroneous choices of marriages which are not valid depending on the law of marriage in their jurisdiction. As a result, no right and benefit or privilege accrues to them legally. The article recommended that there is a need for intending couples to get more acquainted with the laws regulating marriage in their respective jurisdiction to ensure they contract a valid marriage.

**Keywords:** Marriage, same sex, civil marriage, cohabitation

### **1. Introduction**

The word 'Marriage' is not capable of a single definition as the concept differs with varying jurisdiction, Cultures and Societies. The differences notwithstanding, marriage is generally regarded as the union of opposite sex.<sup>1</sup> However, this paper will be considering marriage from different perspectives as it will discuss Same-sex marriage, Civil marriage and Cohabitation. The paper will also consider the three forms of marriages as mentioned vis-à-vis the legality of each of them as well as rights and responsibilities attached to them where they do exist.

### **2. Same-Sex Marriage**

Same-sex Marriage could be described as the legalized union of a Same-sex couple (either two males or two females) for the purpose of cohabiting as husband and wife. The concept of Same-sex marriage is not a recent development as it has been in existence since ancient times, even though it did not receive recognition and wide acceptability.<sup>2</sup> In recent years however, the issue of Same-sex marriage has been generating controversies and interests all over the world. Various writers have been expressing their views in respect of the matter, in not less than twenty-five textbooks and hundreds of law review articles for over twenty-five years now.<sup>3</sup> Similarly, there had been agitations for legalization of rights by Same-sex couples for about three decades, and people aware of the 'gay right movement', but they did not have the idea of the various forums in which the issues were being addressed<sup>4</sup>

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<sup>1</sup> That is marriage between a man and a woman; a man and two or .more women; or a woman and two or more men. See also E. I Nwogugu, *Family Law in Nigeria* 3<sup>rd</sup>edn. 4

<sup>2</sup>P. G. Bossin, 'Same-Sex Union: The New Civil Rights Struggle or an Assault on Traditional Marriage' (2004) 40 (iss.3) (Art.2) *Tulsa Law Review* 382.

<sup>3</sup> See e.g. Paul Axel-Lute, '*Same-sex Marriage: A Selective Bibliography of the Legal Literature*'(providing a bibliography of legislation, ALR Annotations, Web- based Resources, Case laws, Law review Articles concerning Same-sex marriage as well as list of countries legalizing Same-sex marriage) (last updated January 7, 2014). [https:// Law-library.rutgers.edu/files/favicon.ico](https://Law-library.rutgers.edu/files/favicon.ico) accessed on 3 February 2016.

<sup>4</sup>Bossin, 'Same-Sex Union: The New Civil Rights Struggle or an Assault on Traditional Marriage' (2004) 40 (iss.3) (Art.2) *Tulsa Law Review* 382.

The agitation for rights led to Same-sex couples seeking the enforcement of their rights before the court. Therefore, in November 2003, in the landmark case of *Goodridge v Department of Public Health*,<sup>5</sup> the Massachusetts Supreme Court held that denying gay and lesbian couples the right to marry, violated the Massachusetts Constitution. This decision brought about a lot of activities at both the state and National levels of the United States towards amending the State Constitution in order to prevent such other decisions.<sup>6</sup>The decision in *Goodridge*'s case was viewed differently by two schools of thought. One school of thought believed that, gay rights movement is the next to Civil rights struggle<sup>7</sup> while the other believed that homosexuality violates moral and religious values and therefore, same-sex couples should have limited or no right at all.<sup>8</sup>The argument of those against same-sex marriage is that same-sex marriage is an all-out assault on the institution of marriage and that if equivalent rights of marriage

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<sup>5</sup> 798 N.E 2d 941. See also Bossin *Ibid*.

