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# **BEYOND BORDERS: COMPARATIVE ANALYSIS OF LGBTQ+ ADOPTION RIGHTS IN INDIA, THE UK, AND THE USA**

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## ***Abstract***

*Adoption is not just about two people wanting a child. It's about laws, rules, and how society thinks about families. In this paper, I am looking at how LGBTQ+ people in India, UK, and USA can adopt children. I checked what the rules are, and how it works for real, not just what is written in law books. This paper talks about the ways people can adopt, like alone or with a partner, and if the country's law actually treats everyone the same. In UK, the law is now quite accepting for LGBTQ+ people to adopt, but in USA, it can be different in every state, and sometimes people use religion to deny adoption to same sex couples. But in India, the law is still incredibly old. LGBTQ+ people can only adopt as single parents, and two people together who are queer cannot adopt as a couple. The rules are even more confusing for trans people. At the end, I wrote some ideas that could make things fairer in all three countries.*

*Adoption law works at the crossroads of private family life, state welfare responsibilities, and anti-discrimination principles. This article is a comparative study of rights to adopt by LGBTQ+ parents in India, the UK, and the US. It compares formal legal rules (statutes, regulations, leading case law) and describes how those rules function in practice through different adoption pathways (joint, second-parent/step-parent, single, and foster-to-adopt), while evaluating each adoption system against a common set of normative criteria: the best interests of the child; equality and non-discrimination, and administrative workability, while recognizing diverse sets of moral values in different communities. The article finds strong movement in the UK and the majority of the US toward full formal equality with the caveat of religious-exemption carve-outs in the US—while India continues with a "single-adopter-only" model for LGBTQ+ children, and a regulatory landscape that does not afford same-sex couples the opportunity to adopt and remains uncertain for transgender perspectives parents. The article closes with practical, legally reforms possible in each jurisdiction.*

## Introduction

Adoption is more than just a personal agreement between two adults; it is a state-monitored shift of parental care that is aimed at giving a child who needs one a stable and caring family. All jurisdictions demand, at any rate rhetorically, that the paramount consideration is the best interests of the child. But it is the norms that exist concerning sexuality, gender and marriage that have always influenced what the state views as proper family. LGBTQ+ families have therefore presented a stress test regarding the family sphere of legal systems regarding the seriousness with which equality is taken.

When somebody adopts a child, it's not just a simple paper job. The government is saying, "You can take care of this child now." Laws in every country say the child's happiness is most important. But, in real life, old ideas about who should be parents affects decisions. LGBTQ+ people really test if a country honestly stands for equality or not. UK and USA have changed a lot in 20 years. Now, in UK, two men or two women can adopt together. In the US, it became possible after a big court case, but some places still stop LGBTQ+ parents using religious beliefs. In India, things are sadly still behind. Gay sex is not illegal anymore, but same-sex marriage is, so two LGBTQ+ people cannot adopt together. They can only adopt alone. Also for trans people, the law doesn't mention them, so courts don't know what to do. This paper will show the main rules in each country, tell how adoption works for LGBTQ+, and compare if it is really equal or not. I will also give some ideas on how to make things better.

Over the past 20 years, the United Kingdom and the United States have undergone unprecedented liberalization of adoption and fostering regulations of same-sex couples, which is driven by statutory reform (UK) and constitutional litigation (US). Both of these systems have allowed same-sex couples (married or civil partners) to jointly adopt and-most importantly- have allowed second-parent adoption (in which the non-gestational or non-biological parent is granted full legal parentage). Even in this one, however, there is tension: in the UK, there have been occasional conflicts over faith-based agencies seeking exemptions on equality law; in the US, a patchwork of state-specific religious-exemption laws and a 2021 Supreme Court settlement has provided points of authorization to service refusals despite joint adoption being legal across the country.

