

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

## Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **Uniform Adoption laws in India**

**Authored By- Sakshi Jain**

## **Abstract**

Adoption is a process where adopting someone, usually a child, one assumes the responsibility of parenting that person's biological or legal parent or parents. Through legal adoption, the biological parents' rights, obligations, and filiation are permanently transferred to the adoptive parents. The adoption law of India, are once again in light of the day, when recently supreme court of India decided to hear a plea that urged for simplifying the legal process for adoption laws in India. And in furtherance of the same notice were issued to the central government. This article discusses some important aspects of adoption. The historical relevance of adoption and the modern perspective in different religion along with the current adoption laws in India are discussed here. This article also throws some light on adoption laws for LGBTQ community and urges for uniform adoption laws for all the genders.

## **What Is Adoption**

Adoption is a legal process, where a parent-child relationship, not being related by blood is established by a legal process rather than by birth process. Under this legal process child of one parent becomes the child of some other parents., making them the new non-biological parents. Today almost every country recognizes and accept legal adoption practices. And India is not any exception.

According to the Encyclopedia of Religion and Ethics-

“Adoption indicates the transfer of a child from old kinsmen to the new. The child ceases to be a member of the family to which he belongs by birth. The child loses all rights and is deprived of all duties concerning his natural parents and kinsmen. In the new family, the child is like the natural-born child with all the rights and liabilities of a native-born member.”

Children are thought of as a nation's future. In orphanages, many kids are left behind and subjected to serious exploitation. Children may occasionally fall prey to sexual assault and human trafficking. Every child deserves a basic right to have a family, and adoption is the best solution for homeless and parentless youngsters.

The adoption law of India, are once again in light of the day, when recently supreme court of India decided to hear a plea that urged for simplifying the legal process for adoption laws in India. And in furtherance of the same notice were issued to the central government.

## **History Of Adoption Laws In India**

In India, adoption is not any new practice. It has been practiced for years altogether. The idea of adoption was first introduced for the purpose of granting orphan, abandoned, and relinquished children the right to a family.

From the very beginning, Hinduism has always believed in a patriarchal society. Due to any reason if a couple lacked a male descendant, they decided to adopt a male kid and name him as the legal beneficiary and the descendant. Since time immemorial, Hindu culture places a high value on male children. It was believed that a parent's spirit can only be saved when a person has a male descendant to light funeral fire, and salvation can be attained through a male child who brings tribe love.<sup>1</sup> The main purpose of introducing this idea of adoption was to ensure that one's funeral rights would be carried out and also to protect one's lineage. The idea of adoption was thought to be the ideal way to provide a child who was separated from his or her biological family back their family life. Due to this, Hindus extended the adoption institution significantly. No other race or religion on earth has advanced to such minute details with regard to the institution of adoption as Hindus. For Hindus, adoption was considered as a "dharma." And dharma basically means Principles, guidelines, and prescriptions that regulates a man's entire life. Desire for a son, has also predominated Hindu culture.

## **Modern Theory**

However with time and civilization, the concept of adoption has undergone a great change. Adoption has served as an important social process in India, where there are many orphans, abandoned children, children with disabilities, and children in need. These innocent kids need parents and homes. There are many people both in India and overseas who are childless. And Adoption serves the purposes of giving homeless children homes and giving people without children or with only one kid who want to adopt another child a happier family life. And this no longer is concerned with the patriarchal ideology that existed in a long back. And in the modern time, the new child welfare society has emerged. The new theory is all about giving parents who are without children a kid, and it is giving orphans, homeless, and children born out of wedlock who may be living in abusive and inhumane conditions homes and parents. In orphanages, many kids are left behind and subjected to serious exploitation. Children may occasionally fall prey to sexual assault and human trafficking. While in some fortunate circumstances, abandoned children are taken in during the adoption process. Giving a kid fresh life via adoption is all that it entails. It is a worthwhile purpose that makes the adoptive child happy.

## **The Evolution Of Law**

During the British rule in India, If a man had a son, grandson, or great grandson, whether they were biological or adoptive, he was forbidden from adopting. Simultaneous adoption also remained unenforceable. The Privy Council looked at the issue of adoption by a minor in *Jamona v. Bamasoondri*<sup>2</sup>. At that time, Privy Council took note of the fact that an individual who is a minor under the Indian Majority Act of 1875 may adopt or give his widow permission to do so after he has reached the age of discretion. The Dayabhaga School determined the age of majority to be fifteen years old, whereas the Mitakshara School determined the age of majority to be sixteen years old.

---

<sup>1</sup> Kusum, *Family Law Lectures – Family Law I*, Lexis Nexis Butterworths, Wadhwa, Nagpur (2<sup>nd</sup> edn., 2008)

<sup>2</sup> *Jamona v. Bamasoondri*, (1876) 3 IA 72.

The court noted that there was no proof that the age of discretion had been set earlier. The father held the prime authority to place a kid for adoption. He didn't required permission of his wife<sup>3</sup>. The mother lacks the ability to place her illegitimate child for adoption.

In *Kashishri Devia v. Greesh Chander*<sup>4</sup>, it was determined that the eldest widow was not the adopted son's successor as mother because she was merely a stepmother, and the succession went to the husband's nephew in the case where the wife so chosen was the second wife of the adopted and the adoptive mother died before the adopted son. A Hindu father who changed his faith and became a non-Hindu did not lose the right to give his Hindu son up for adoption, but as the actual offering involved religious rituals, that responsibility had to be given to a Hindu.

