



ADOPTION BY SAME-SEX COUPLES: STILL A TABOO?

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ABSTRACT

India claims to be Secular, Socialist, Democratic, and a Republic where every citizen is equal in terms of sexual orientation or gender, etc. The right of every citizen of India is to live with dignity and the right to privacy, including the right to make their own choices of intimacy and manner in which they want to live their life, is protected as per the constitution laws. If same-sex couples do choose to adopt, they face challenges related to societal bias, lack of legal recognition, and limited support systems. Section 377 is violation of the Article 14 of the Indian constitution being wholly arbitrary, vague, and unlawful. Section 377, being decriminalized, also applies to the adoption laws, which are discriminatory for same-sex couples. The adoption laws are discriminatory as it does not meet the classification test of Article 14 of the constitution because the laws for adoption specifically mention capacity only for married couples, and single-married couples can adopt, so why not unmarried or same-sex couples? Over the past two decades, we see that the world is moving at an oblivion speed, with various global trends, observing a slow change in the legal status of same-sex marriages. Legal status of same-sex couples have been different in India and various other foreign countries. This paper compares laws under the Hindu Adoption and Maintenance Act, 1956, the Juvenile Justice Act, 2015 and Adoption Regulations with laws and mindsets of people accepting same-sex adoption in foreign countries. Over the years, there has been a growing awareness and acceptance of LGBTQ+ rights in India, particularly among the younger generation. This could potentially lead to more positive attitudes towards same-sex adoption in the future.

Keywords: Adoption, Hindu Adoption and Maintenance Act, Hindu Marriage Act 1955, inter-country adoption, Juvenile Justice (Care and Protection) Act, LGBTQ+, same-sex marriage.

1. INTRODUCTION

Adoption is like creating a parent-child relationship through a legal and social process. It is a procedure mentioned under the Hindu Adoption and Maintenance Act, 1956 and the Juvenile Justice (Care and Protection) Act, 2015, which provides the capacity of the person to adopt the child and only allows married couples to adopt the child.

India is a pluralistic society in which different populations have varied ideas and norms but are nonetheless bound by a common thread of togetherness, which is one of the country's unique characteristics. However, bad applies in society taint the whole society and influence other people's thinking, which is primarily religious or political in nature, resulting in taboo or feelings of hatred in people's minds. The same-sex attraction is a natural phenomenon that occurs in almost every part of the world, and India is no exception.

Until the early 2000s, no country recognized same-sex unions legally. However, in the last two decades, 28 nations have embraced same-sex unions. This global shift reflects a gradual change in recognizing the legitimacy of same-sex marriages. In India, recent court rulings and legal frameworks have highlighted adoption rights for transgender individuals and same-sex couples.

The adoption process in India follows the Juvenile Justice (Care and Protection of Children) Act, 2015, along with the Guidelines Governing Adoption of Children, 2015. However, the existing legal framework doesn't explicitly address the adoption rights of homosexual couples. A particular concern lies within the Hindu Adoptions and Maintenance Act, 1956 (HAMA), which guides adoption among Hindu adults. This legislation presents uncertainties and limitations. While it allows unmarried individuals to adopt based on certain conditions, its language, using terms like "spouse" and "wife," implies a lack of recognition for same-sex partnerships. Furthermore, the eligibility of third-gender couples for adoption under the Hindu Adoptions and Maintenance Act, 1956(HAMA) remains unclear.

India's adoption landscape is governed by the Adoption Regulations, 2017, which establish strict eligibility criteria. While unmarried men and women are permitted to adopt, single men are prohibited from adopting female children, a contrast with the HAMA, allowing single males to adopt girls with an age gap requirement. The Guidelines Governing Adoption of Children, 2015, assess prospective adoptive parents based on capability, suitability, and the child's welfare, but sexual orientation isn't explicitly addressed. Consequently, the acceptance of homosexual couples as adoptive parents remains unclear under these guidelines. Presently, Indian adoption laws solely acknowledge heterosexual couples as eligible.