<sup>6</sup> See ABA Sec. Fam.L.Working Group on Same- Sex Marriage and Non-Marital Unions, A white paper: An Analysis of the law Regarding Same-Sex Marriage, Civil Unions, and Domestic Partnership 30-35, 56 nn. 207-208 (2004) (available at <http://www.abanet.org/family/white paper/full report.pdf>) *The White Paper* discusses the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996), and the two proposed federal constitutional amendments, Sen. Jt. Res. 26, 108th Cong. (Nov. 25, 2003) and H.R. Jt. Res. 56, 108th Cong. (May 21, 2003), that seek to limit marriage to opposite-sex couples. It also indicates that the following states have enacted statutes, constitutional amendments, or executive orders restricting marriage to opposite-sex couples: Alabama (Ala. Code § 30-1-19 (1998)); Alaska (Alaska Const. art. I, § 25; Alaska Stat. § 25.05.013(2004)); Arizona (Ariz. Rev. Stat. Ann. § 25-101 (West 2000)); Arkansas (Ark. Code Ann. § 9-11-109(2002)); California (Cal. Fain. Code Ann. § 308.5 (West 2004)); Colorado (Colo. Rev. Stat. § 14-2-104 (2003)); Delaware (Del. Code Ann. tit. 13, § 101 (1999)); Florida (Fl. Stat. Ann. § 741.212 (West Supp. (2005)); Georgia (Ga. Code Ann. § 19-3-3.1 (2004)); Hawaii (Haw. Const. art. I, § 23; Haw. Rev. Stat. Ann. § 572-1 (LEXIS 1999)); Idaho (Idaho Code § 32-209 (1996)); Illinois (750 Ill. Comp. Stat. Ann. 5/212 (West 1999)); Indiana (Ind. Code Ann. § 31-11-1-1 (LEXIS 2003)); Iowa (Iowa Code Ann. 595.2 (West 2001)); Kansas (Kan. Stat. Ann. § 23-101 (1995)); Kentucky (Ky. Rev. Stat. Ann. § 402.020 (LEXIS 1999)); Louisiana (La. Civ. Code Ann. arts. 89, 3520 (West 1999)); Maine (19-A Me. Rev. Stat. Ann. § 701 (1998)); Michigan (Mich. Comp. Laws Ann. § 551.1 (West 2005)); Minnesota (Minn. Stat. Ann. § 517.01 (West 1990)); Mississippi (Miss. Code Ann. § 93-1-1 (2004)); Missouri (Mo. Rev. Stat. Ann. § 451.022 (West 2003)); Montana (Mont. Code Ann. § 40-1-401 (2003)); Nebraska (Neb. Const. art. I, § 29); Nevada (Nev. Const. art. I, § 21); North Carolina (N.C. Gen. Stat. § 51-1.2 (2003)); North Dakota (N.D. Cent. Code § 14-03-01 (2004)); Ohio (Ohio Rev. Code Ann. §§ 3101.01, 3105.12 (West Supp. 2005)); Oklahoma (Okla. Stat. Ann. tit. 43, § 3.1 (West 2001)); Pennsylvania (23 Pa. Consol. Stat. Ann. § 1704 (West 2001)); South Carolina (S.C. Code Ann. § 20-1-15 (Supp. 2004)); South Dakota (S.D. Codified Laws § 25-1-1 (2004)); Tennessee (Tenn. Code Ann. § 36-3-113 (1996)); Utah (Utah Code Ann. § 30-1-2 (1998)); Virginia (Va. Code Ann. § 20-45.2 (2004)); Washington (Wash. Rev. Code § 26.04.010 (West Supp. 2005)); West Virginia (W. Va. Code § 48-2-104 (2004)).

