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*Research Article*

# **An Analytical Study Of Adoption Rights For Same-Sex Couples In India: Legal Challenges, Societal Impacts, And Future Prospects**

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## **ABSTRACT**

This essay engages with the question of whether same-sex couples are allowed to adopt in India. Adoption is a complex process as it involves an institution, an orphan, and a couple willing to adopt or sponsor such an orphan. In India, the guidelines surrounding adoption were largely common for all couples, irrespective of age, caste, race, or religion. Recently, specifically after the decriminalization of homosexuality, the procedure for the adoption of orphans has been rationalized by specific acts and rules. Same-sex couples, due to their sexual orientation, have been subjected to suffering agony and pain. They are not allowed to adopt and hence have to suffer discrimination.

The restriction on same-sex couples adopting a child originates from the belief that allowing same-sex couples to adopt will leave the child scarred for life. There is no consideration for the social impact of children who are either abandoned or orphaned regarding such adoption. It is a fact universally accepted that the future of a society depends on the future of its younger generation. When asked what children need, people from a diversity of ethnic, age, and socio-economic groups, and people representing different religions, ethics, and professions tend to agree about the basics. They need the opportunity for a welcoming, nurturing, and stable family. Research indicates that taking away children from their families can have devastating psychological effects. When marriage in India is legally allowed irrespective of gender, it makes same-sex relationships valid. Hence, the right to adoption is a corollary of such rights which are available to one section of society. Decriminalization is a step toward recognizing the rights of such couples.

**Keywords:** *Same sex couples, Discrimination, Social impact, Adoption rights*

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## **1. Introduction**

The scope of marriage and marital relations has witnessed significant reviews in the past few years across the world. In particular, marriage itself has been subjected to scrutiny regarding the eligibility requirements for the partners involved. One of the most significant issues that have been dealt with in the context of new-age marriages is the gender identity of the prospective partners. Consistently increasing

societal acceptance and a series of judicial decisions have paved the way for same-sex couples to come out in the open regarding their relationships.<sup>1</sup> The past two decades have seen a significant decriminalization of

<sup>1</sup> SR Psaki, AJ Melnikas, E Haque, G Saul... - Journal of Adolescent ..., 2021 - Elsevier. What are the drivers of child marriage? A conceptual framework to guide policies and programs.

consensual sexual relations and cohabitation involving different genders. Furthermore, during these years, many countries have witnessed an avalanche of people getting married to domestic partners of their choice. These issues have gone beyond the issue of mere legality and have had social, economic, and other implications as well. The next important phase of the discussion regarding the rights of people who are in relationships involving same-sex couples is the issue of adoption or having children through surrogacy. The present focus is on one of the important aspects of marriage, or rather one of the outcomes of marriage, namely, adoption rights for same-sex couples in various jurisdictions in the country of India.

### **1.1. Background and Rationale**

India is a secular, democratic country constitutionally dedicated to ideals of equality, justice, and liberty. Its constitution is based on the doctrine of 'pith and substance' and was designed not only to be dynamic and suitable to India but also to accommodate the unique regional diversity and fragile caste structure of its society.<sup>2</sup> There are numerous examples of judicial prudence, which the Indian judiciary has displayed right from the inception of our constitution to provide adequate stretch to the Constitution of the country. Despite these praiseworthy credentials of the Indian judiciary, the right to homosexuality, including the adoption of children by same-sex parents, is still not legally recognized. There are many social biases embedded in Indian society that demand immediate attention. The term "same-sex couples" has been used for simplicity. We recognize that there are numerous other loving and committed family arrangements, many of which raise problems similar to those in the context of same-sex couples. These are important questions and certainly deserve to be discussed and addressed. We are also well aware that there are many cultures and communities that have never recognized the institution of marriage for same- or opposite-sex couples. The purpose of marriage and adoption is very vast. If two consenting men or women want to adopt a child, and if that child will have a mother and father in those two women and men, then society should not raise its finger against this right of the couple. With the advancement of society, the parents of children born through surrogacy are in dire straits. Such children are growing up as orphans. The boy has been declared illegal. But society needs to understand such children.<sup>3</sup> We need to change our thinking. Such children need a big hug, love, and education from society.