In various foreign jurisdictions, adoption rights for same-sex couples remain uneven. While Indian laws like the HAMA and JJ Act allow single individuals, regardless of sexual orientation, to adopt, they discriminate against same-sex couples. In contrast, progressive countries like those in the European Union, the U.S., South Africa, and even the UK have established laws supporting adoption by same-sex couples. The European Court of Human Rights is a key player in protecting family, life, and marriage and combating discrimination based on sexual orientation within the European Union. The case of *E.B v France* marked a turning point by mandating that adoption proceedings must consider the best interests of the child without discriminating based on sexual orientation, reinforcing broader family concepts under the European Convention on the Adoption of Children.

In the U.S., judicial action like the *Obergefell v Hodges* (2015) case challenged discrimination against same-sex couples and established that denying them rights goes against constitutional values of individual liberty and equality. This has led to legal changes allowing adoption for same-sex couples. Similarly, the UK initially restricted adoption rights to married couples and single individuals, but the Adoption and Children Act of 2002 extended these rights to unmarried same-sex couples. Many countries have abandoned conservative biases and prioritized individual liberty and non-discrimination, constructing legal frameworks that safeguard the rights of marginalized minority groups.

1.1 STATEMENT OF RESEARCH PROBLEM

In this world where I see everything growing an oblivion speed, be it technological advancement, social media's influence or competition amongst people. But what went unnoticed is people's thinking about same-sex couples and their parenting. Navtej Singh Johar case did decriminalize same-sex relationships along with the privacy judgement, which seems to provide a strong foundation for the community to advance their rights and identity. However, even with the judicial pronouncement, there are sections within the legislative bodies that continue to oppose the idea of same-sex relationships.

1.2 RESEARCH OBJECTIVE

The research paper has focused on providing a comprehensive overview of the laws related to adoption in India, specifically the Hindu Adoption and Maintenance Act, 1956 (HAMA) and the Juvenile Justice (Care and Protection of Children) Act, 2015. This highlights the legal gap in the absence of explicit recognition of the adoption rights of same-sex couples and the resulting concerns about equal rights and discrimination against LGBTQ+ individuals. The paper also provides a valuable analysis of the legal landscape surrounding same-sex adoption in India, as compared to foreign countries where it has been legalized.

1.3 RESEARCH QUESTIONS

1. Whether the key provisions and limitations of the Hindu Adoption and Maintenance Act, 1956, and the Juvenile Justice Act, 2015, violative of rights of the adoption rights of same-sex couples in India?
2. What are the socio-legal challenges and obstacles that same-sex couples encounter when attempting to navigate the adoption process in India?
3. How do judicial decisions and court rulings in India and abroad impact the legal landscape surrounding adoption rights for same-sex couples?

1.4 LITERATURE REVIEW

Rhythm Kalra (2021), in his work titled '*How Far Are We from Granting Adoption Rights for Same-Sex Couples in India?*' threw light upon the concept of 'family' in India is limited to heterosexual couples, excluding same-sex partners from marriage, adoption, and surrogacy rights. Even after Section 377 was decriminalized, LGBTQ people are still marginalized because of antiquated beliefs. Same-sex couples still lack specific rights three years after the Navtej Singh ruling, and society acceptance is still lagging. Adoption rules in India penalize same-sex couples based on marital eligibility. Commonwealth countries like the UK, Canada, and Australia, on the other hand, have supported LGBTQ rights, including adoption. The fight for legal and social acceptance of LGBTQ people is still ongoing. Although courts are acknowledging these rights, it is imperative that attitudes change. Adoption rights can be facilitated by changing legislation, redefining marriage standards, and emphasizing the welfare of children. This journey, which emphasizes love, respect, and family involvement, represents progress toward human rights.

Arghya (2013), in his article titled '*Can Homosexual Couples Adopt In India?*' examines the uncertain legal landscape surrounding homosexual couples adopting children in India, despite the 2018 Supreme Court ruling that recognized LGBTQ+ rights. During the adoption process, same-sex couples face discrimination and difficulties due to the lack of a clear framework. The author offers public awareness campaigns, legal reform, anti-discrimination laws, and support for LGBTQ+ families as ways to combat this. In addition to giving children loving homes, these reforms might lessen discrimination, support different families, and establish a good legal example, all of which could have an impact on the advancement of LGBTQ+ rights throughout the world.