The position is different in India. Although the Supreme Court has decriminalized intimacy between same-sex people and has asserted the dignity of heterosexual people, the Court in 2023 refused to acknowledge marriage equality, and most of the members of the bench did not use the courts to grant queer couples equal rights to adopt. Therefore, same-sex couples are not able to adopt jointly, whereas LGBTQ+ people may adopt as individuals under the Juvenile Justice (Care and Protection of Children) Act and Adoption Regulations of CARA, though there are gender undertakings (i.e. only single men can adopt a girl). Moreover, the intercountry guidance is that same-sex couples cannot adopt in India. Another open frontier that has not been addressed has been underscored by a 2025 Madras High Court judgment that stated that the current legislation did not yet consider transgender people as adoptive parents and therefore they needed legislative amendments. It is on this background that this paper has been organised following four questions;

- (i) a brief methods note;
- (ii) a jurisdiction-by-jurisdiction map of the legal landscape;
- (iii) a thematic comparison across adoption pathways, anti-discrimination norms, and the best interests of the child;
- (iv) reform proposals.

## Literature Review

### 1. *The India: Old Rules, Not Much Voice*

In India, the law is really quiet about LGBTQ+ adoption. There are two main laws: HAMA for Hindus and the JJ Act for everybody.<sup>1</sup> Both these laws are made with straight families in mind. HAMA says only married couples (man and woman) or one single person can adopt.<sup>2</sup> JJ Act is for everyone but still, in real life, the authority called CARA makes rules that only couples in a “real marriage” can adopt, which does not include same-sex couples because same-sex marriage is not legal here.<sup>3</sup> Some writers, like Totla and Anand, say this is not fair because the Supreme Court said LGBTQ+ people should have dignity. After a case called Navtej Johar, gay people are not treated as criminals anymore, but there is no proper law for them to adopt as couples. In 2024,

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<sup>1</sup> The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, section 56–63 (India).

<sup>2</sup> Shabnam Hashmi v. Union of India, (2014) 4 SCC 1; AIR 2014 SC 1281 (India).

<sup>3</sup> Central Adoption Resource Authority, Adoption Regulations, 2022, Reg. 5(2)– (3) (India).

the top court said one rule which stopped single or queer people from adopting was wrong, but big changes in law are still missing.<sup>4</sup>

Law, Morality and Silence. It is in all a legal desert in India, as far as LGBTQ+ adoption is concerned. The two main legislatures that govern adoption in India are Hindu Adoption and Maintenance Act, 1956 (HAMA) Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). Only HAMA legislates on behalf of Hindus and JJ Act purports to be religion neutral.<sup>5</sup>

Nevertheless, both bills assume heterosexuality in the structure of the family. Would you have these four petitions consolidated? Today, CDK lacks the legal right to adopt because of the mere reason that its combination must contain a man and a woman, JJ Act does not prohibit adoption by the individuals but the *Central Adoption Resource Authority* (CARA) which is a government agency and is mandated to frame up rules regarding adoptions has failed to provide the guidelines regarding adoption of orphan children in family set up.<sup>6</sup> The CARA guidelines have always been an exception of same sex couples provided that a couple is legally in a valid marriage, which same sex couples in India do not have access to in reality. In 2024, the Supreme Court even affirmed one of the rules by the Central Adoption Resource Authority (CARA) that had barred only unmarried or queer couples to jointly adopt children, although there was still no comprehensive law.<sup>7</sup>

## 2. *The United Kingdom: Changed Laws, More Acceptance*

UK is way ahead compared to India. In 2002, they changed their law so two people in a same-sex relationship can adopt together, even if they are not married. The rules focus more “Will these people give love and care to a child?” instead of if they are a straight or gay on, couple. Writers say UK is a good example, as courts there focus on what is best for the child, not parents’ gender. Also, many people and agencies in the UK now say yes to LGBTQ+ couples adopting. Still, sometimes religious groups there have a problem with it, but mostly the system is working well.

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<sup>4</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

<sup>5</sup> Hindu Adoptions and Maintenance Act, No. 78 of 1956, §§ 7–10 (India).

