

Examination of Legally Recognized Parental Rights of the LGBT Community in India

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INTRODUCTION

Transgender rights did exist in every part of the world from ancient ages. But major jurisdictions are struggling in respect of giving the rights legal recognition by fruitful legislation and written laws. India recently introduced Transgender Bill, 2019 to guarantee rights to the people from the Transgender community. However, because the bill was quickly crafted, it is not well received by the community.

The Bill has many lacunas in it and has failed to cover the essential needs of the community one of which is to provide the Transgender Community the Adoption Rights. In fact, the Bill does not even provide for an appropriate mechanism to determine one's gender; instead, it requires a person to go through proper screening by District Magistrate, Chief Medical Officer, and Psychologist under Section 7 for the issue of a certificate identifying him as transgender after the person applies to the District Magistrate under Section 5. This is a time-consuming and dehumanizing process since defining a person's gender based on bodily characteristics is incorrect.

Justice Radhakrishnan in *National Legal Services Authority v. Union of India* elaborated on the principle of self-identification and said:

“Gender identity lies at the core of one’s personal identity, gender expression, and presentation and therefore, it will have to be protected under Article 19(1)(a) of the Constitution. A transgender person’s personality could be expressed by his behavior and presentation. A state cannot prohibit, restrict or interfere with their expression of such personality, which reflects that inherent personality.”

The Bill's approach for determining a person's gender differs from what was stated in the *NALSA* Judgement.

India is one such country that is still developing its society to accept people from the LGBTQ community. Various steps that have been taken in the country include the Landmark Judgment of *Navtej Johar* in which the Constitutional Bench of the Supreme Court strike down Section 377 of the Indian Penal Code which criminalized homosexuality. However, in today's globe, India still falls behind in awarding some rights, such as adoption and parental rights.

Although India has taken measures to provide justice to the LGBTQ population, providing LGBTQ persons the right to parenthood and adoption is critical. Adoption laws in India are controlled by the Hindu Adoption and Maintenance Act, 1956, which provides for the method and procedure for adopting a child in India by any Hindu, but it is currently quiet on adoption by same-sex couples. Section 8 of the act states that an unmarried female can adopt a child but according to Section 7 of the Act a male can only adopt if he has a ‘wife living’.

Personal law in Islam, Christianity, Parsi, and Judaism does not recognize full adoption. Because non-Hindus do not have a legal right to adopt a kid, those who wish to do so must take the child into 'guardianship' under the rules of *The Guardian and Wards Act of 1890*. Even this act does not talk about adoption rights for the LGBTQ community.

As said by Justice KS Radhakrishnan:

The spirit of the Constitution is to give every person an equal chance to grow and achieve their potential, regardless of caste, religion, or gender.

The dimensions and perspectives of the meaning and content of fundamental rights are constantly evolving, as is to be expected in a vibrant democracy where the mind is always free. Now is the time for them to be treated as the third gender in the true sense, with all of the benefits that the other two genders have.

All of this leads us to believe that the present is an appropriate time and stage for raising the right to adopt and the right to be adopted to the status of a fundamental right and/or understanding such a right to be encompassed by Article 21 of the Constitution, as was sought in the case of *Shabnam Hashmi v. Union of India*.

Parenting Rights to people belonging to the LGBTQ community have been granted in many countries. In Sweden, discrimination on the basis of sexual orientation and gender identity and expression has been banned since 1987.

Since 2003, gay and lesbian couples have been able to adopt children, and lesbian couples have had equal access to IVF and artificial insemination since 2005. South Africa is one such country and the only African Country that has allowed joint adoption by same-sex couples.

After the case of *Du Toit v Minister of Welfare and Population Development*, the Constitutional Court Amended the Child Care Act, of 1983 and enacted the Children's Act, of 2005 which enables same-sex couples to adopt a child. Similarly, in England, The Adoption and Children Act, of 2002 enabled unmarried same-sex couples to adopt a child. For adopting a child, the couple just needs to prove that they are living together and just need to show that they are having an enduring relationship.