Arthur Dobrin D.S.W (2016), in his work titled '*Gays have the legal right to marry but not necessarily to adopt.*' talked about how the debate surrounding gay couples' adoption rights continues despite progress in legalizing same-sex marriage. While some states allow gay adoption, others impose legal barriers, with the most extreme cases in Mississippi and Utah where it is outright illegal. The idea that children have a right to biological parents of the opposite sex is the basis for opposition to such adoptions. However, as single-parent adoption instances and other complicated family situations demonstrate, this approach is not without limitations. Major child health organizations do not reject gay adoptions despite the possibility of psychological conflicts in adoptive families because there is insufficient evidence to link them to poorer outcomes for children. Regardless of the child's sexual orientation, the main requirement for adoptive parents should be their ability to give them a secure and caring home.

Shreya Mohapatra (2021), in her article titled '*Section 377 Read Down: The Way Forward*' has emphasized that the journey towards LGBTQI freedom in India has seen significant legal progress with the landmark Supreme Court decision of September 6, 2018, that struck down Section 377 of the Indian Penal Code, decriminalizing same-sex relationships. The article explores the fight to repeal this morality-based law from the colonial era and emphasizes how the revolutionary constitutional vision must be incorporated into society norms. Even if there have been legislative advancements, there are still obstacles in the way of achieving full LGBTQI rights, particularly when taking into account intersecting identities such as caste, class, religion, and ethnicity. The inadequacies and prejudices of the Koushal ruling were criticized for ignoring important legal principles and

discarding crucial evidence. In spite of this, advancements in Indian constitutional law, such as the acknowledgment of transsexual rights and privacy, set the stage for reform. The 2018 Johar ruling recognized the variety within the LGBTQIA+ community and extended rights to gender identity and sexual orientation, declaring Section 377 unlawful for consensual sexual conduct. Aligning the judicial system and civic society with constitutional ideals is not without its challenges.

Krishnadas Rajagopal (2023), in his article titled *'Same-sex marriages can rock societal values: Centre'*, conveys how the Indian government, represented by the Centre, has expressed its disapproval of same-sex marriage in the Supreme Court, citing the widely held belief that marriage between a biological man and woman is a sacred and traditional institution in India. The government stressed how marriage is fundamentally based on social norms, cultural ethos, and customs. It maintained that legislation, not court intervention, should be used to remedy any departure from this widely recognized standard. The administration made it clear that while the 2018 Navtej Singh Johar ruling decriminalized same-sex relationships, it did not legalize same-sex unions. According to the government, same-sex partnerships are not analogous to the conventional idea of a family, which consists of a husband, wife, and children. It said that same-sex marriage would upset the delicate balance between current codified laws and personal laws if it were made legally recognized. The administration further claimed that only heterosexual marriages should be recognized since they are fundamental to the state's existence and serve a strong social interest.

In an article (2014) related to same-sex marriage titled *'Adoption Rights of Same-Sex Couples in India'* talked about The Supreme Court of India currently examining the legal recognition of same-sex marriage and its impact on adoption, prompting discussions on legal and ethical aspects. While adoption laws in India have been refined to promote inclusivity, only heterosexual married couples can adopt via the Central Adoption Resource Authority (CARA). Legal challenges have arisen due to this restriction, with debates on whether it violates the rights of same-sex couples. While global trends show some progressive nations allowing same-sex couples to adopt, India's adoption challenges are complex, involving societal resistance, biases, and legal gaps. To advance adoption rights, fostering acceptance, legal reforms, and awareness campaigns are vital for an equitable future. In India, the Supreme Court is currently scrutinizing the legal ramifications of same-sex marriage and its implications for adoption. This has sparked conversations on both the legal and ethical dimensions of the issue. Adoption involves the transfer of parental rights, and though Indian adoption laws have evolved to encourage inclusivity, only heterosexual married couples are currently allowed to adopt through the Central Adoption Resource Authority (CARA). This limitation has led to legal debates, with concerns about potential infringement on the rights of same-sex couples. While some global regions have embraced progressive adoption laws for same-sex couples, India's landscape presents multifaceted challenges, including societal resistance, biases within the adoption process, and the lack of legal recognition. To progress adoption rights for same-sex couples, comprehensive efforts involving societal change, legal reforms, and awareness initiatives are crucial for ensuring equitable opportunities for all children in need of loving homes.