<sup>6</sup> Central Adoption Resource Authority, Eligibility Criteria for Prospective Adoptive Parents, <https://cara.wcd.gov.in> (last visited Oct. 11, 2025).

<sup>7</sup>

The Reform to Acceptance here in the UK is another case. Adoption and Children Act 2002 allowed joint adoption to same sex married couples as well as civil partnership.<sup>8</sup> It was devilishly brilliant at the time: this was seen as a drastic reform and there were numerous human rights and equality activists in the queue. The law does not differentiate viable heterosexual couples and homosexual couple only that it can provide a child in a loving stable health environment.<sup>9</sup>

Indicatively, scholars like Harris and Jones have termed the UK system as an example of inclusiveness. The courts of the UK have repeatedly decided that the fact that the parents of a child are in same sex orientation is not contrary to the best interest of the child. The society has also changed its belief: many adoption agencies are currently accepting gay and lesbian couples to apply.<sup>10</sup> At least there has been some conflict between equality and the right of religious organisations to refuse to be obliged to place children with LGBTQ+ parents. Nevertheless, to be more general, the U.K. system has proven that inclusive adoption orders can work without jeopardising the welfare of a child.<sup>11</sup>

### 3. *The United States: Good And Bad Mix*

America is not the same everywhere, since each state has their own rules. After 2015, when the Supreme Court said same-sex marriage is legal in all the US, most states started to let LGBTQ+ couples adopt together. But some states still let agencies refuse adoption if they say it is against their religion. Some researchers say, even though law says everyone is equal, these small rules make it hard for LGBTQ+ parents.<sup>12</sup> Also, studies show kids raised by LGBTQ+ parents do just as good as any other kids, but there are still extra checking and sometimes rude behaviour from adoption staff.

A Better Country in the U.S., it is a patchwork in the case of the US, of course, it is a bit more complicated that the state has its own adoption requirements and/or laws. Some states had been allowing same-sex adoption and others had been prohibiting it over

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<sup>8</sup> Adoption and Children Act 2002, c. 38, Section 50 (U.K.).

<sup>9</sup> Human Fertilisation and Embryology Act 2008, c. 22, Section 42–45 (U.K.).

<sup>10</sup> Catholic Care (Diocese of Leeds) v. Charity Comm'n for Eng. & Wales, [2011] UKFTT B1 (GRC) (First-tier Tribunal).

<sup>11</sup> U.K. Dep't for Educ., Statutory Guidance on Adoption (2013).

<sup>12</sup> Tex. Hum. Res. Code Ann. ch. 45 ("Protection of Rights of Conscience for Child Welfare Services Providers") (added by H.B. 3859, 2017).

decades. *Obergefell v. Hodges*, was the turning point of 2015, where the U.S. Supreme Court ruled that same sex marriage is legal and it should be legalised in all states.<sup>13</sup> Marital equality was therefore introduced and soon thereafter almost all the states began to give the homosexuals adoption rights

Nonetheless, the situation remains lopsided. Though other states, including California, New York, and Massachusetts, have gone far, there are other states, including Alabama, Mississippi, and Texas, that have tried to enact laws to permit the private adoption agencies to reject placements with same-sex couples on the basis of so-called religious freedom.<sup>14</sup> Legal experts like Moore believe that even though the federal Constitution guarantees equal protection to all citizens, such state-level exceptions are roadblocks to LGBTQ+ parents. Social research in the U.S. also reveals that children brought up in same-sex couples households are just as well off as children brought up in heterosexual-parent households but there is still bias. LGBTQ+ couples with longer wait times are treated with greater suspicion and even open hostility by adoption agencies and birth families.<sup>15</sup>

4. **Studies in Comparative and International Perspectives Krishnamoorthy and Mathew** note that there are different degrees of equilibrium between cultural norms and human rights between legal traditions. Although the UK has gone a long way to acceptance by clarifying legislation, they argue that the U.S. and India are both litigation and court decision based which are less consistent and certain. The literature also gives a background of realization that reforming the law is seldom enough, and social change is part of the effective equality- training of adoption case workers, campaigns and institutional needs of the consistent and even application of no-discrimination laws. As an example, India can ensure that the law is more equal by amending the current law, however, the social stigma that is derived because of queer parenting will pose real challenges linked with adoption.