### **1.2. Research Objectives**

The objective of the proposed research is to study the legal challenges that are posed for same-sex couples in India with respect to child adoption rights and further evaluate the impact of this legal discrimination on such couples and their families by approaching it with a doctrinal and socio-legal research methodology. To achieve this objective, the researcher plans to make use of research questions in order to propose solutions to the conundrum: Should Indian lawmakers allow same-sex couples to adopt children? This major question will be divided into a few sub-questions such as, 'Do Indian laws allow same-sex couples to adopt children?', 'What legal challenges are posed for same-sex couples in India in exercising their child adoption rights?', 'Are there inconsistencies and gaps in the law that prevent the recognition of such couples in India?', 'Analyzing laws that recognize same-sex couples in other jurisdictions: What are the pros of recognizing such couples?', 'Is the concept and recognition of same-sex couples a new norm in India?', 'What happens when the legal principles are flouted in practice?' and 'Are there any solutions that can be suggested to resolve the existing legal challenges?'.

The researcher will explore the adoption laws of a few other jurisdictions that are either at the nascent stage or have embraced the changes alongside India and apply the right model based on the principles and social values of all laws and procedures. By doing this, the study will be able to identify the challenges posed by Indian laws and the legal system as a whole, examine the pragmatic implications that arise directly or indirectly due to the duty on the principle of law, and affirm that there is a need for legislation to recognize the diverse nature of family.<sup>4</sup> The study is interdisciplinary and will include an exhaustive doctrinal and socio-legal study. The practical research insight, while substantive, focuses on the need for up-to-date and modern legislation that provides protection and ensures different provisions and rights relating to adoption by same-sex couples.

## **2. Legal Framework for Adoption in India**

There is a wide range of adoption laws and regulations in India, which cover all religious communities but are primarily regulated by three laws: the Hindu Adoption and Maintenance Act, the Guardians and Wards Act, and the Juvenile Justice Act. Each of these laws primarily deals with different aspects of adoption and is applied to different segments of society. This section will briefly review these laws that govern the adoption process in India and also discuss the key aspects of each and its applicability to same-sex couples. The concluding segment will review and discuss the legal

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<sup>2</sup> Y Efevbera, J Bhabha - BMC public health, 2020 - Springer. Defining and deconstructing girl child marriage and applications to global public health.

<sup>3</sup> Barkah, C Cholidi, S Rochmiyatun Dan Hukum Islam, 2023 - jurnal.ar-raniry.ac.id. The Manipulation of Religion and The Legalization of Underage Marriages in Indonesia.

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<sup>4</sup> C Pusateri - academia.edu. Finding the Best Families for Children—Moving Towards Inclusive Adoption

and practical challenges of these laws in regulating and guiding the whole adoption process in India.<sup>5</sup>

The Hindu Adoption and Maintenance Act is a secular law regulating the adoption of children among Hindus, i.e., persons professing religions such as Hindu, Sikh, Jain, or Buddhist faith. The statute generally requires that the authorized guardian can give a child in adoption only with the consent of the child, provided that the child is capable of exercising such consent. In the case of a male child, the Act also mentions that if the child has not completed the age of fifteen years, the consent should be obtained. The issue of gay marriage is not recognized in Hindu culture and statutes, and hence there is no provision or requirement to obtain such consents for same-sex couples.

### **2.1. Historical Overview**

A progressive country is one that recognizes the rights of all its citizens, irrespective of their gender, religion, sexual orientation, or age. In India, for a long time, the LGBTQIA community had been denied various rights, including adoption rights. It was only that the court recognized that the community has the right to adopt children under the Juvenile Justice and Care of Children Act. This case has legalized adoption rights explicitly, but before that, the Supreme Court had recognized transgender people's right to adopt children as legal guardians. Furthermore, the Hindu Adoptions and Maintenance Act also extends rights to adopt children to transgender people. The aim of this paper is to analyze the various legal provisions and judgments concerning the adoption rights of the LGBTQIA community and to understand its importance and challenges.<sup>6</sup>