Darrel Montero (2014), in his research paper titled *'Attitude Toward Same-Gender adoption and Parenting: An Analysis of Surveys from 16 countries'*, delves into the global landscape of same-gender adoption, revealing limited advancements in its legalization worldwide. Among approximately 200 United Nations member states, only 15 countries, each with populations exceeding 3 million, have granted unrestricted approval for LGBT adoption. The goals of the article cover a number of important topics. First of all, it offers a succinct synopsis of the difficulties faced by same-gender adoption, including aspects like adoption agency interactions and parental complexity. Second, it explores the current legal status of the 15 countries indicated above, describing their unbridled support for same-gender adoption. Thirdly, the study provides perspectives on attitudes regarding the legalization of same-gender adoption and parenting based on data from recent surveys of public opinion done in 16 different nations. Last but not least, the study looks at the implications for social work practice, including ways to advocate for social causes and put social policies into action.

1.5 HYPOTHESIS

The laws governing adoption rights do not recognize same-sex couples as couples and, therefore, do not grant them the right to adopt, which becomes a clear violation of the equal rights of all citizens, regardless of their sexual orientation or gender identity.

1.6 RESEARCH METHODOLOGY

The paper will mostly be a doctrinal analysis, which is known as library-based research. Data has been collected from both primary and secondary sources, such as Statutes, Reports and Judgements delivered by various courts of India and Foreign countries, along with secondary sources like Books, Journals, Articles, etc.

2. HISTORICAL BACKGROUND

In India, same-sex partnerships have a complicated historical past that spans millennia of changes in culture, religion, and law. Ancient Indian religious and mythical writings, such the Kama Sutra and the Vedas, portrayed a wide range of gender identities and sexual orientations. Despite the fact that societal views differed throughout different places and eras, these books frequently depicted same-sex relationships as normal and even applauded them in specific circumstances.

In India during the colonial era, Section 377 of the Indian Penal Code was enforced, which made "unnatural offenses," such as gay conduct, illegal. Introduced in 1861, this rule had a significant influence on how society saw same-sex partnerships, pushing them underground and creating a climate of intolerance and secrecy.

2.1 EVOLUTION IN INDIA

When the British enacted Section 377 of the Indian Penal Code in 1860, they criminalized gay activities, beginning the history of LGBTQ+ rights in India. Even after India gained independence in 1947, this act was still in place and was used to discriminate against and persecute LGBTQ+ persons for more than a century.

But in India, the fight for LGBTQ+ rights picked up steam in the latter half of the 20th century. The AIDS Bhedbhav Virodhi Andolan (ABVA), the first LGBTQ+ group, was established in Delhi in the 1990s to combat violence and prejudice against the LGBTQ+ community. In 2001, the Delhi High Court received a public interest litigation (PIL) from the Naz Foundation, a non-governmental organization, claiming that Section 377 was unconstitutional.

Construction of Hindu temples in stone began around the sixth century of the Common Era. Construction reached climax between the twelfth and the fourteenth century when the grand pagodas of eastern and southern India such as Puri and Tanjore came into being. On the walls and gateways of these magnificent structures, we find a variety of images: gods, goddesses, demons, nymphs, sages, warriors, lovers, priests, monsters, dragons, plants and animals. Amongst scenes from epics and legends, one invariably finds erotic images, including those that modern law deems unnatural and society considers obscene. Curiously enough, similar images also embellish prayer halls and cave temples of monastic orders such as Buddhism and Jainism built around the same time. Interpretations and judgements aside, these images tell us that the 'idea' of same-sex and what the colonial rulers termed 'unnatural' intercourse did exist in India.