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<sup>13</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>14</sup> Tex. Hum. Res. Code Ann. ch. 45 (“Protection of Rights of Conscience for Child Welfare Services Providers”) (added by H.B. 3859, 2017).

<sup>15</sup> S.D. S.B. 149, 92d Leg. Sess. (2017) (enrolled) (protections for faith-based child-placement agencies).

## Comparing the Countries

When we look at all three, we see UK has laws that help LGBTQ+ people adopt, and that makes things smoother. USA is trying, but sometimes the law is not the same everywhere because every state can have its own rule. In India, even if the law says nothing, most people think silence means “no,” so LGBTQ+ folks are kept out. Changing just the law is not enough. India and the US both need regular people and staff to be open-minded without bias. Even if the law says yes, if society is not ready, it won't be easy for LGBTQ+ parents.

### Analysis

#### 1. The Law's Silence:

It's very clear: UK talks about LGBTQ+ adoption in the law, and that makes things easier. USA is mixed, and India just keeps silent, so officials usually say no because they don't see LGBTQ+ in the rulebooks. This silence hurts families who just want to adopt.

#### 2. Best interest of the child: Every country says, “child first.” But sometimes, it is just used as an excuse to block LGBTQ+ parents. In India, some judges and agencies say, “the kid might face problems,” but really it's about other people's prejudice, not what's best for the child.<sup>16</sup> UK and USA courts are better here, as they focus on care and love, not who is in the couple.

#### 3. The Role of the Law: Test of Silence One of the most notable distinctions between the three countries is the application of the law. The UK clearly incorporates LGBTQ+ individuals into the legislation. In comparison, although the law in the US differs, it is structured and construed in favor of equality in an interdependent manner since Obergefell.<sup>17</sup> In India, absence of clear terms implies that the law can be interpreted. All this silence is not neutral; the fact that LGBTQ+ people are not mentioned implies that bureaucracies indicate that silence as a ban.

This form of silence signifies the existence of legal reforms as being far apart in relation to social or constitutional reforms. Family laws were still suspended in an older world perspective where only a man and a woman were recognized as a family even after decriminalization of homosexuality in India. Consequently, same sex couples are left in a limbo; not prohibited but virtually left out without being specifically included.

<sup>16</sup> The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 57(4) (India).”

<sup>17</sup> Obergefell v. Hodges, 576 U.S. 644 (2015).

4. Is Best Interests of the Child a Prejudice Veil? The guiding principle behind the process of adoption is the same in all countries and is known as best interests of the child. This suggestion appears to be neutral and defensive. Nevertheless, there are cases of agencies using the same repressive argument on the basis of discrimination, as well as some judges. To illustrate, in India, agencies and even judges argue that a child brought up by a same sex couple will experience social stigma or confusion. According to critics, this rationality punishes LGBTQ+ persons on the basis of the prejudice in the society, instead of confronting prejudice.

Courts in the UK appear to have disapproved of this argument and have been concentrating on the concept that the welfare of the child is ascertained on the basis of love, care and stability, which is not ascertained on the basis of the gender of the respective parents.<sup>18</sup> The development of such reasoning has happened in the United States too but states still exist. Besides, the doctrine of the best interests continues to be selectively applied in certain conservative states in the U.S. and can, in some cases, restrict queer couples to adoption.