<sup>7</sup>See e.g. *Amendment to Preserve Traditional Marriage*, *supra* n. 5, at 15-17 (testimony of Rep. John Lewis (D-Ga.)) (stating that the proposed Constitutional amendment "seeks to write discrimination into the constitution," that it would "restrict[ ] the civil rights of some of our citizens," and that "[t]he right to liberty and happiness belongs to each of us, and on the same terms, without regard to... sexual orientation"); Mary L. Bonauto, *Civil Marriage as a Locus of Civil Rights Struggles*, 30 Human Rights Mag. 3 (Summer 2003); Josephine Ross, *Riddle for Our Times: The Continued Refusal to Apply the Miscegenation Analogy to Same-Sex Marriage*, 54 Rutgers L. Rev. 999 (2002); M. Strasser, *Same-Sex Marriages and Civil Unions: On Meaning, Free Exercise, and Constitutional Guarantees*, 33 Loy. U. Chi. L.J. 597 (2002); Mark Strasser, *Loving in the New Millennium: On Equal Protection and the Right to Marry*, 7 U. Chi. L. Sch. Roundtable 61 (2000); Ralph Wedgwood, *The Fundamental Argument for Same-Sex Marriage*, 7 J. Political Phil. 225 (1999); Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique*, 21 N.Y.U. Rev. L. & Soc. Change 567 (1994).

<sup>8</sup>See e.g. George W. Dent, Jr., *The Defense of Traditional Marriage*, 15 J.L. & Pol. 581 (1999); William C. Duncan, *Whither Marriage in the Law?* 15 Regent U. L. Rev. 119 (2002); John Finais, *The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations*, 42 Am. J. Juris. 97 (1997); Patrick Lee & Robert P. George, *What Sex Can Be: Self-Alienation, Illusion, or One-Flesh Union*, 42 Am. J. Juris. 135 (1997); Dale M. Schowengerdt, Student Author, *Defending Marriage: A Litigation Strategy to Oppose Same-Sex "Marriage,"* 14 Regent U. L. Rev. 487 (2002).

are given to same-sex couples; the institution of marriage will be destroyed.<sup>9</sup> On the contrary, those in favour of equal rights for same-sex couples contends that those involved in same-sex marriage are seeking to benefit from the marriage, rather than destroy it.<sup>10</sup> The rationale behind the argument of those in favour of Same-sex marriage is hinged basically on the fact that, the refusal of marriage right to same-sex couples amount to inequality as the same right denied them is actually given to others.<sup>11</sup> To the proponents of this view, inequality is considered contrary to the principle of equality which should entail that every adult citizen should have an equal right to participate in the basic institutions of society (unless- perhaps – there is sufficient evidence that an equal arrangement of this kind would have uncontroversial harmful effect).<sup>12</sup>In addition, it is the view of Same-sex marriage proponents that legal marriage being a social institution creates social status, therefore they also want to belong to that class.<sup>13</sup> Historically, under the English law, the regulation of marriage had always been the province of the States.<sup>14</sup>The States through their respective legislatures enact laws thereby creating statutes to regulate the issue of marriage. Previously, however due to the fact that Same-sex marriage was not contemplated, the various States Statute did not cover that area. Therefore, there was no legal validity for Same-sex marriage. Consequently, Same-sex couples resorted to court to secure their rights and legality to Same-sex marriage. The first case brought against State Statute denying homosexual couples the right to marry is the case of *Baker v Nelson*.<sup>15</sup> In that case, the Minnesota Supreme court, however held that a State statute denying a Same-sex couple the right to marry did not violate the First, Eight, Ninth, or Fourteenth Amendments to the Constitution. The case was consequently dismissed on appeal to the U.S. Supreme Court for want of a substantial question.<sup>16</sup> There were also other several State court decisions denying gay and lesbian couples the right to marry.