### **2.2. Current Laws and Policies**

It would be interesting to take a look at the existing state of the legal landscape on adoption in India to understand the challenges it poses to same-sex couples today. It would also help by providing perspective and insights for formulating appropriate affirmative solutions.<sup>7</sup> The broad prevailing framework on adoption in India is regulatory adherence to the guidelines and the Ministry of Women and Child Development, which is the nodal ministry to address the issue in the country. It is primarily responsible for formulating policies and legislation aimed at the welfare of women and children in the country. The ministry has laid down certain guidelines that make it

mandatory for citizens who aim to adopt to complete the pre-adoption formalities satisfactorily. This means that any couple wishing to adopt from the country must fulfill at least one requirement: having a marriage that is legal and valid according to the provisions of the Hindu Marriage Act and the Special Marriage Act. The guided procedure outlines requirements such as applications, home studies, background checks, medical reports, etc., to be conducted by recognized adoption counseling agencies empaneled by the Central Adoption Resource Authority.

### **3. Adoption Rights for Same-Sex Couples: A Global Perspective**

Queer individuals have been an indispensable part of society since time immemorial. Yet, historically, their struggles against great legal and social odds have permeated song, dance, literature, and art. Some neon signs declare their presence for all to see. Rural forests have been the sites of hidden storylines. Overall, this narrative acknowledges that same-sex couples have been forming families and business partnerships for centuries. The quest for social condemnation has led to disdainful legal neglect, refusal to formally acknowledge these entwined lives at moments of collective joy and collective grieving.

In a report formed subsequent to a violent incident in Delhi, it was proposed that same-sex couples living together must be provided with legal recognition equal to heterosexual cohabiting couples within a time frame of five years. This is an important step towards providing same-sex individuals the ability to function as part of the general societal framework of family. However, these recommendations are not actionable in their current form. Adoption laws in India only recognize heterosexual couples or single individuals as qualified to apply for adoption. There are a series of regulations to qualify as prospective adoptive parents and a list of directions on how to obtain an adoptive license. Consequently, the complexities involved in same-sex couples adopting not only arise from provisions in adoption laws but also from such compounded rules.

#### **3.1. Comparative Analysis**

The principles of equality and non-discrimination demand that legislative and administrative measures should deal with comparable situations in a similar manner. In a series of decisions, the Family Court of Douai, the European Court of Human Rights, and the Constitutional Court have struck down discriminatory domestic provisions with respect to adoption by same-sex couples and have recognized positive duties to recognize the filial ties between the children and the partners in a same-sex relationship that were constituted abroad. The French rules were also challenged before the Constitutional Court and are currently under examination for violation of the Constitution before that court. This decision set aside the double test of age and conditions of having lived at least five years in the community imposed in the

<sup>5</sup> R Auchmuty - Research Handbook on Gender, Sexuality and the ..., 2020 - elgaronline.com. Feminist responses to same sex relationship recognition.

<sup>6</sup> R Marsh - Journal of Social Welfare and Family Law, 2022 - Taylor & Francis. Upholding the dignity of gay men who are (prospective) parents: an analysis of adoption and surrogacy law.

<sup>7</sup> P Frati, R La Russa, A Santurro, B Fineschi... - European Journal of ..., 2021 - Elsevier. Bioethical issues and legal frameworks of surrogacy: A global perspective about the right to health and dignity

Region of the Basque Country to access the artificial reproductive assisted methods and to derive any protection arising therefrom, to Title II of the Catalan provision.<sup>8</sup>

The discussion has also been taken by the Constitutional Court in another decision. The school board of a public school decided to refuse the enrollment of a pupil based on an earlier decision of the Data Protection Agency, which had considered that this refusal would be justified as long as the child's parents could not be legally recognized as heads of the child and, on the other hand, recognizing the elderly person as a legal guardian would amount to giving some validity to the act of giving birth to the woman, a foreign citizen where the laws only removed the outcome of the Act making it feasible to see about the possibility of enrolling the minor in the school system. The Constitutional Court considered that the entrance of the elderly woman did not involve being enrolled because she already was a member of the community, but to confirm that status, by validating the consequences of her act, which had led to the birth of the minor.