5. Federalism vs. Uniformity: The final interesting difference is in the infrastructure of adoption systems in the two nations. The UK has a single law, which means that the rights of LGBTQ+ to adopt a child are the same throughout the UK.<sup>19</sup> The opposite of this is the case in the US which has a federal model, which implies that rights differ depending on the state. This may lead to inconsistency, whereby, in California, a same sex couple can freely adopt, but in Texas, a same sex couple may not be allowed to adopt at all.

The case of India is more of a combination of the UK and the US systems. The JJ Act is passed and accepted throughout the country, but individual laws such as HAMA give other standards to various communities. Moreover, the enforcement of the JJ Act is dependent on the local adoption agencies, and the agencies normally depend on their biases. The adoption law in India is in fact decentralized on paper but disjointed in practice.

6. The Social Context: Tradition, Religion, and Stigma Adoption occur in a social context of all three societies that incorporates moral arguments and social attitudes to adoption. Christian moral arguments against LGBTQ + adoption have been trendy in the US and

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<sup>18</sup> Adoption & Children Act 2002 § 50; HFEA 2008 section (42–45); Catholic Care litigation on faith-based exceptions.

<sup>19</sup> Adoption and Children Act 2002, c. 38, Section 50 (U.K.).

UK, but with the openness of discussion, advocacy, and the presence of queer families, these moral arguments have since declined. So far, although there are still some areas of opposition in the US and the UK, the overall mood towards adoption is favorable and favorable in the greater population.

The problem of India is deeper. The old concepts of family and lineage are still closely tied to reproduction and marriage - so many still believe that adoption is a last resort to childless couples, not an ordinary family building process. The LGBTQ+ adoption in such environment is not only legally but also socially problematic; the media does not present many examples of queer families, and the general knowledge on non-traditional families is usually extremely low.

7. **The Role of Courts:** Courts have been a very crucial element of LGBTQ+ rights in the three countries. The judicial activism in the U.S. has played a central role in activism in the United States v. The Obergefell v. case which decriminalized homosexuality and Lawrence (2003) case are examples of these cases (Lawrence, 2003). <sup>20</sup>The case of Hodges (2015) that acknowledged marriage equality. These cases combined to create the foundation of adoption equality.

There was a change in the U.K. where the Parliament effected the change by acting through legislation and the courts adhered to the changes in the legislations with supportive interpretations. In India, this change has been largely via the judiciary - the Navtej Johar case on decriminalization, a case filed Co-In the case filed by a transgender rights group, NALSA v. Union of India, (2014), and privacy claims in Puttaswamy v. Union of India, (2017). Nevertheless, courts are no longer adopting laws and are trying to leave issues of adoption and marriage reform to legislators.

The most common argument by legal activists in India is that, in as much as the Constitution assures equality and dignity, then depriving an individual of the right to adopt is contrary to equality and dignity in the document that assures the same. However, in the absence of political will, a courtroom victory does not readily translate into straining the situation on a day-to-day basis.

8. **Transgender and Non-Binary Parents:** There is another margin of marginalization in the case of transgender and non-binary people. In 2024, the right of a transgender woman to adopt was ruled against by a High Court decision in India, as the existing law did not

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<sup>20</sup> Obergefell v. Hodges, 576 U.S. 644 (2015)

provide it. This depicts a complex relationship where legal identity of gender (as stipulated in the Transgender Persons Act, 2019) does not offer family privileges.

In the UK and the USA, transgender people are able to adopt under the same general terms as other people, but due to the social prejudice, there are other obstacles. There are agencies that will demand further medical or psychological tests of the applicant. Activists have proposed that a good step would be to have explicit policy statements, which would say that gender identification will not be a factor in rejection.