In 1993 however, a State court opened the door to the possibility that prohibition against gay marriage might be unconstitutional in the case of *Baehr v Lewin*.<sup>17</sup> In that case the Hawaii Supreme court held that, although Same-sex marriage was not a fundamental right, the State prohibition against Same-sex marriage appeared to be both sex discrimination and a denial of equal protection under the State's Constitution.<sup>18</sup> Following the decision in Baehr's case the State passed a Constitutional amendment defining marriage as between one man and one woman.<sup>19</sup> This was to enable the State ensure that marriage is a preserve of opposite sex couples. Consequently, the federal Defense of Marriage Act was

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<sup>9</sup>See *Amendment to Preserve Traditional Marriage, supra* n. 5, 123-27 (testimony of Rep. Marilyn Musgrave (R-Colo.)) (asserting, in defense of the proposed constitutional amendment, that "the traditional definition of marriage is likely doomed unless we amend the Constitution," and contending that "traditional marriage-as well as our democratic system of government-is now under attack" and that "[w]ithout traditional marriage, it is hard to see how our community will be able to thrive"). See also Bossin, *Ibid* 383.

<sup>10</sup>Bossin, *Ibid*.

<sup>11</sup> W. Ralph, 'The Fundamental Argument For Same-sex Marriage' (1999) 7 ( 3) *The Journal of Political Philosophy* 225-242

<sup>12</sup> *Ibid*.

<sup>13</sup> *Ibid*.

<sup>14</sup>*Boggs v. Boggs*, 520 U.S. 833, 850 (1997) ("[D]omestic relations law is primarily an area of state concern.... "); *Mansell v. Mansell*, 490 U.S. 581, 597 (1989) ("Family law is an area traditionally of state concern." (O'Connor, J., dissenting) (citation omitted)); *Loving v. Virginia*, 388 U.S. 1, 7 (1967)("[M]arriage is a social relation subject to the State's police power."). See also H.R. Rpt. 104-664 at 3(July 9, 1996) ("The determination of who may marry in the United States is uniquely a function of state law. That has always been the rule, and H.R. 3396 [the federal Defense of Marriage Act] in no way changes that fact.").Bossin *Ibid*.

<sup>15</sup> 191 N.W 2d 185 (minn. 1971); See also Bossin *Ibid*.

<sup>16</sup> 409 U.S. 810 (1972). See also Bossin, *Ibid*.

<sup>17</sup> 852 p.2d 44 (Haw. 1993). See also Bossin *Ibid*.

<sup>18</sup>*Baehr v Lewin* *Id.* at 58 67.

<sup>19</sup> Haw. Cont. art 1 & 23 ("The legislature shall have the power to reserve marriage to opposite –sex couples"). *cit.* Bossin *Ibid*.

enacted.<sup>20</sup> The purport of the federal Defense Of Marriage Act was to define marriage as between one man and one woman for the purposes of Federal law and also to ensure that no state would be required to give full faith and credit to a Same-sex marriage performed in another State. This is an indication that the congress was not ready to risk leaving the issues of Same-sex marriage solely up to States so that the Federal rights, obligations, and benefits in opposite sex marriage would not be affected.<sup>21</sup>

Similarly, States which were alarmed at the decision in Baehr and who wanted to forestall a situation whereby they would be forced to recognize Same-sex marriages from other States equally enacted their own State Defense of Marriage Acts (DOMA). The State DOMA defined Marriage as between one man and one woman and also provided that the State would not recognize a Same-sex marriage from another State.<sup>22</sup> Ironically, while many States were quickly passing DOMA, some courts were taking contrary positions.<sup>23</sup> For instance, in 1998 an Alaska trial court held that denying Same-sex couples the right to marry violated both the state Constitutional right to privacy and the State Constitutional right to be free from discrimination.<sup>24</sup> However, before the case could get to the highest court, a constitutional amendment defining marriage as between one man and one woman was passed. This effectively ended the law suit.<sup>25</sup>