Eligibility Criteria for Prospective adoptive parents under CARA are as follows:-

1. The prospective adoptive parents shall be physically, mentally, emotionally, and financially capable, they must not be suffering from any life-threatening medical condition, and they must not have been convicted of any criminal conduct or accused of violating the rights of children.
2. Any prospective adoptive parents, regardless of marital status or whether they have a biological son or daughter, can adopt a child subject to the following conditions:-
 - a. The consent of both spouses for the adoption shall be required, in the case of a married couple.

- b. A single female can adopt a kid of any gender.
 - c. A single guy is ineligible to adopt a girl kid.
 - d. No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship except in the cases of relative or step-parent adoption.
3. The potential parents' ages as of the date of registration will be used to determine potential adoptive parents' eligibility for children of various ages. The age difference between the kid and any potential adoptive parent must be at least twenty-five years.
 4. In the case of a couple, the composite age of the prospective parents shall be counted.
 5. The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by a step-parent.
 6. Couples with two or more children will be considered exclusively for special needs and difficult-to-place children unless they are relatives or step-children.
 7. The prospective adoptive parents have to revalidate their home study report after a period of three years.
 8. Prospective adoptive parents who have not received a single referral within three years of registering will have their seniority tallied from the date of registration unless they have reached a composite age of one hundred ten years.

It is true that under the CARA guideline, the adoption procedure is open for all, and no such gender discrimination is directly mentioned there but when I open the online CARA Application Form, I saw that they have provided only two options 1. Marital Status and 2. Select Applicant Gender Male/Female.

I also called the helpline of CARA 1800111311 with the hope that there may be some special provision will be available for this community which is not reflected in the online portal but unfortunately, they also informed me that no such adoption for the transgender or LGBT community is still available under CARA.

The screenshot displays the CARA (Central Adoption Resource Authority) online registration interface. At the top, it identifies the organization as the Ministry of Women & Child Development, Government of India. The main heading is 'Online Registration : In Country Adoption'. The form is divided into sections: 'Marital Detail' and 'Personal Information : Male'. The 'Marital Status' dropdown is currently open, listing 'Married', 'Single-unmarried', 'Widower', 'Divorcee', and 'Legally Separated'. Other visible fields include 'Select Applicant Gender' (Male/Female), 'Date of Birth' (DD/MM/YYYY), 'Nationality' (INDIAN), 'Occupation', 'Annual Income', 'Place of work', 'State', and 'Id Type'.

INTER-COUNTRY ADOPTION UNDER CARA (Central Adoption Resource Authority): - CARA (Central Adoption Resource Authority) does not allow the LGBT community for In-country adoption from India and at the same time, CARA does not allow them for INTER-COUNTRY adoption. So there is no way through which the parties can take a child in Adoption and enjoy the basic rights of parenthood through CARA.

RESEARCH ON THE SURROGACY (REGULATION) ACT, 2021:-

When I submitted my research proposal in the year 2021 then no surrogacy Act was enacted. In my research proposal, I have mentioned only the Surrogacy Bill, 2019 which has passed from both houses of Parliament but that also not covered the LGBT community. In 2021, a new Surrogacy Act has been enacted but under Section 4 of The Surrogacy (Regulation) Act, 2021, the eligibility criteria of the intending couple is issued by the authority which is the couple must be married between the age of 23-50 in case of female and 26-55 in case of male on the day of certification, also they must not have any surviving child either biological or adopted at the day of the surrogacy under Sec 4 of the said Act. Also, the intending couple must possess a certificate of necessity issued by the Appropriate Authority under this Act after satisfying all other conditions mentioned in the said Act.

Section 4 of The Surrogacy (Regulation) Act, 2021 provides the eligibility criteria of “intending couple” (a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy) and “intending woman” (an Indian woman who is a widow or divorcee between the age of 35 to 45years and who intends to avail the surrogacy) as follows:-

- a. The intending couple must have in possession a certificate of essentiality issued by the appropriate authority.
- b. A certificate of a medical indication in favor of either or both members of the intending couple or intending women necessitating gestational surrogacy from a District Medical Board.
- c. An order concerning the parentage and custody of the child to be born through surrogacy has been passed by a court of First Class Magistrate.
- d. Intending couples are married and between the age of 23 to 50 years in the case of females and between 26 to 55 years in the case of males on the day of certification.
- e. Intending couples have not had any surviving child biologically or through adoption or through surrogacy earlier.
- f. Intending spouse with a child who is intellectually or physically challenged, or who suffers from a life-threatening condition or terminal sickness with no permanent treatment, and who has been approved by the competent authority with a proper medical certificate from a District Medical Board.