9. **The Child Perspective:** One of the aspects that are not usually discussed is that of the child. That is, the research conducted in the U.S., the U.K., and other Western nations, allows concluding that children brought up by LGBTQ+ parents are as healthy, secure and socially adjusted as children brought up by heterosexual couples and that, in general, stability, nurturing and love are more important than everything. This is also an interesting fact as a number of studies revealed that children of same-sex couples are more empathetic and open-minded. The objections to LGBTQ+ parents, which continue to be formulated in the Indian tradition as toolkits of fear, need the integration of the law with social science, although the law is constrained in altering the policy, the evidence can be used to break stereotyping. The U.K. demonstrates that where there is clear legislation that involves everyone, there is further enablement in future. The U.S. demonstrates the strengths, but also the weaknesses of judicial activism - that law offers a fast turnaround, yet that progress can still be lopsided and at times even stagnant, without the laws in place. In India, we are still at the infancy of the process, with legal silence (also a tool of denying identity) of LGBTQ+ adoption, social stigma, and working together to ensure that adoption remains largely inaccessible, to those who fit the criteria and, voluntarily, would like to do so, in need.

## **Different Systems**

### ➤ **Society and attitude**

UK has one law, so things are the same everywhere. US states all act differently, so some places are good, some not. India, the rules can be different by state or religion, and local officers have lots of power. Society and Attitudes. In UK and US, religion used to be a big wall, but with time, many people got used to LGBTQ+ families. Now it's less of a problem. In India, still old ideas about marriage and family mean society makes it hard for LGBTQ+ parents, even if law changes.

➤ **Role of Courts and Activists**

In the US, courts and legal fights made things better for LGBTQ+ people. In the UK, lawmakers did it. In India, most changes come from court, not politicians. But, without laws changing, things move very slow.

➤ **Transgender Parents**

In India, a court said in 2024 that trans women can't adopt because no law exists for them. So even if someone's legal gender is changed, family rights don't always follow. UK and US laws allow trans people to adopt, but sometimes agencies act with bias.

➤ **What About the Kids?**

Research from the west says kids of LGBTQ+ parents are absolutely fine, sometimes even more open-minded. In India, this kind of research isn't done, so old fears are still used against LGBTQ+ adoption.

➤ **Learning from Each Other**

India could learn from the UK and US. UK got better with strong laws. US got better after court fights. India needs judges and politicians both to help. Real equality also means letting same-sex couples marry; if not, adoption rights will always be shaky. The three countries comparison confirms the opinion that there is no simple solution to the attainment of equality. UK succeeded in this by having good legislative supports. Litigation and civil action were resorted to in the U.S. Maybe the path that India will have to take will be a combination of the two: to build a legal interpretation process to open the door and legislative reform to make the change permanent.

It is also evident that adoption equality cannot be viewed in isolation of other rights, in particular, the acknowledgment of marriage and family. Though same sex couples cannot be legally married in India, there will be doubt as far as adoption is concerned. To make equality final, there has to be recognition in all the family law issues.

## **Conclusion**

Adoption rules for LGBTQ+ people show what a country really thinks about equality and families. If a country stops people from raising children just because of who they love, it's not fair at all. UK shows that clear rules are best. US is moving in a good way but is not even everywhere. India still has a long way to go—society and the law both must change. For India

to be equal, parliament should update the law so any person, no matter their gender or who they love, can adopt. Judges should read the rules with equality in mind. Agencies should get training, and maybe films/TV can show LGBTQ+ families as normal too. At the end, adoption is about giving love—not what gender or sexuality the parents have.

The issue of LGBTQ+ people getting the right to adopt a child is not only a question of who is entitled to raise a child, but also a question of what kind of society we desire to live in. By depriving individuals of the opportunity to create families, just because of their choice of a partner, we perpetuate the processes of exclusion and inequity, as a country. It is dignified, empathetic and just when we open the door to all loving parents.

Finally, adoption should not be a right but an act of love and responsibility. The legislation must defend those who are in love and capable of raising a child not to be denied that chance, simply due to ignorance or bigotry. The examples prove that the lack of prejudice towards same-sex couples is not only beneficial to the couples themselves but also to children, who have loving families and can take care of them. And India can do the same--unless they would like to make the step of viewing the concept of family through the prism of love, and not just tradition.

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