Despite the failed attempts at getting any court to uphold their rights proponents of same-sex marriage did not give up the fight for their rights. Finally, they succeeded at the Vermont Supreme Court on December 20, 1999 when the court held that it violated the common Benefit Clause of Vermont Constitution to deny to Same-sex couples the same benefits and privileges granted to married couples.<sup>26</sup> The court therefore ordered the legislature to remedy what they termed 'Constitutional infirmity'. Accordingly, the Vermont legislature created the 'Civil unions'. Thus Vermont became the first State in the U.S to offer the same state benefits and protections to Same-sex couples as those extended to married couples.<sup>27</sup> Similarly, on December 9, 2004, the Canadian Supreme Court ruled that legislation legalizing Same-sex marriage was constitutional.<sup>28</sup> Therefore Canada legalized Same-sex marriage in 2005. Other countries that have legalized Same-sex marriage include Argentina, Australia, Belgium,

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<sup>20</sup> Pub. L. No. 104- 199, 110 Stat. 2419 (1996).

<sup>21</sup> See generally H. R Rpt. 104-664 (July 9, 1996).

<sup>22</sup> Fla. Stat. Ann. § 741.212 (West Supp. 2005) provides:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States or any other jurisdiction, either domestic or foreign, or any other place or locations, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

<sup>23</sup> Bossin Ibid.

<sup>24</sup> Bossn, Ibid. cit. *Brause v Brause of Vital statistics*, 1998 W L 887 43 (Alaska super. Feb, 1998).

<sup>25</sup> Bossin cit. Alaska Const. art. I, § 25. See also *Brause v. State*, 21 P.3d 357 (Alaska 2001) (holding that plaintiffs' constitutional challenge to the state's refusal to grant them marriage licenses was made moot by adoption of article 1, § 25).

<sup>26</sup> Bossin Ibid cit. Baker, 744 A 2d at 807.

<sup>27</sup> Bossin Ibid cit. Vt. Stat. Ann. tit. 15 & 1201-1207 (2002).

<sup>28</sup> Bossin Ibid cit. In the matter of section 53 of the Supreme Court Act, R. Sc. 1985, C. S-26, 2004. S.C.R. 7a.

Brazil, Canada, Colombia, Costa Rica, Denmark, France, Germany, Iceland, Mexico, Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom, Uruguay.<sup>29</sup>

Following the decision of the Supreme Court to remedy the constitutional infirmity in the Vermont case of December 20, 1999, the Vermont legislature created the “Civil Union in” 2002. Connecticut adopted a similar civil union law in 2005. It is pertinent to mention that legislative laws in the United States are enacted by legislatures of the respective States. Therefore some States enacted their laws to accommodate the Civil Union. Subsequently however, towards legalizing Same-sex marriage the Supreme Court<sup>30</sup> in 2013 invalidated DOMA to the extent that it prevented the Federal Government from treating Same-sex marriages as valid when they were lawful in the State in which they were licensed.<sup>31</sup> Finally, the United States legalized Same-sex marriage in 2015 when the U.S. Supreme Court<sup>32</sup> held that under the 14<sup>th</sup> Amendment of the U.S. constitution States must license a marriage between two people of the Same-sex, and must recognize a marriage between two people of Same-sex when their marriage was lawfully licensed and performed out-of-State.<sup>33</sup> Argentina approved a bill in 2007 in favor of Civil Unions for Same-sex couples. Britain passed a law to create the status of ‘Civil Partnership’ in 2004.<sup>34</sup> Similarly Ireland’s Civil Partnership Act 2004 gave the status of ‘Civil Partner’ to Same-sex couples.<sup>35</sup> Canada legally approved of Same-sex marriage and recognized it as a committed relationship between two adults via its Civil Marriage Act 2005.<sup>36</sup>