This is not possible for LGBT people to get a child being an “intending couple” as their right to marry is still not being approved or covered by any marriage law in India. Neither the Hindu Marriage Act, of 1955 nor the Special Marriage Act, of 1954 covered their marriage, also not any other special law has been enacted by the Indian legislature for their marriage.

The term “intending women” under The Surrogacy (Regulation) Act, 2021 is also not applicable to the LGBT community. Now this present law also does not show any hope to this community where they get children and can fulfill the basic rights of parenthood.

Even this Act is not allowed any single person to get a child under surrogacy law; bachelor or unmarried cannot also enjoy motherhood or fatherhood under this new legislation. People from the LGBT community cannot get a child in the normal course of nature, the surrogacy procedure was really a big hope for them which is also not been approved by the state.

What does it mean to be a legal parent?

A child can only have two legal parents. Being a child’s legal parent means:

- You have financial responsibility for the child which includes paying child maintenance if the child does not live with you
- For the purposes of British nationality, inheritance, and pension entitlements, you will be considered parent and child.

Who are the legal parents?

The birth mother will be one of the child's legal parents by default. We use the term "birth mother" rather than "biological mother" because the law in England and Wales states that whoever gives birth to the child is the legal mother (even if she used donated eggs).

The identity of the second parent is determined by how and under what circumstances the kid was conceived. If the child was conceived by sperm donation at a UK-registered clinic, the second legal parent will be designated on documents completed at the clinic at the time of the sperm donation.

If the kid was created through sexual intercourse or artificial insemination (but not in a UK-registered clinic), the biological father will be the other legal parent. though, at the time of conception, the birth mother is married or in a civil partnership, and the kid was created by artificial insemination, the

husband, wife, or civil partner will be the child's other legal parent, even though they are not the biological parent.

The only option to alter a kid's legal parents is to adopt the child or, in the case of a surrogacy agreement, to get a parental order. When a kid is adopted, the adoptive parents become the legal parents, and the birth/biological parents no longer have a legal parental duty. Seek expert guidance about surrogacy for more details.

What is parental responsibility (PR)?

The law says that PR is:

all of the legal rights, obligations, powers, responsibilities, and authority that a parent of a child has over the kid and the child's property

People with PR can decide or be engaged in significant choices in a child's life, including as where they should live, their education and health, their name, religion, and whether or not they can travel or live overseas.

A child's PR can be held by an unlimited number of persons. This means that more than two persons can share parental responsibility for a kid.

Birth mother

You are instantly the legal parent of your kid as the birth mother, and you have PR. The only way you may lose PR and legal paternity is if your child is adopted (unless you and your partner adopt your child).

If you are the civil partner or wife of the birth mother
A child conceived after 6 April 2009

If you or your civil partner or wife conceived a child by artificial insemination (at a clinic or at home) after April 6, 2009, you and your civil partner/wife will be the kid's legal parents and will share parental responsibilities. This is true whether or not the sperm donor is known. To avoid confusion, make sure both of your names are listed on the child's birth certificate.

If your wife or civil partner conceived a child after 6 April 2009 by sexual intercourse with a male, you will not have any inherent rights to the kid.

A child conceived before 6 April 2009

If your wife or civil partner had a kid before April 6, 2009, you do not have automatic rights to the child.

How to Get Permanent Residence for Your Wife or Civil Partner's Child

If you are married or in a civil partnership with the birth mother, you can obtain PR by either entering into a parental responsibility agreement (PR Agreement) or applying to the court for a parental responsibility order (PR Order). See *Children and the Law: Parental Responsibility* for further information about PR.

