

Adoption of Children by Homosexual Couples in India

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Abstract: *This manuscript here strive here to study the reasons due to which adoption by LGBT couple has not been legalized in India yet, there is a heated debate going on whether LGBT couples should be allowed to adopt children or not even after the decriminalization of homosexuality in India on 6 September, 2018. This paper would cover the challenges faced by homosexual couples in India and the reason on why the government has not legalized the adoption for homosexual couples. It talks about the best interest of a child grown without the influence of heterosexual couples as parents in their lives and the impact it has on them. Specially being brought up in a country like India where adoption is influenced by various social notions. The subject of same sex adoption has been gaining a lot of attention in the recent years, reflecting a shift in societies attitude towards same sex couples. The purpose of this paper is to provide a thorough examination of the legal, social, psychological implications of adoption by homosexual couples.*

Keywords: *Decriminalized, Challenges, Influence, Impact, Notions, Implications*

INTRODUCTION

In 2018, the Supreme Court decriminalized same sex sexual conduct, overturning Article 377 of the Indian Penal Code. It was ruled that same sex couples have right to be in a relationship without facing discrimination. However, the court left the decision on the legality of the same sex marriage to the Parliament of India. (Journal) All this started from the landmark justice of supreme court in case of Navtej Singh Johar v Union of India¹ where it was declared that that section 377 was unconstitutional as it violated the fundamental rights of the LGBTQ community overturning its judgement of 2013. After this the most awaited judgement for the recognition of same sex marriage which was brought up in case of Supriyo v Union of India² in which the supreme court unanimously held that there was no fundamental right to marry under the Constitution. It has been quite a while since the judgement of 2023 was held and the government has permitted the homosexual couples for

a live in relationship and has considered it to be completely lawful and a fundamental right which cannot be prohibited to them. When it comes to adoption the law permits single people to adopt children as single parents but prohibits homosexual couples to adopt children together. In a case if either of the partners in homosexual couples adopt a child then the other partner is prohibited from exercising any rights over the child. There are a few legislations that govern adoption in country:

1. THE CENTRAL ADOPTION RESOURCE AUTHORITY (CARA)- It is lawful authority that reports to the women and child development and is the primary organization for all kinds of children adoption, it supervises along with governing both domestic and global adoptions.
2. HINDU ADOPTIONS AND MAINTAINENCE ACT, 1956- It regulates the judicial procedure for Hindu grown ups to adopt children along with their lawful obligation to support various family numbers. As an exception under the Sections 7 and 8(c) of the act, such authorization is not required in cases when the person is mentally unstable, has relinquished mankind, or has abandoned their children.
3. ADOPTION REGULATION, 2017³- The 2017 Adoption Regulations are far stricter than the Hindu Adoption and Maintenance Act ADOPTION REGULATION, 2017. Single women and men are qualified to adopt only if they are mentally, psychologically, and economically stable and do not suffer from any illness that is life-threatening. Another restriction is that the law does not allow a single male to adopt a female unless there is an age gap of at least twenty years between them, as permitted in Section 11(3) of the Hindu Adoption and Maintenance Act, 1956⁴. However, the laws do allow a single man to adopt a female child but only a boy.

Adoption by same sex couples in India

¹ Navtej Singh Johar v Union of India (2018)SSC 10,1

² Supriyo v Union of India(2022)W.P © No. 1011

³ https://en.wikipedia.org/wiki/Central_Adoption_Resource_Authority>

⁴ Hindu Adoptions and Maintenance Act 1956

In India, same-sex couples face significant legal and social challenges in adopting children, as adoption laws largely favor heterosexual, married couples. Currently, Indian law does not specifically recognize same-sex marriages, which affects adoption rights for same-sex couples. Under the Juvenile Justice (Care and Protection of Children) Act, adoption is generally open to single parents and married heterosexual couples, but the Central Adoption Resource Authority (CARA) guidelines emphasize that only married couples are eligible for joint adoptions. This effectively excludes same-sex couples, as they cannot legally marry in India. As a result, individuals within same-sex relationships can adopt as single parents, but both partners cannot gain legal parenting rights over the child together.