In Nigeria however, Same-sex marriage is not legalized as it has been prohibited by virtue of the Same-sex Marriage Prohibition Act 2013. The Act prohibits Same-sex marriage and makes it an offence for anyone who engages in the act. It also specifies punishment of 14 years for persons found guilty of the offence. Similarly, Sections 284 of the Penal Code and 214, 217 and 222 of the Criminal Code of both the Northern and Southern Nigeria respectively criminalizes homosexuality. The Nigerian position has no doubt generated a lot of criticism, both from within and outside Nigeria as some consider the Act as a breach of the fundamental human right of a minority as enshrined in the International conventions to which Nigeria is a party. Another reason for the criticism against the Act is the fact that, it is viewed as going contrary to the constitution of Nigeria which precludes discrimination on the basis of sex. The criticisms notwithstanding, the Act enjoys wide acceptability among Nigerians. This may not be unconnected with their moral and religious beliefs, and the fact that Nigerians have strong family values. Besides Same-sex marriage is alien to Nigerian marriage customs and tradition which is still firmly part of the society. In view of the position of the Nigerian Same-Sex Marriage (Provision Act), 2013 there is no right or responsibility in respect of Same-sex marriage in Nigeria.

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<sup>29</sup> P. Axel-Lute, ‘Same-Sex Marriage: A Selective Bibliography of the Legal Literature’ (Last updated January, 7<sup>th</sup>, 2014). Available at <https://law-library.rutgers.edu/files/favicon.ico>. Accessed on 3<sup>rd</sup> February, 2016.

<sup>30</sup> In the case of United States v. Windsor (U.S. Supreme Court, 2013).

<sup>31</sup> Findlaw, ‘Developments in Same-Sex Marriage Law’ Available at <http://family.findlaw.com/marriage/developments-in-same-sex-marriage-law>. Accessed on 16<sup>th</sup> February, 2016.

<sup>32</sup> In the case of Obergefell v. Hodges (U.S. Supreme Court, 2015).

<sup>33</sup> Findlaw, Ibid.

<sup>34</sup> M. Kalafut, ‘Same-Sex Marriage History Around the world’ Available at [www.SameSex%20Marriage%20History.htm](http://www.SameSex%20Marriage%20History.htm). Accessed on 19<sup>th</sup> February, 2016.

<sup>35</sup> Nidirectgovernment services, ‘Marriage, Civil Partnership and Cohabitation’ Available at [www.hmsso.gov.uk/docs/copynote.htm](http://www.hmsso.gov.uk/docs/copynote.htm).

<sup>36</sup> Civil Marriage Act (S.C. 2005, c. 33). Available on line at <http://laws-lois.justice.gc.ca/theme-gcwu-fegc/assets/favicon>. Accessed on February 3<sup>rd</sup>, 2016.

In Ireland, Same-sex couples acquire the status of 'Civil Partner'. The status gives equal treatment rights and responsibilities with married couples in a wide range of matters which include: tax, including inheritance tax; employment benefits; states and occupational pension benefits; tax credit and child support; duty to provide maintenance for your civil partner and any children of the family; ability to apply for parental responsibility for your Civil Partner's child of the family; inheritance of the tenancy agreement; recognition under Intestacy rules; access to fatal accident compensation; protection from domestic violence; recognition for immigration and nationality purposes.<sup>37</sup> In Canada, the same rights and responsibilities accruing to married couple extends to Same-sex couples by virtue of the Civil Marriage Act 2005. In the United States, some of the rights and responsibilities accruing to married couples also extend to couples in Civil Union thus: the ability to utilize the law of domestic relations in full, including annulment, separation, divorce, child support, child custody, division of property, and maintenance; the ability to take advantage of the laws relating to title, ownership, inheritance, descent, and distribution with respect to the ownership of real estate; the ability to utilize prohibitions against discrimination based upon marital status; the ability to access causes of action dependent on spousal status, such as loss of consortium, emotional distress, and wrongful death; the availability of group insurance for state employees; the availability of family leave benefits; the ability to adopt; the availability of marital immunity and privilege.<sup>38</sup> It is pertinent to mention that, while same-sex couples acquire the status of "Civil Union", they have limited rights and responsibilities compared to heterosexual married couples. Where however, they acquire the status of Civil marriage, they exercise the same rights and responsibilities as heterosexual married couples.