PR Agreements:

Entering into a PR Agreement is straightforward. If the child's father or anybody else possesses PR, he must sign the PR Agreement or be notified of your application for a PR Order. You, your partner, and the child's father (if he has PR) must fill out form C(PRA2), which may be downloaded from the HMCTS website. The form will need to be signed in the presence of a court official at your local county court or family court and you will need to bring along the child's birth certificate and your photo ID. The form is then sent in two copies to the Central Family Court, First Avenue House, 42-49 High Holborn, London, WC1V 6NP.

PR Orders:

If the father or any person with PR does not agree to the PR Agreement, you can petition the Family Court for a PR order. This application is made using Form C1, which may be downloaded from the HMCTS website. If the child's father has PR, he must be notified and participate in the court procedures.

If you are not married or have a civil relationship with the birth mother

A child conceived outside of a licensed fertility clinic:

If your spouse conceived a kid at home (rather than at a licensed fertility clinic) and you are not married or in a civil partnership, you will not have any automatic rights to the child.

A child conceived at a licensed fertility clinic:

If you and your partner conceive a child in a licensed fertility clinic, you can both give the clinic your written approval for you to be the kid's second legal parent. There will be no legal father for the kid, and you and the birth mother will have equal parenting rights and obligations, as well as the ability to be mentioned on the birth certificate. Either you or your partner can withdraw consent at any time before the sperm, egg, or embryo transfer.

If your partner conceives at a licensed fertility clinic and you do not want to be the child's second parent, you should sign a form indicating that you do not want to be the second parent of the child.

How to Apply for Permanent Residence if you are not married to or in a civil partnership with the birth mother

If you have not married or entered into a civil partnership with the birth mother and do not already have parental responsibility for the kid, you can gain it by asking to the family court for a child arrangements order indicating that the child resides with you or with you and your partner. If the ruling states that the kid 'lives with' you, you are immediately granted PR for the child. Another option is to adopt the child, making you one of the child's legal parents. See *Adoption* for further information.

Child arrangements order

A child arrangements order specifies who the kid lives with and when, as well as who the youngster spends time with and when. Child arrangements orders have replaced what was previously known as residence orders and contact orders. A child arrangements order is obtained through an application to your local Family Court. A child arrangements order indicating that the kid resides with you or with you and your spouse will provide you parental responsibility for your partner's child. If you have lived with your partner's kid for three years in the past five years, you are automatically eligible to apply for a child arrangement order. If not, you will need the consent of everyone who has PR for the kid, including her mother and maybe her father. If you do not obtain permission from everyone who has PR, you must seek permission from the court in a leave application. To gain the court's consent, you must demonstrate that you have a relationship with the kid and that the planned application would not disturb the child's life. For further information, please check our guide *Children and the Law: When Parents Divorce*.

Adoption

Civil partners and married couples are both eligible to adopt a child as a couple. This implies you will be allowed to adopt a child who is not biologically related to either of you. Adoption is a lengthy and complicated process that includes an examination by Social Services as well as judicial hearings.

If the child you are adopting has a known biological father who has PR, he must be included in any court processes, and if he does not consent to the adoption, the court must consider whether adoption is in the best interests of the kid. When determining whether adoption is in the best interests of the kid, the court must consider the fact that if you adopt the child, the father would lose PR and any legal standing in the child's life. The court may refuse to grant an adoption when, for example, the father has taken an active role in the child's life and the court considers that this should continue in the child's best interests. After adopting a kid, you will obtain PR and become the child's legal parent. As a result, adoption is a more permanent alternative than a child arrangements order. If you are thinking about adopting a child, you should get legal counsel.

Fostering a child

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Fathers from previous relationships

Any kid born to a parent to whom you or your partner are or were married will immediately get PR. If you were not married, his PR status will be determined by your child's date of birth, whether he is on the birth certificate, or if he got PR via other means (see *Children and the Law: Parental Responsibility*). If the father has PR, he has the right to be part of all major choices about your child's development. He has the right to petition the court for orders concerning your kid, including child custody orders. He must be present in any court procedures involving your child.

He will also have legal financial obligations to his child. See our guide *Children and the Law: child maintenance*.