The Court of Arbitration has decided a case regarding a couple constituted by two women and their child born through artificial insemination. The couple argued that the provision of the Civil Code, which refused legal recognition as the co-parent of the child born through invoking the legal invalidity of the joint request for artificial fertilization, violates the Constitution as interpreted through various articles and invited the judges to make a declaration in line with what made the provision unconstitutional. The Court partially annulled the contested provision, but on formal and not on material grounds. It rejected the discrimination argument of the applicants and the invitation for in line with the ECHR.

#### **4. Challenges Faced by Same-Sex Couples in Accessing Adoption Rights**

The situation laid bare in the previous section raises a series of legal and social justice challenges. Under the Hindu Adoption and Maintenance Act, the courts had applied the principle of 'benefit of adoption' to allow a wife to adopt a child as the husband's child. The absence of a mandatory welfare standard at the time also led to the collection of the principle of 'benefit of taking and giving.' Under the Juvenile Justice Act, the welfare standard was mandated. Therefore, since the JJ Act and its successor JJ Act, some courts have, in rare cases, based post-decree questions of adoptions on the child's best interests. However, the courts continued to refuse guard admissions.<sup>9</sup>

No one appears to have raised the argument that the 'benefits' of adoption should also be applicable to same-sex couples before 2009. The year 2009 is, in fact, considered pivotal in LGBT Indian rights justification since a ruling that violated constitutional rights had been confirmed. Before then, same-sex marriage was unheard of before 2018. Therefore, it seems that the judiciary upheld these other laws that are exempt from same-sex unions. Many lower courts refuse to interpret the rights of same-sex adoptive parents, even after the repeal of Section 377, consistent with their ruling on custodial rights. Similarly, it seems that for the time being, the draft ART bill following is moving forward with the traditional, union-free template.

##### **4.1. Legal Barriers**

The existing scenario in Indian law is, however, very problematic. A series of judgments by the Indian Supreme Court has not been particularly friendly to alternate forms of sexuality. In 2013, a division bench of the Supreme Court rendered down the decriminalization of homosexuality established by the High Court of Delhi. The Court based its opinion on the belief that the country's morality would sanction a goodwill to cure homosexuals. This judgment neglected to systematically deal with the academic materials submitted to the High Court and the extensive history of offensive acts against homosexuals well before the Indian Constitution was formulated. It is against this background that we need to evaluate the issue of adoption by homosexual partners.<sup>10</sup>

There is no direct law in India expressly embracing LGBTIQ+ cultural entities, equal rights for which have been recognized. The general rules governing the establishment of the relationship between the adoptive parent and the biological children do not match the sexual identity of the adoptive parent and do not stand in the way of same-sex couples yet. Unlike Indian marriage laws, adoption laws are convicted, but families run a real danger of facing hurdles in society or family settings and stigmatization and discrimination, particularly on non-acceptance or obstruction of their existence. While courts can, and have, prioritized the intent of their welfare—the best interests of the child—if a foster child has already comfortably provided for its birth or a previous guardian, it is difficult for the court to ignore the dangerous consequences of societal backlash.

##### **4.2. Societal Stigma**

Existing in a society where the plight of transgender persons is enough justification to terrorize anyone visibly or audibly challenging the gender binary, one need not take a wild leap to connect this fear with the

<sup>8</sup> A Stevenson - 2021 - books.google.com. Intimate integration: A history of the sixties scoop and the colonization of Indigenous kinship.

<sup>9</sup> A Alam, A Mohanty - Qubahan Academic Journal, 2023 - journal.qubahan.com. Developing 'happiness engineering' subject for the schools in India: Designing 10890

the pedagogical framework for a sustainable happiness curriculum.