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Reason for Prohibition of adoption for homosexual couples

The prohibition on adoption by same-sex couples in many regions, including India, often stems from legal, social, and cultural factors. Here are some key reasons often cited:

1. **Legal Limitations and Marriage Laws:** In countries where same-sex marriage is not legally recognized, laws related to family rights, including adoption, typically cater to heterosexual, married couples. Joint adoption rights are often restricted to legally married couples, excluding same-sex partners who are unmarried due to legal constraints.
2. **Traditional Family Structure Norms:** Many societies and legal systems have long upheld the notion of a "traditional" family structure, typically involving a male and female parent. These norms can lead to biases against same-sex couples, with concerns about deviating from traditional child-rearing structures.
3. **Concerns About Child Welfare and Development:** Although research shows that children of same-sex parents experience similar developmental outcomes to those raised by heterosexual parents, some policymakers and social groups argue, based on outdated or unsubstantiated views, that children need both a "mother figure" and "father figure" for balanced development.

⁵ Wikipedia , The free encyclopedia, ‘ Same Sex Adoption in Europe’

4. **Religious and Cultural Beliefs:** In more conservative societies, religious and cultural views play a significant role in shaping public policy. Some of these beliefs do not support homosexuality and, by extension, same-sex parenting, which influences adoption laws.
5. **Lack of Specific Legal Protections for LGBTQ+ Families:** Without explicit protections for same-sex couples and LGBTQ+ families, adoption laws often leave them in a grey area. This lack of legal clarity can prevent same-sex couples from successfully adopting children together.
6. **Slow Legislative Progress on LGBTQ+ Rights:** Even in regions where there is growing support for LGBTQ+ rights, legislative change can be slow. Advocacy for equal rights, including adoption rights, is often a gradual process influenced by shifts in public opinion, political climate, and legal precedence.

These factors combine to create legal and social barriers that limit adoption rights for same-sex couples. However, as societal attitudes shift and legal reforms advance in various parts of the world, restrictions are gradually being reconsidered and challenged.

Legislations of Adoption by homosexual couples around the World

The legislation of adoption by same-sex couples varies widely worldwide, with different countries and regions adopting varying approaches based on legal systems, societal attitudes, and levels of LGBTQ+ rights recognition. Here is an overview of the status in different parts of the world:

1. Countries with Full Adoption Rights for Same-Sex Couples

In these countries, same-sex couples can adopt both jointly and as stepparents:

Europe⁵: Many European countries, including the United Kingdom, France, Spain, Portugal, the Netherlands, Germany, and Sweden, grant full adoption rights to same-sex couples.

Americas⁶: Canada, the United States (all 50 states), Brazil, Argentina, Colombia, and Uruguay allow same-sex couples to adopt.

⁶ Wikipedia, the free encyclopedia, ‘Same-sex Adoption in the United States’

Australia and New Zealand⁷: Both Australia (nationally) and New Zealand have legalized joint and stepchild adoption by same-sex couples.

South Africa⁸: South Africa has extensive LGBTQ+ rights, including joint adoption, and was the first African country to legalize same-sex marriage in 2006.

2. Countries with Partial Adoption Rights

Some countries allow same-sex adoption only under specific circumstances:

Italy⁹: Italy does not allow joint adoption for same-sex couples but permits stepchild adoption in certain cases, especially following court decision.

Switzerland¹⁰: Switzerland allows stepchild adoption by same-sex couples but does not permit full joint adoption.

3. Countries Where Same-Sex Adoption is Prohibited

In some countries, adoption by same-sex couples is legally prohibited:

Russia¹¹: Adoption by same-sex couples is explicitly banned, and Russian law even prevents single individuals from countries that recognize same-sex marriage from adopting Russian children.

Eastern European Countries: Many Eastern European countries, including Poland, Romania, and Hungary, restrict same-sex adoption, often due to strong religious and conservative influences.

Most African and Middle Eastern Nations: Adoption by same-sex couples is largely prohibited due to legal and cultural restrictions, as homosexuality itself is often criminalized.

4. Countries with No Specific Legal Provisions

Some countries have no explicit legislation, leaving adoption by same-sex couples in a legal grey area:

Japan¹²: Japan has no laws specifically allowing or prohibiting same-sex adoption, and joint adoption is limited to married couples, which excludes same-sex partners as same-sex marriage is not recognized.