Known donors

If you are married or are in a civil partnership and you or your partner/wife conceive a child outside of a licensed fertility clinic using a known donor, the donor will have no legal rights to the kid, but both you and your civil partner/wife will have parental rights.

If you are not in a civil partnership/married and you conceive a child outside of a fertility clinic in the UK with a known donor, for example at home, The

donor will be the legal father of the kid and will have certain legal rights immediately, while your partner will have no legal rights to the child. You'll need to talk about how much engagement he'll have in your child's life. If you are unable to reach an agreement or if the agreement fails, you or the donor may petition the court for a child arrangements order.

One critical choice will be whether or not his name should be listed on the birth certificate. If your child was born on or after December 1, 2003, or if registration occurred after that date, and the father's name was registered on the birth certificate, he will automatically have PR for your child and the right to participate in all important decisions concerning your child's upbringing. If he is not recorded on the birth certificate, he will not have PR by default, but he may be able to gain it by entering into a PR Agreement with you or asking the court for a PR Order. He will have a legal financial obligation to his child regardless of whether he has PR or is identified on the birth certificate. You can apply for child support through the Child Support Service because you will not be living together; for more information, see *Children and the Law: Child Maintenance*.

Assisted conception and anonymous donors

He will have a legal financial obligation to his child regardless of whether he has PR or is identified on the birth certificate. You can apply for child support through the Child Support Service because you will not be living together; for more information, see *Children and the Law: Child Maintenance*. However, children born anonymously after April 2005, will have the right to receive information about their donor when they are 18 years old.

Co-parenting agreements

If anyone decide to co-parent with friends, it can be helpful to enter a co-parenting agreement that deals with important questions as to how you will raise your child. The agreement may address issues such as how much time the kid will spend with each of the parents, what religious education he or she will get, what will happen if any or the other parents decide to divorce or establish new partnerships, and who will contribute financially to your child's upbringing. While a co-parenting agreement can provide a valuable roadmap for navigating future parenting issues, it is crucial to remember that these agreements are not legally enforceable and cannot be relied on in court.

What if the parents separate?

Following the breakup of a partnership, the courts have recognized that non-birth lesbian co-parents have an essential continuous role in their child's development. The legal rights will be determined by your legal connection with your spouse and kid. If the married person and the partner share parental responsibility for the kid, one can both apply for child arrangements orders to decide who the child resides with, how much contact the child should have with the other parent, and whether or not shared care is appropriate.

If either of the parents already have a child arrangements order (or residence order), the component of the order that specifies whom the kid resides with will remain in effect until the child reaches the age of 18. If the spouse and the partner divorce, either of you can request to have the order changed or discharged. Discharging an order means canceling it. If the order is discharged, the non-birth mother will lose her PR unless a PR Agreement or PR Order is in place.

If the couple adopted a child together, notwithstanding your separation, the spouses will both remain that kid's legal parents, and either of the spouse will be allowed to petition to the court for orders concerning her or him without first obtaining the court's consent. The spouses will both retain the Parental Right for the child.

Children and the Law: Parental Responsibilities, as well as Children and the Law: When Parents Divorce.

The law is complicated, and it is possible that it has changed after this book was written. This guide is intended to offer broad information on the law in England and Wales only. You should get current, independent legal counsel.

"Rights of Women" accepts no responsibility for any actions taken in reliance on the legal information provided in this guide.

GENDER OF THE CHILD ADOPTED UNDER CARA (Central Adoption Resource Authority):

I worked on another point which is the Gender of the Child adopted under CARA (Central Adoption Resource Authority). While searching the website of the CARA here I found that all the Gender options are available for the child who is the subject matter of the adoption under CARA e.g. No Choice, Boy, Girl, and Other. But unfortunately, when I searched their 2020-2021 Annual report, it is showing that 1286 Boy Children and 1856 Girl Children in total

of 3142 children were adopted under In-country adoption. On the other hand, 183 Boy Children and 234 Girl Children were adopted under Inter-Country Adoption. But in both cases, no other gender child data is present.

This is very clear that the Indian parent only wants to adopt either boy or a girl child. They are not even interested to adopt any gender which is in question or stigmatized by society. The reason is most of the parents who registered under CARA are already faced so many issues regarding child-related matters that they do not even have the strength or courage to adopt a transgender child in adoption and again start another kind of fight against society. But a wounded can feel the wound of others hurts. If the transgender gets the right to adoption, they may adopt a child from their own community.