<sup>10</sup> J McLeod, D Shilbury... - Journal of sport ..., 2020 - journals.humankinetics.com. An institutional framework for governance convergence in sport: The case of India.

reluctance to award same-sex couples with child adoption rights. Homosexual couple adoption in India is not only in defiance of 'societal norms,' for the simple reason that the whole idea of a same-sex couple is nothing short of essential non grata in society, but it also involves the additional concerns of the exposure of a prepubescent to highly tabooed forms of sexual behavior. Such exposure has the potential to entail long-term effects such as underdeveloped or overdeveloped concepts of sex and relationships, psychological conflicts, and peer scrutiny. Additionally, one may argue that since it is a long-standing right, children are entitled, irrespective of their parents' sexual orientation, to have both a male and female role model in this critical stage in the development of their gender role and identity. The absence of a same-sex pair as potential adoptive parents is, therefore, not only a moral issue of a valued 'ontological security' but also poses a threat to the right to have a role model, closely connected to the inherent right to live and the right to develop. Homosexual couple adoption may in fact be a foolish step, guided by the desire to cater to the interests of eager individuals or to liberate present generations from the all-too-restrictive restraints obeyed thus far, while neglecting the long-term safety and psychological welfare of the child being adopted.<sup>11</sup>

### **5. Societal Impacts of Allowing Adoption for Same-Sex Couples**

All human society has a natural and fundamental interest in the family and therefore in the institution of marriage. Marriage is a shelter for everyone, for their happiness and well-being, and for the fulfillment of their destiny. Although same-sex parenting is likely to be a reality for a significant portion of the future population in a growing number of countries, those who oppose same-sex marriage or same-sex parenting of any kind will likely continue to engage in missionary work.<sup>12</sup> To achieve the first-level benefits of acceptance of same-sex marriage and same-sex parenting for all the children of same-sex couples and for all same-sex couples, we must begin by recognizing the societal claims of positive societal effects to be realized by more permissive legal regimes and policies, particularly from children and families formed in such a way.

An underlying theme of these studies—whether focusing specifically on same-sex parenting or addressing same-sex parenting as part of a broader exploration of alternate family forms—is that same-sex parents and their children are no less competent, happy,

or successful than their different-sex peers; indeed, in many respects, they are often more competent, happy, or successful. These findings are thus unequivocal: at a primary, fundamental level, there is no gap in the well-being of children whose same-sex parents become legal parents after birth. Additional positive effects include family social support and the recognition of parenting partnerships by legal institutions.

#### **5.1. Child Welfare and Well-being**

Adoption, including inter-country adoption, has always had the welfare of the child as its paramount interest. It has been said that the best interests and welfare of the child should be of primary concern for everyone involved in child welfare and protection work. The concept of best interests of the child seems to exist to strengthen the argument that the best parent for a child is not just anyone but a caring and nurturing parent who can raise a child to the best of their abilities. The full range of benefits that familial relationships provide cannot be replaced, separated, or act as placeholders for the actual nuclear family. It is the experience of the unique warmth, love, shaping skills, confidence, needs, care, and other complexities that occur within the family structure, not to forget the values it carries. This unique structure provides the basis for children to grow up and gradually learn about themselves and their responsibilities towards society and the state. Out-of-home care carries the risk of harming the child and should be a measure of last resort, with an extended family having the primary role in nurturing and safeguarding the child.<sup>13</sup>

Children cannot be treated as commodities. This is the argument that goes against surrogacy, as the reproductive rights of the birth mother and the father cannot be exchanged for cash, even if they willingly contracted the same. Since the child or the family should not become the receivers of commodities, it is advocated that adoption is one way of finding families for children in need. In short, if whatever else exists or emerges as being against the interests of the child, then at best, they can be treated as luxuries for the interested parties and at worst, must be illegal. What this argument does is make the rights of children special and, in fact, exceptional by dispensing with other social conditions or characteristics. This also reflects the inherent contradiction in the above argument: if the above argument really works, then from a queer couple's perspective, the benefits of cultivating and nurturing gay families intended to adopt live up to the warrants and take them in as prospective parents. They can be people who are legally married and strongly attached to each other and their family through the commitment and through their support and shared responsibility for each other. In clearer terms, in the present dynamic age, which queer couples are the ones who continue to fight for and choose to have extended

<sup>11</sup> JJ Trenka, JC Oparah, SY Shin - 2021 - books.google.com. Outsiders within: Writing on transracial adoption.