5. Ongoing Legislative and Judicial Developments

⁷ Wikipedia, the free encyclopedia, 'LGBTQ+ adoption and parenting in Australia'

⁸ Wikipedia, the free encyclopedia, 'LGBT rights in South Africa'

⁹ Wikipedia, the free encyclopedia, 'LGBT rights in Italy'

Legal recognition of same-sex adoption continues to evolve as public attitudes and LGBTQ+ rights progress:

Latin America: In countries like Mexico, some states allow adoption by same-sex couples, though there are still variations across different regions.

United States and Europe: Court rulings have often played a pivotal role in securing adoption rights, setting precedents for equal treatment of same-sex couples under family law.

Laws regarding adoption by same-sex couples range widely, with acceptance growing in many Western and some Latin American countries, while prohibitions remain strong in conservative regions, particularly in Eastern Europe, Africa, and the Middle East. As LGBTQ+ rights gain recognition, adoption rights for same-sex couples are likely to expand in more regions worldwide, although legislative and cultural changes may be gradual.

Analysis

The argument whether homosexual couples should be allowed to adopt or not is still quite a controversial topic with contentions on both sides so let's see the following points to understand better:

1. Adoption by Homosexual couples is supported by the following arguments-
 - Stable and Loving Homes: Same-sex couples often provide nurturing, stable, and loving homes, which are essential for a child's emotional well-being.
 - Open-Minded Environment: Children raised by same-sex couples are likely to grow up more open-minded, accepting diversity in family structures, and respecting different identities.
 - Resilience and Empathy: Studies show that these children often develop greater resilience and empathy due to experiencing and understanding diversity from a young age.
 - Equal Developmental Outcomes: Research consistently finds that children of same-sex parents show no difference in social,

¹⁰ Wikipedia, the free encyclopedia, 'LGBT rights in Switzerland'

¹¹ Wikipedia, the free encyclopedia, 'LGBT rights in Russia'

¹² Wikipedia, the free encyclopedia, 'Same Sex rights in Japan'

psychological, or educational outcomes compared to those raised by heterosexual parents.

- **Positive Role Modeling:** Such children may be more confident and secure, having role models who challenge traditional gender norms, encouraging individuality and self-expression.
- **Strong Parenting Motivation:** Same-sex couples typically go through intentional, rigorous adoption processes, often resulting in high levels of parental commitment and involvement.

Adoption by Homosexual couples is refuted by the following arguments-

- Indian society is largely conservative, with strong beliefs in traditional family structures. Some argue that a “normal” family requires both a mother and a father, asserting that children need role models of both genders to develop “properly.”
- Same-sex marriages are not legally recognized in India, creating a gap in legal rights for same-sex couples, including adoption. This legal framework limits access to joint adoption rights and treats same-sex couples differently from heterosexual ones.
- Opponents sometimes argue that children may face challenges due to societal stigma, bullying, or discrimination if raised by same-sex parents, potentially affecting their mental and social well-being.
- Many religious and cultural beliefs in India view homosexuality unfavorably, which influences public opinion against adoption by same-sex couples. These beliefs contribute to moral opposition to LGBTQ+ parenting.
- Same-sex relationships, though legally decriminalized, are still stigmatized by large parts of society. Some argue that children raised by same-sex couples might struggle socially, facing bias or discrimination.
- Some view same-sex parenting as unnatural or incompatible with Indian values, believing it will negatively influence a child’s behavior or development. This perspective is often rooted in stereotypes and misconceptions.
- Without strong judicial precedents or clear legislative support, same-sex adoption is viewed skeptically. Many policymakers are reluctant to introduce policies without broader societal acceptance or legal recognition of same-sex marriages.

CONCLUSION

Some argue that same-sex couples should not be allowed to adopt children in India at present due to various socio-cultural, legal, and practical concerns. Traditional Indian society largely views the family unit as consisting of a mother and father, which many believe provides balanced gender role models essential for a child’s development. Additionally, same-sex marriage is still not legally recognized in India, creating a lack of legal clarity around adoption rights for LGBTQ+ couples. Opponents also worry that children raised by same-sex couples may face significant societal stigma, bullying, or discrimination, potentially affecting their mental health and social integration. Religious and cultural beliefs, which often view homosexuality unfavorably, add to the resistance. As a result, some argue that until legal frameworks evolve and societal acceptance grows, allowing same-sex adoption could present challenges for both the children involved and society at large. As stated by the Supreme Court also that a queer person can only adopt as a single parent reinforcing the discrimination against the community. So for now adoption should not be legalized as it can cause a massive stir for the Indian society.

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