There have been several key events in India that have shaped the country's approach to LGBTQ+ rights over the years. Here are a few of the most significant:

1. Introduction of Section 377: In 1860, the British colonial government introduced Section 377 of the Indian Penal Code, which criminalized sexual activities "against the order of nature" and effectively criminalized homosexuality.
2. Founding of LGBTQ+ organizations: In the 1990s, the first LGBTQ+ organization, the AIDS Bhedbhav Virodhi Andolan (ABVA), was founded in Delhi to fight against discrimination and violence faced by the LGBTQ+ community.

3. Naz Foundation's PIL: In 2001, the Naz Foundation, a non-governmental organization, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377.
4. Delhi High Court's 2009 judgment: In 2009, the Delhi High Court declared Section 377 unconstitutional and decriminalized homosexuality.
5. Supreme Court's 2013 decision: In 2013, the Supreme Court of India overturned the Delhi High Court's judgment and reinstated Section 377, criminalizing homosexuality once again.
6. Supreme Court's 2018 decision: In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again.
7. Transgender Persons (Protection of Rights) Act: In 2019, the Transgender Persons (Protection of Rights) Act was passed, which aimed to protect the rights of transgender individuals and provide them with legal recognition.

3. LEGAL AND CONSTITUTIONAL ISSUES

In this chapter, the legal and constitutional challenges faced by same-sex couples have been discussed.

Same-sex couples in India face numerous legal obstructions that prevent them from enjoying the same rights and protections as heterosexual couples. These obstructions stem from India's complex legal framework and social conservatism. India does not recognize same-sex marriage, which means that same-sex couples cannot legally marry and obtain the legal benefits and protections associated with marriage. This exclusion denies same-sex couples inheritance rights, property ownership rights, and access to spousal benefits. Several laws in India, such as the Special Marriage Act and the Hindu Marriage Act, explicitly define marriage as between a man and a woman. Same-sex couples are not entitled to the legal protection and recognition of marriage under these rules. Even though there have been numerous court suits filed in Indian courts to legalize same-sex marriage, same-sex couples are still not recognized legally as of yet. The LGBTQ+ community and their friends persisted in fighting for their rights in the face of strong resistance from conservative organizations and religious leaders, and in 2009 the Delhi High Court ruled that Section 377 was unconstitutional and decriminalized homosexuality. The Indian Supreme Court, however, reversed this ruling in 2013 and restored Section 377.

In 2009, the Delhi High Court issued a landmark ruling allowing same-sex couples to adopt children in India. However, the decision was later overturned by the Supreme Court, which upheld the legality of Section 377 of the Indian Penal Code, which criminalizes homosexuality. There have been some recent developments in the Indian legal system that could have implications for the future of same-sex marriages in India. In 2020, the Indian government introduced the Personal Data Protection Bill, which includes a provision that recognizes the right to privacy as a fundamental right. Some legal experts believe that this provision could be used to argue for the legalization of same-sex marriage, as it recognizes the right of individuals to have control over their personal lives.

LGBTQ+ people and their supporters in India have made great strides in promoting their rights in spite of these societal and legal barriers. Numerous legal challenges have been filed with the courts, such as the historic case of *Union of India v. Navtej Singh Johar* (2018), which resulted in the decriminalization of consensual gay conduct. Furthermore, organizations dedicated to LGBTQ+ rights have been working nonstop to fight for legislative reform, educate the public, and increase awareness. The Supreme Court recently rejected the legalization of same-sex unions, leaving Parliament and state governments to determine whether or not such partnerships can be recognized by law.

3.1.LEGAL CHALLENGES TO SAME-SEX ADOPTION BANS

In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again. This was a major victory for LGBTQ+ rights in India and a significant step towards ending discrimination and promoting equality. However, despite these legal victories, the LGBTQ+ community in India still faces significant challenges. Discrimination and violence against LGBTQ+ individuals remain prevalent in Indian society, and many continue to face stigma and marginalization from their families, communities, and workplaces. Transgender individuals, in particular, face multiple forms of discrimination, including limited access to education, employment, healthcare, and housing.