### **3. Civil Marriage**

Civil Marriage could be described as a statutory marriage, recognized as being legally valid by a state or country. Due to its statutory nature, civil marriage is regulated by the laws regulating marriages in various jurisdictions. It is generally conducted by an official who is not a clergy usually at the marriage registry. Ordinarily, civil marriage is expected to take place between a man and a woman,<sup>39</sup> however, it is no longer the case as more jurisdiction where civil marriage is practiced have amended their laws regulating the institution of marriage to incorporate same-sex marriage ( e.g. Britain, Canada and the United States).

In the United States, Civil marriage laws differ from one state to the other as they are enacted by the legislature of the respective states.<sup>40</sup> In the United Kingdom, Civil marriage is regulated by the Marriage (Same-sex Couples) Act 2013 which was recently introduced to accommodate Same-sex couples in England and Wales. In Nigeria, the statutory marriage is the form of civil marriage that is practiced and it is regulated by both the Marriage Act (1914) and the Matrimonial Causes Act (MCA) 1970. Because Civil marriage is statutory in nature, rights and responsibilities are attached to it. In jurisdictions where Civil marriage operates, rights and responsibilities are protected by the Federal law.

In the United States and United Kingdom some of the protected rights and responsibilities are as enumerated under the rights and responsibilities for same-sex marriage. In Nigeria, due to the statutory nature of civil marriage, statutory marriage creates a sort of contractual relationship where each party

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<sup>37</sup>Indirect government services, Ibid

<sup>38</sup>Bossin, Ibid.

<sup>39</sup>This was the position in the various legislations regulating marriages in jurisdiction where Civil Marriages were practiced before the legalization of Same-sex marriage.

<sup>40</sup>Bossin, Ibid

has rights and responsibilities<sup>41</sup> that are determined by the law. It creates a legal status for married couples such that the law assigns certain peculiar legal capacity and incapacity to them.<sup>42</sup>It is worthy of note to mention that, there is sanctity of marriage and marriage is respected. Therefore, the law will invalidate anything that affects it.

Some rights and responsibilities that can be exercised in Civil marriage in Nigeria include the right to apply for a decree of dissolution or nullity of marriage: judicial separation or restitution of conjugal rights under the Matrimonial Causes Act.

#### 4. Cohabitation

Cohabitation simply means a couple living together as husband and wife without legally formalizing their union. Put in another way, cohabitation could be referred to as ‘an informal’<sup>43</sup> or a “trial” marriage.<sup>44</sup> Thus this implies that cohabitation is not backed up by any law. Cohabitants are therefore vulnerable to attendant consequences which may likely arise from the relationship. More often than not, couples who cohabit for a considerable number of years assume that they have acquired the status of common law husband and wife.<sup>45</sup> In the United Kingdom for instance, a lot of couples cohabit together under the guise of a “common law marriage” with they believe that they have similar rights and responsibilities with married couples. This may probably be due to the fact that such couples are unaware that common law marriage was since abolished several hundred years ago.<sup>46</sup> The concept of common law marriage has no legal validity in the U.K (though in Scotland cohabiting couples whose partnerships are terminated are entitled to some basic rights).<sup>47</sup> This in essence underscores the fact that no matter how long a couple cohabits, it does not entitle either of them to inherit the other’s property in the event of death.<sup>48</sup> However, where a cohabiting couple separates and children are involved, both couples may have rights and responsibilities even if only one of the biological parent.<sup>49</sup> Similarly, in Nigeria there is a lot of cohabitation particularly among young men and young women. Cohabitation has been observed and reported as a common phenomenon among Nigerian university undergraduates.<sup>50</sup>Most of those who cohabit do so without being aware of the implication. Generally, cohabiting couples advance so many reasons for cohabiting. One which is commonly adduced is, cohabiting couples consider cohabitation as “trial marriage”, which will enable them test their compatibility in the relationship. Research has however, shown that there is no benefit in cohabitation as findings reveal that couples who cohabit before marriage have a 50 percent higher rate of divorce

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<sup>41</sup>Nwogugu, ‘*Family Law in Nigeria*’ 3<sup>rd</sup>edn. 11

<sup>42</sup>Nwogugu, *Ibid.* cit. Allen: Status and Capacity 46 *LQR* 277,288

<sup>43</sup>H.Glezer, ‘Cohabitation’. Available on 20 webmaster@aifs.gov.auon.