Link of the Annual Report of 2020-2021 of Central Adoption Resource Authority (CARA) under the Ministry of Women and Child Development, Government of India:

<https://cara.nic.in/PDF/annual/CARA%20Annual%20Report%202020-21%20English.pdf>

THE WORLD POPULATION REACHES 8 BILLION

On November 15, 2022, the World's population reached another milestone in human development by the Annual World Population Prospect Report released on World Population Day and India is still listed as the Second largest populated nation among the other countries of the world. Currently, as per www.worldometers.info, India has a 139.34 crore population and according to United Nations estimations, India by 2023 surpasses China and will designate as the most populous country in the World. The country with the second highest fertility levels tends to be those with the most Orphan and Abandoned child in India.

In India, orphans are the most neglected part of the society as the orphans do not belong to the prominent social nuisance group. In a democracy, vote banks are not influenced by orphans.

As per the detailed study of SOS Children's village, there are more than 02 Crore orphans in India which is more than the total population of many countries, more than our very own neighboring country Sri Lanka. In 2019, according to UNICEF in India, more than 25 million (2.5 crore) orphans are here. Another report at about 44 million (4.4 crores) destitute and 12 million (1.2 crores) orphan and

abandoned children in India are estimated by UNICEF.

It is the duty of the Government to take care and give protection and basic needs to the children in distress. The Planning Commission of India has not provided any kind of interest to these distressed children.

There is a concept known as “*Parens Patriae*” which means that if a child is an orphan or abandoned then the State is the parent and acts as a guardian for those children. If the children have no one then without any parent or effective guardian, the State will be the parent or the Guardian of the children and will act as guardian and provide each and every necessary need such as food, clothes, residence, education, coaching, medical supports to that child.

It is very disturbing that Indian Law allows the abandoned or orphaned child to be raised without a family rather than being adopted or brought up by an LGBT family or couples.

In India LGBTQIA+ community people are not getting any qualification to take a child in adoption, on the other hand, the number of Indian orphans is increasing. As per the new study conducted by the International Charity for Orphaned and Abandoned Children, India is now having 20 million orphans in the year 2021 which obviously increased in 2022. And the condition of these orphanages is quite disturbing with poor quality service including their food, cloth, education, residence, etc.

It is very disturbing that Indian Law allows the abandoned or orphaned child to be raised without a family rather than being adopted or brought up by LGBTQIA+ families or couples.

A vital life stage for a person is believed to be parenthood. The desire to parent or have children is a natural human want and one of the requirements for leading an intrinsically moral life. Prior to recently, homosexuality was viewed as a crime. Before India's independence, British colonial authorities enacted Section 377 of the Indian Penal Code, which made any sexual behavior among the homosexual population illegal. This archaic law was being used to harass and physically harm anyone who did not conform to the stereotypical gender and sexual orientation binary and was becoming more outdated. Section 377 of the Indian Penal Code was decriminalized in 2018, making consenting homosexual relationships lawful. The five-judge Constitutional Bench concluded that Section 377 of the IPC was unconstitutional in a landmark ruling that included distinguished justices such as Chief

Justice Dipak Mishra and Dr. D.Y. Chandrachud. This ruling was a watershed moment in the LGBTQ+ community's liberation. By doing so, the Court signaled that LGBTQ people would be allowed equal constitutional rights. However, given the current scenario, the statute remains discriminatory. Equality before the law is guaranteed by Article 14 of the Indian Constitution. No individual living on Indian land will be denied equality before the law or equal protection of the rules, according to this clause. Even after this, because of the general misunderstanding about sexual identity and sexual orientation, as well as the great obstacles faced by members of the LGBTQ community, they continue to battle for legal parental rights. It is wrong to stigmatize members of the LGBTQIA+ community who want to have children. This exclusion is typically based on outdated notions of what defines a typical family and society.