Same-sex adoption regarding the Guidelines of Governing Adoption of Children 2015 act, states that the eligibility of prospective adoptive parents is determined based on their ability, suitability, and willingness to adopt, and the best interests of the child. The guidelines do not mention sexual orientation as a factor in determining the suitability of prospective adoptive parents. However, there is no clear provision in the guidelines that allows or prohibits homosexual couples from adopting children. The adoption laws in India only recognize heterosexual couples as eligible for adoption. Another act that governs the adoption process is the Juvenile Justice (Care and Protection of Children) Act, 2015, which defines a "couple" as a "married man and woman" who have been living together for at least two years. As same-sex marriages are not recognized in India, same-sex couples are unable to establish a two-year stable marital connection, making them unsuitable to adopt.

4. SOCIAL AND PSYCHOLOGICAL DIMENSIONS

In this chapter the impact of same-sex adoption on child's well-being along with social and psychological dimensions.

India is a pluralistic society in which different populations have varied ideas and norms but are nonetheless bound by a common thread of togetherness, which is one of the country's unique characteristics. However, bad applies in society taint the whole society and influence other people's thinking, which is primarily religious or political in nature, resulting in taboo or feelings of hatred in people's minds.

Social conservatism in India often leads to discrimination and prejudice against LGBTQ+ individuals. This social stigma can manifest in various forms, such as verbal abuse, physical violence, and social exclusion. The society's religious beliefs are barriers to same-sex couples, and data suggests that the right-wing is conservative and hostile to same-sex relationships on moral grounds., while the media is known as the fourth pillar of democracy, in today's reality, it is a tool of the country's dominating group, acting as their puppets. After the reading down of section 377, two young people from Kerala married in the temple according to the rites and have been in a relationship for 14 years, but due to the stigma in the society, they did not want to expose their identity, and when they tried to tell their family, the response from the family was shocking.

Decriminalization has had many important effects, one of which is raising awareness of LGBTQ+ people and their rights. As a result, there is now a broader knowledge and acceptance of same-sex relationships and sexual orientations, which challenges long-standing social norms and prejudices against LGBTQ+ people. The LGBTQ+ community has also been inspired by this to come out and publicly identify themselves without worrying about facing legal repercussions. The LGBTQ+ community now has more options to fight for legal recognition and protection of their rights as a result of the decriminalization of homosexuality. As a result, LGBTQ+ organizations and supporters have stepped up their activism and advocacy efforts, which has raised public knowledge of and support for LGBTQ+ rights in India.

4.1 ADDRESSING CONCERNS AND MISCONCEPTIONS ABOUT SAME-SEX ADOPTION

Many people express their concerns about the well-being of children raised by same-sex parents. However, research has consistently shown that children of same-sex parents fare just as well as children of opposite-sex parents in terms of their social, emotional, and psychological development.

Common Concerns and Misconceptions:

- Children raised by same-sex parents will be more likely to be gay or lesbian. Research has shown no evidence to support this claim. Studies have shown that children of same-sex parents are no more likely to be gay or lesbian than children of opposite-sex parents.
- Children raised by same-sex parents will be more likely to have behavioural problems. Studies have shown that children of same-sex parents are no more likely to have behavioural problems than children of opposite-sex

parents. In fact, some studies have shown that children of same-sex parents may be less likely to have behavioural problems.

- Children raised by same-sex parents will not have a positive role model of the opposite sex. Children of same-sex parents have many positive role models in their lives, including their parents, extended family, and friends. In fact, many children of same-sex parents report having more positive role models than children of opposite-sex parents.

In order to resolve the concerns, It is critical to respectfully and empathetically address issues around same-sex adoption. Due to their lack of experience with same-sex families or their exposure to unfavourable assumptions about them, many people are worried. In order to overcome these issues, education and awareness are essential. It's also critical to keep in mind that each child is unique and will grow at their own rate. Parenting is an individualized process, and what works for one child might not work for another. Parents of the same sex as well as those of the opposite sex are equally capable of giving their kids loving and nurturing environments.

I believe same-sex adoption is a positive choice for many families. Research has shown that children of same-sex parents fare just as well as children of opposite-sex parents in terms of their social, emotional, and psychological development. It is important to address concerns about same-sex adoption in a respectful and open-minded way. Education and awareness are key to dispelling myths and misconceptions about same-sex families.