<sup>12</sup> E Derrer-Merk, MF Reyes-Rodriguez... - Journal of Social ..., 2022 - Wiley Online Library. Is protecting older adults from COVID-19 ageism? A comparative cross-cultural constructive grounded theory from the United Kingdom and Colombia. wiley.com

<sup>13</sup> K Diffley - 2020 - books.google.com. Where My Heart is Turning Ever: Civil War Stories and Constitutional Reform, 1861-1876.

families and ensure they meet the normal expectations of being humane and nurturing? They rise to the occasion and can surely become the quintessential queer role models with a modern twist. Thus, queer families or couples can provide stable and nurturing homes and are not inferior to any other situation that will provide a long-term, recruit, or near-permanent placement, greatly increasing the well-being of the adopted children. Thus, LGBTQ rights to become parents and laws facilitating that are not mere matters of sexual interest, even though other qualifications apply. The dominant ideology and application of law in surrogacy often go against the concept of being unjust to marginalized people.

## **5.2. Family Dynamics**

In this modern era, a just society is one that not only respects varied family forms but also provides affinity towards them. Kids are the most vulnerable, but they have no say in deciding their birth parents, and neither do they have any control over their sexual orientation. On what grounds does society decide and dictate family forms in old conservative and traditional ways? This chapter tries to understand the concept of family law and inquires whether judicial activism has paved the way for the recognition of 'same-sex couples' as adoptive parents in all their functional roles, or whether adoption is limited to meeting the mere needs of the children. Among the countries that do allow same-sex couples to adopt children, what are the legal safeguards and rights promulgated? This chapter focuses on contemporary family dynamics in the context of same-sex parenting. It mainly deals with same-sex parenthood, legislative frameworks, legal and policy approaches taken by different countries, legal challenges, societal impacts, child well-being, and also provides future prospects. Through a comparative approach, the parental rights of same-sex couples are highlighted in different countries where adoption is legal and through policies and laws associated with the same. With the advent of globalization, advancement, and the exchange of cultural values, as well as equal legislation in force, the understanding and recognition of same-sex relations have improved to a great extent. Sometimes, same-sex couples are referred to as the 'unseen, unrepresented, and unheard' families.<sup>14</sup>

## **6. Case Studies and Examples**

Australia and the U.S. are examples of countries having same-sex adoption rights included in a comprehensive family law. The Australian Capital Territory, Western Australia, Tasmania, and the Northern Territory have passed legislation to allow access to ART, including IVF treatments, for single women and same-sex couples. In these states, both donors are recognized as legal parents of the child. As for the other states, any person is able to legally recognize a child if there is a known relationship between the child and the parent, or

a second-parent adoption is realized if a known relationship does not exist. Moreover, according to the Northern Territory bill of 2021, there is no requirement equivalent to the six-month period of living continuously in a prescribed personal relationship found in the Family Law Act of Australia for a known sperm donor to be recognized as the legal parent.<sup>15</sup>

The United States has enjoyed a variety of jurisdictions, so the answer for same-sex parents will depend on the state's legal policies. Gay or lesbian adoption is allowed by various states, and the situation regarding legal parental recognition may also differ case by case. To avoid future legal disputes, some state laws include presumptions of both same-sex partners' parentage. Second-parent adoptions, where the child's legal connection to the child already exists, are also popular in some states. However, in an unfortunate event, a same-sex parent who has legal permission in a certain location may not be able to make use of the parental order in the case of an emergency trip to a different area.