Adoption in India is governed under the Hindu Adoption and Maintenance Act of 1956, the Guardianship and Wards Act of 1980, and the Juvenile Justice (Care and Protection of Children) Act of 2015. The Juvenile Justice (Care and Protection of Children) Act, 2015, and the Guidelines Governing Adoption of Children, 2015, regulate adoption laws in India for LGBTQIA people. Although the laws and regulations do not officially prohibit LGBTQIA individuals from adopting children, various societal and legal barriers may make this difficult. The Juvenile Justice Act allows anybody, regardless of sexual orientation, to adopt a child. Furthermore, the need that adoptive parents be emotionally, cognitively, and physically secure may be construed in ways that are discriminatory towards LGBTQIA individuals. The Delhi High Court found in 2020 that the Juvenile Justice Act does not restrict adoption by same-sex couples and that such discrimination violates LGBTQIA people's fundamental rights. The 2015 Guidelines Governing Adoption of Children make it illegal for adoption agencies to discriminate against persons based on their sexual orientation; yet, there have been incidents of prejudice against LGBTQIA people who want to adopt children. Although there have been some encouraging improvements in recent years, more needs to be done to guarantee that LGBTQIA people are not discriminated against during the adoption process. A case involving a lesbian couple was made public in 2019. In this case, a lesbian couple was attempting to adopt a kid. The

adoption agency discriminated against the couple, and they were eventually unable to adopt because the agency refused to accept same-sex couples as possible adoptive parents.

The Delhi High Court found that the adoption agency's discrimination was unlawful and ordered that the couple's case be reconsidered. A transgender lady attempted to adopt a child in the case of Sreeja Suresh Kumar v. District Child Protection Officer (2020). Nonetheless, the District Child Protection Officer refused her owing to her gender identification. The Kerala High Court ruled that the officer's judgment was discriminatory and ordered that the woman's plea be reconsidered.

STATUS OF LGBTQ+ COMMUNITY AS PARENTS IN INDIA & NEED FOR LEGAL RECOGNITION

According to a well-known African saying, "it takes a village to raise a child." It expresses that a secure and healthy atmosphere is required for children to thrive, develop, and realize their ambitions and dreams. As a result, if the LGBT community can give children with a safe and healthy environment, they will be able to develop and flourish as members of civilized society. They should be allowed to have parental and adoption rights. Few repressive laws forbid queer individuals from adopting children and violate the fundamental freedoms protected by Articles 14, 15, and 21 of the Indian Constitution. This legislation does not specifically prevent same-sex couples from adopting. A parent's parenting abilities cannot be judged solely on their marital status or sexual orientation. The government must also keep these concerns up to date and refrain from embracing cultural standards. Same-sex relationships are not legally recognized, and marriage is not permitted. As a result, they are ineligible to adopt children. However, there have been some encouraging recent improvements. The Delhi High Court granted permission for a same-sex couple to adopt a child in 2020. This was the first time a court in India recognized same-sex couples as legal parents in India.

Additionally, in 2018, the Indian government announced that single parents, including those individuals who identify as LGBTQ, can now adopt children. Discrimination and stigma against LGBTQ individuals are still prevalent in society, and they may face difficulties in accessing legal protections and recognition as parents.

CONCLUSION

Why should a child be denied a caring family because some people backed by religious extremist object to LGBT people? The group has long faced discrimination and ignorance in the generally conservative country.

Presently, there are no laws in the country which talks about adoption and parenting rights to the LGBTQ community. India is currently at a 'knee point' in terms of LGBT child adoption rights. It only needs a nudge in the proper direction. Nothing beats the impetus provided by the country's legal system. It is past time for politicians to make the necessary changes to the country's adoption laws. A female can adopt any child of any gender but a male cannot adopt a girl child. Also except for relative or step-parent adoption, if the adoption is done by the married couple then at least two years of stable marital relationship is required. The required age is also prescribed under the CARA for the PAPs. Apart from this several other conditions are also needed to be fulfilled to adopt a child under CARA as per the Gazette notified on 23.09.2022 by the Ministry of Women and Child Development in exercise the powers conferred by the Juvenile Justice (Care and Protection of Children) Act, 2015 and in suppression of the Adoption regulations, 2017.