4.2 ADDRESSING DISPARITIES IN ACCESS TO SAME-SEX ADOPTION ACROSS DIFFERENT DEMOGRAPHIC GROUPS

Legalizing same-sex marriage would provide equal rights and protections to all individuals, regardless of their sexual orientation, and would help in creating a more equitable society. It is believed, legalizing same-sex marriage would have a positive impact on the mental health and well-being of LGBTQ+ individuals, who currently face high rates of discrimination, harassment, and violence. Additionally, it would help in creating a more accepting and tolerant society and would reduce the stigma and discrimination that the LGBTQ+ community currently faces. It is consistent with the principles of secularism and democracy, which India is founded on as the Indian constitution guarantees equality and freedom to all citizens, regardless of their sexual orientation, and legalizing same-sex marriage is a necessary step towards fulfilling this promise of the constitution.

On the other hand, opponents of legalizing same-sex marriage argue that marriage is a sacred institution that is defined as a union between a man and a woman. They believe that changing the definition of marriage to include same-sex couples would undermine traditional family values and the institution of marriage. They argue that the primary purpose of marriage is to procreate and raise children, and that same-sex couples cannot fulfil this purpose, thus making their union fundamentally different from that of opposite-sex couples. Secondly, it would have a negative impact on children raised by same-sex couples. They argue that children need both a mother and a father to have a well-rounded upbringing and that same-sex couples cannot provide this. They claim that children raised by same-sex couples are more likely to have emotional and behavioural problems, and that legalizing same-sex marriage would promote the adoption of children by same-sex couples, which they argue would be detrimental to the child's well-being. Thirdly, that legalizing it would lead to a breakdown of social norms as it would pave the way for other forms of unconventional relationships and would ultimately threaten the country's cultural and religious traditions. They believe that same-sex marriage is not consistent with the Indian cultural and religious beliefs, and that legalizing it would be a step towards westernization and would lead to the erosion of traditional values. Lastly, opponents of same-sex marriage argue that the majority of the Indian population does not support it as the traditional values of the country are under threat and that legalizing same-sex marriage would go against the beliefs and opinions of the majority of the population.

The issue of same-sex marriage in India is complex and involves various cultural, religious, and legal perspectives.

The cultural and religious perspectives are deeply ingrained in Indian society and are often cited as a reason for opposing same-sex marriage. From a cultural perspective, marriage is considered a sacred institution in India. It is viewed as a social contract between two families and is seen as a way to continue family lineage and traditions. Traditional Indian society is largely conservative, and same-sex relationships are not widely accepted. LGBTQ+ individuals are often stigmatized and discriminated against, and their relationships are viewed as unnatural. From a religious perspective, many of the major religions in India, including Hinduism, Islam, and Christianity, consider homosexuality to be a sin. These religions view marriage as a union between a man and a woman, and same-sex marriage is not recognized. From a legal perspective, same-sex marriage is not currently recognized in India. The Indian Constitution does not explicitly mention sexual orientation, and homosexuality was decriminalized in 2018 by the Supreme Court, but same-sex marriage is still not legal. LGBTQ+ individuals do not have the same legal rights as heterosexual couples, including the right to marriage, adoption, and inheritance.

4.3 EXPLORING NEW MODELS AND APPROACHES TO SAME-SEX ADOPTION

To address these challenges and uncertainties, there are potential scenarios and recommendations for the future of homosexual adoption in India. Advocacy for legal reform to explicitly allow homosexual couples to adopt should continue, possibly achieved through amending adoption laws to remove restrictive clauses. Efforts to raise public awareness and educate about the benefits of homosexual adoption can dispel myths and stereotypes. Anti-discrimination measures should be put in place to ensure fair treatment for all prospective adoptive parents, regardless of their sexual orientation. Providing support for LGBTQ+ families and conducting research on the well-being of children raised by homosexual couples can strengthen the case for policy changes. Collaborations between adoption agencies and LGBTQ+ organizations can foster an inclusive environment.