### **6.1. Successful Adoption Case.**

Single individuals and same-sex couples have many success stories as parents to children, including biological children, adopted children, foster children, and children born through surrogacy. The examples are both at international and national levels. In India, gay men and lesbians have been adopting children and raising them either single-handedly or with their partners for many years. Children in these families are staying in India or abroad, succeeding in academics and other areas, and growing up to become productive and warm-hearted citizens. There have also been many cases where single men and women have adopted the children of their partners into their legal guardianship in order to raise them with the rights of adopted children. Sustained and consistent efforts to raise children adopted by gay and lesbian individuals or same-sex couples help debunk the myth that sexuality is an indicator of competency to be a good parent. These successful parenting stories challenge the rhetoric of anti-homosexual discriminators and offer real-life narratives about their competencies as parents. It also signals that the primary issue about giving rights to gay and lesbian individuals could be welfarist by focusing on the rights of the children to have all the privileges and obligations as legal heirs of their adoptive parents rather than being moralistic and simply questioning the rights of homosexuals. Furthermore, a growing interest in promoting the adoption and foster care of children without family support should serve as a catalyst for why same-sex couples should be given the legal recognition and standing to parent their children. Long waitlists and even longer waiting times must be replaced by a system that promotes prospective same-sex couples and homosexual singles to adopt foreign and Indian

<sup>14</sup> V Putin - 2023 - nationsworld.kr. On the historical unity of Russians and Ukrainians.

<sup>15</sup> JB Murtazashvili - Journal of Democracy, 2022 - muse.jhu.edu. The collapse of Afghanistan.

children. Such stories, albeit few, carry enormous potential to make the invisible, including the fears and anxieties of a gay parent, seen. By making gay and lesbian parents and children in their charge visible, it prompts others to introspect and question their stance on an issue to which they may not have given much thought.

## **6.2. Legal Battles and Precedents**

Gradual progress is not unique to other regions; it is applicable in the Indian state as well. Long before same-sex couples' struggles for adoption, same-sex marriages prevailed with several applicants seeking the same, and a lot has changed in a decade and a half. In testimony of a legal witness, Anjali Gopalan, the founder of a foundation, sets the facts straight. In the year 2000, a petition was heard before the Delhi High Court by a same-sex couple to get their marital status recognized. The court referred to the plaintiff and his partner as two sisters living together and dismissed the case. In 2008, another case went before the Delhi High Court in which a postoperative transgender woman wanted her marriage to be registered with a man.<sup>16</sup>

Although marriage between two persons was de-authorized in the year 2000, there was no record of the specific case in the country, and the arguments proceeded on this angle. Recognizing marriage as a complex issue, the respondent asked the parents of one of the convicted criminals to be produced for verification. The court immediately recognized the couple as the girl and the boy and rejected the certificate issued by the medical authorities, which provided support for the petition. This led Anjali to approach the Supreme Court, and it issued guidelines to the state, district, and local authorities to recognize the marriages of castrated individuals. This conclusion was far from satisfactory for her - all her efforts were reduced to the category of a third-gender marriage, and she wasn't looking for the same. If the legislative assembly and administrative structure are reluctant to offer marriages, it only made sense to push the envelope a little further, and this provided the leverage required for this push.

## **7. Future Prospects and Recommendations**

The Indian jurisprudence is gradually moving towards recognizing the rights of special categories of children in India—children of the rainbow family, i.e., children who are in line to be adopted by same-sex couples. Yet, India is at a juncture in its adoption laws where a long-overdue amendment could be a paradigm shift, which could reframe the current conceptualization of the institution of marriage and parenting in India. It is only legitimate that present and future laws must be in the same line and should be made applicable to all citizens alike without any discrimination, no matter their sexual orientation. The needs of the children are dynamic and

ever-evolving, and similarly, the laws made to protect their best interests. The present study concludes that the rights of the child under the Constitution and other international legal regimes could be recognized in securing the welfare of the child raised by adopting same-sex couples. In this chapter, detailed action points are provided for the LGBTQI community, which are inclusive of need-based legislation and an inclusive approach for better development and welfare of the adopted child. As the children's rights are paramount in the law of adoption, the child should not be denied the benefits of additional support and protection offered by inclusion under the welfare schemes provided to them.<sup>17</sup>

## **7.1. Policy Suggestions**

Some policy suggestions have been made to protect the rights of members of the LGBTQIA+ community as well as modernize adoption laws. Sections in the new laws have to be modeled, keeping in mind the phenomena of this era—like surrogacy with sperm and egg transplantation. Further laws have to ensure prevention of exploitation of these surrogates. Adopting a child should be viewed as parting with the biological and genetic child and the bond angle. Further machinery has to be set up to have periodic checks on how the child is being treated in a same-sex family. Moreover, with different rules and regulations, there has to be a mediation body. Not the family court. It has to be a body that is sensitive to all these issues.