<sup>44</sup>J. Budel, DiekmannA,andEnglehardt H, ‘Premarital Cohabitation and Marital Stability in West Germany’ (1999 ) *Journal of Marriage and Family* 1-26

<sup>45</sup> Indirect governmental services, *Ibid.*

<sup>46</sup> Fisher Meredith Solicitors, ‘Cohabitation’ Available at <http://www.fishermeredith.co.uk> accessed on 3 February 2016.S

<sup>47</sup> Cohabitation and Common law marriage. Available at <http://www.iawdonut.co.uk> accessed on 3 February 2016

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup>M. O. Ogunsola, ‘The Effect of Premarital cohabitation on quality of relationship and marital stability of Married people in South west Nigeria Available at Ogunsola Article U.I.pdf cit. O. A. Alo and I. S. Akinde, ‘Premarital Sexual activities in an urban society of Southwest- Nigeria’.

than those who do not<sup>51</sup> or face greater chances of divorcing than the couples who do not cohabit before marriage.<sup>52</sup>

In the United Kingdom and in other jurisdictions of the world generally, there are no laws regulating cohabitation as a form of marriage. However, in 1999, France passed laws to legally grant a civil contract called ‘Civil Solidarity Pacts’ to give cohabiting couples (gay or straight) many of the same rights as heterosexual couples. The law became effective in October, 2000. Although, in United Kingdom and the United States, cohabiting couples may exercise some rights and responsibilities in the laws of property and Trust<sup>53</sup>; in the event of a divorce, they cannot exercise the same rights and responsibilities of married couples except where cohabiting couples separate and it involves children. In Nigeria, cohabitants cannot exercise similar rights and responsibilities as married couples because cohabitation is not recognized by the laws regulating marriages in Nigeria. Although under the Evidence Act, there is a presumption in favour of cohabiting couples as married until the contrary is proved, their rights are not recognized as far as laws regulating marriages in Nigeria are concerned.

### **5. Conclusion and Recommendation**

From the three forms of marriages considered: the Same-sex marriage, Civil marriage, and Cohabitation, it would appear that, civil marriage is the most appropriate form of marriage because of its legalization, wide acceptance and approval. This is without prejudice to same-sex marriage where it is legalized by the law regulating marriage in a jurisdiction. Though Cohabitation is erroneously considered to be a form of marriage, it not marriage in the strict sense of the word. Besides, it does not have any benefit, yet it could result in serious consequences particularly on the part of the females<sup>54</sup> People should get themselves acquainted with the laws regulating Marriages in their respective jurisdictions, in order for them to be well informed as to which form of marriage is legal or not. Also, so that people could enter into marriage relationships where their rights can be protected and enforced. There should be more public enlightenment and awareness as to the position of the law regarding Same-sex marriage in Nigeria to prevent any legal consequences. Young people should be reoriented about marriage by religious bodies, FIDA and other related organizations, in order to discourage cohabitation among them.

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<sup>51</sup> R. Ravinder, “Premarital Sex – Lessons From American Experience”, Ilorin (Nigeria)’ (2006) 11(1) *The Nigerian Journal of Guidance and Counseling*, 134-145.

<sup>52</sup> P. R. Amato and A. Booth, ‘A generation at risk in an era of family upheaval’ Cambridge, M A: Havard University Press.

<sup>53</sup> Fisher Meredith Solicitor, Ibid

<sup>54</sup> Females could end up with unwanted pregnancies that could lead to them dropping out of school, while the they are subsequently abandoned by their “partners”