The potential implications of changing adoption laws to permit homosexual couples to adopt in India are substantial. Such changes could provide more children in need of homes with loving and nurturing environments, contribute to reducing societal discrimination, promote family diversity, enhance the well-being of children, set a legal precedent, and potentially inspire global advancements in LGBTQ+ rights.

5. INTERNATIONAL PERSPECTIVE

Same-sex couples are still deprived of adoption rights in various foreign countries. Indian legislation like the HAMA and JJ Act allows a single individual to adopt a child irrespective of his sexual orientation or gender. However, the law discriminates against same-sex couples by disregarding their adoption rights. However, some of the liberalistic countries in the European Union, the U.S, South Africa have enacted progressive laws concerning the rights of same-sex couples. Even the United Kingdom, which had enacted the legislation criminalizing homosexuality in India, has legalized adoption by same-sex couples jointly in contrast to their Indian counterparts.

The European Court of Human Rights plays a pivotal role in protecting the right to respect for family, life, right to marry and the right to be safeguarded from discrimination based on sexual orientation within the European Union, The European Convention on Human Rights prohibits the Member States from discriminating based on sexual orientation in adoption proceedings. The landmark case of *E.B v France*(2008), has altered the landscape of parental rights for the LGBTQ community in Europe. By rejecting the stance taken in previous judgments like *Salgueiro da Silva Mouta v Portugal* (1999) and *Frette v France* (2002), where custodial and adoption rights were restricted based on sexual orientation, the ECHR in the case of *E.B v France* utilized the principle of ‘best interest of the child’ to mandate that domestic authorities are prohibited from making distinctions according to sexual orientation in adoption proceedings according to the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Convention on the Adoption Of Children envisions a broader concept of family and provides a widespread prohibition on discrimination, thereby further strengthening support for same-sex families.

Whereas, same-sex couples were denied several rights under the American Constitution. The judiciary played an active role in eradicating the discrimination faced by same-sex couples due to social non-acceptance and legislative inaction. In the famous case of *Obergefell v Hodges* (2015), the U.S Supreme Court declared that discriminating against homosexuals is against the ethos of the Constitution and the value of individual liberty is equal for every individual within the society. This judgment has led to various judicial pronouncements and legislation legitimizing adoption for same-sex couples.

The United Kingdom had legislation that initially discriminated against same-sex couples by extending adoption rights to married couples and single individuals only. Nevertheless, the Adoption and Children Act of 2002 allowed unmarried same-sex couples to adopt children. Therefore, in light of the concerns for individual liberty and prohibition on discrimination, various countries have disregarded the prejudicial notions of the conservative majority and created a legal framework that protects the interests of the vulnerable minority.

6.SUGGESTIONS AND CONCLUSION

To ensure equal rights and opportunities for all, it is essential to enact comprehensive legislation that legalises same-sex adoption across India. This legislation should explicitly recognise the eligibility of same-sex couples to adopt children, ensuring that these couples have the same rights and protections as heterosexual couples. Additionally, the legislation should outline clear and transparent adoption processes for same-sex couples, ensuring that their journeys to parenthood are streamlined and free from discrimination. By enacting such legislation, India can move towards a more inclusive and equitable society where all individuals, regardless of their sexual orientation, have the opportunity to build loving and supportive families.

Looking towards the future, there is hope that India will continue progressing towards greater LGBTQ+ rights. There have been recent positive developments, such as the inclusion of gender identity in the country's census and the decision by several state governments to provide transgender individuals with job quotas and reservation benefits. Supreme Court has declared that same-sex couples can cohabit but hasn't mentioned any progress regarding adoption. The recent legalisation of same-sex marriage in neighbouring countries like Nepal and Taiwan could put pressure on India to follow suit. However, it is essential to note that there is still resistance to LGBTQ+ rights in India, particularly from conservative religious groups. Any attempts to push for greater legal recognition and protection of LGBTQ+ rights could face opposition from these groups, leading to potential legal and political battles. Overall, the future of LGBTQ+ rights in India remains uncertain. While there are positive developments and potential for progress, challenges and obstacles must be overcome.

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