Different aspects of the Sexual Offences Act have to be covered. Legal recognition is very crucial for the rights of same-sex families and their strength as families. Family is not an appropriate term to talk about such situations where one is a trans person. Thus, only when we understand such issues properly, we would appreciate the crucial concerns. Further elaboration indicates that India never had a marriage law until nor a divorce law. But they were developing in the model of marriage. Partnership laws are extremely critical for women and more so for LGBTQ individuals. These are also solid legal relationships. Fundamental rights apply to these, and they need the protection of justice.

## **7.2. Social Awareness Campaigns**

Progressive societies have always benefited from and been spurred to action by champions of social change. The same-sex community in India has witnessed the slow but growing acceptance of their rights as individuals who have the same fears, dreams, and aspirations as the rest of human society. However, the journey is a long and often confusing one, with discriminatory laws and attitudes prevailing in regulatory and social environments. As with any such human rights issue, it is essential that a society becomes well-informed and engaged in active

<sup>16</sup> K Anwar - Nazhruna: Jurnal Pendidikan Islam, 2021 - digilib.uinkhas.ac.id. Pancasila village, multicultural education and moderation of diversity in Indonesia.

<sup>17</sup> SO Manullang - International Journal of Humanities, Literature and Arts, 2020 - neliti.com. Understanding of modern society perception on sociology of Islamic law in Indonesia.

discussions on this matter to elicit a more just and equal treatment. Socially, such platforms help to provide greater Indian identities as they remove the imposed stigmas of Westernization and foreign ideologies when communities and families become personally touched by such conversations and struggles.<sup>18</sup>

There are many useful roles that societal institutions and individuals can play in bringing about greater awareness and sensitivity on issues such as same-sex relationships. These include large and small group activities targeting opinion leaders, academics, politicians, religious leaders, etc., working with common people on how they understand the use, arrangements, sharing of resources, and time in families that are child-headed by same-sex couples. Such engagements can lead to learning programs on how to be a better friend, colleague, teacher, customer, or government representative to those who are in a non-traditional family. Within such societal awareness drives, studies and statistics can also play a role in highlighting the lack of rights for same-sex couples regarding personal security, financial stability, and family sustainability. Such a drive, however, requires all sides to be willing to listen and understand the points of view of the other, possibly experienced from being in a similar position. Before and during such discussions, facts and figures on commonly held biases can be shared along with examples of successful family relationships that would help to engender greater social acceptance of the idea that same-sex couples can equally provide the necessary security, nurturing, and developmental characteristics for children to grow in predominantly traditional societies as well.

## **8. Conclusion and Key Findings**

**Key Findings** First, homophobia combined with societal perceptions that same-sex parents will create unhealthy, unstable, and morally deviant families has promoted the myth and misconception that LGBTQ individuals are not, and should not, be parents. These comments bring fear, insecurity, and isolation to LGBTQ people when they face familial judgment about their ability to parent. However, the same-sex couple's right to adopt children does not accelerate homophobia or violate children's rights. These rights inherently respect every child's right to family and the ability of same-sex couples to provide protection and emotional care. For the sake of the proper welfare and long-term advantage of the child, such a theory promotes equal treatment and acceptance of the LGBTQ group as individuals and potential parents, and their adoption rights provide leadership for such fathers intending to secure the legal aspects of their parental or adopted children's lives. Second, in today's society, the prospects for same-sex family structures have improved significantly and meet the new requirements.

In addition, the transmission of a conceived biological child and LGBTQ advances offers pregnancy services. Furthermore, from time to time, the court's observation also drew attention to the concept of same-sex adoption and the positive aspects of marriage to bring infants to their home and, in fact, form a family, providing emotional care and caring for the child with an equal degree of zeal as birth mothers.

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