The Privy Council oversaw all adoption legislation in the late British era. After the British era ended, there were significant changes made, including a change in how parliamentary laws were implemented. As a result, the Hindu Code Bill was introduced to address issues of Hindu law. The same code also applied to adoption legislation. It offered a few slightly distinct adoption laws, which are briefly mentioned below.

The most effective piece of legislation addressing all the main divisions of Hindu law after independence was the Hindu Code Bill of the 19th century. Adoption-related laws were covered in various sections of the Hindu Code Bill. Regarding adoption, the daughter is not eligible for adoption under the proposed in the Hindu code bill. The only prerequisites listed in the Hindu Code Bill for adoption were that the child be a boy, be under the age of 15, and not be married. Furthermore, he shouldn't have been adopted in the past. The adoption of an illegitimate kid is not prohibited by this measure. Parents who give their child up for adoption must be of sound mind and be at least 18 years old. Another crucial issue is that the child's mother can give him up for adoption even without the father's permission if the child's father is deceased, has given up on life, or has ceased to be Hindu. The law stipulated that if a man's son, grandson, or great-grandson are still alive, neither he nor his widow may adopt a kid. The adoptive father must reach legal adulthood and be of sound mind. As a result, the issue of age or competence regarding adoption is clearly simplified by the code, or we could say that the code explicitly identifies the adoption-related requirements and restrictions. Contrary religious adoption was not covered in the code.

The Hindu Code Bill was later divided in four segments, which are now considered acts of parliament. One of the four pieces is the Hindu Adoption and Maintenance Act of 1956, which regulates adoption and maintenance rules. The guidelines for becoming the guardian of a minor child were laid down in the Guardian and Wards Act of 1890. The Statutes of Guardianship and Wards Act deals with the guardianship process for minors, not directly with adoption legislation. It has guardianship laws that have been codified. The Juvenile Justice Act of 2000 deals with the law governing the care and protection of abandoned and neglected children, while the succession rights of the adopted kid are governed by the Indian Succession Act of 1956. And Institutional care of the destitute and orphan children focuses on care of juveniles.

Although there were various rituals and practices involved in adoption in the past, the process is still the same now. Although the early and new adoption acts had different goals, the fundamental principles of adoption remained the same in both. The actual giving and taking of children has not changed from the beginning of time. The adoption process is mostly used to care for abandoned and destitute children.

---

<sup>3</sup> *Trikanganda MaUanauda Vs. Shivappa PatU*, (1943) ILR.Bom.706

<sup>4</sup> *In Kashishri Devia v. Greesh Chander*, (1964) WR 71.



## **Adoption Under Hindu Law**

In India the legal process of adoption is governed by 1956 Hindu Adoption and Maintenance Act<sup>5</sup>. Section 2<sup>6</sup> of the Hindu Adoption and Maintenance Act, lays down some basic requirements which needs to be necessarily fulfilled to make a parent eligible for taking adoption. The law has undergone various amendments throughout the years. It was believed in hindu culture that only when a person has a son to light the memorial service fire will the spirit of a deceased parent achieve salvation.

## **Adoption Under Muslim Law**

The Muslim law does not recognize adoption. Therefore, if a Muslim who wish to adopt has to approach a tribunal in accordance with the Guardianship and Wards Act of 1890<sup>7</sup>. But the idea of acknowledgment is taken into consideration by the law. It is believed that a Muslim cannot prove paternity, and even if he adopts a child, he can never assume the role of child's father. According to a number of experts on Islam, adoption, which establishes a non-biological parent-child relationship, is not recognised under Mohammedan law. A Muslim never claims a baby as their own, and a child is considered to be a genuine direct descendent. The adopted child retains his or her biological family name and does not change it to the name of the adoptive family, should the adoption go through. Thus, the parents adopting the child can never assume the status of biological parents.

In the case of Muhammad Allahdad Khan v. Muhammad Ismail<sup>8</sup>, the court found that Muslim law does not recognise adoption in the same way as Hindu and Roman law does. Adoption is not recognised as a filiation under Muslim law. The adoption of children bill was submitted in the parliament in 1972 with the goal of creating a unified adoption law that would apply to all Indian citizens, regardless of their religious affiliation. The administration withdrew the measure, preventing its passage, in 1978.

## **Adoption Under Christian Law**

Similarly, like Muslim law, there is no law for adoption in Christianity. And therefore for adoption they have to approach the tribunal under Guardians and Wards Act, 1890. In Christian law, there is a system of foster care. Only foster care is permitted under the aforementioned Act for Christians to adopt children. Once the child turns major under foster care, he is free to cut all ties. However, such a child is not legally entitled to an inheritance.

The Act stipulates that the welfare and well-being of the child must be considered by the court when deciding who should be the guardian. In India, there is no specific law that permits or governs Christian adoption. And therefore, Foster children are not considered children in law where there is no legally recognized statutory or customary adoption. And when foster parents pass away, their assets are distributed to their legitimate intestate heirs at the expense of the foster children.

---

<sup>5</sup> The Hindu Adoptions And Maintenance Act, 1956, No. 78, Acts of Parliament, 1956, (India)

<sup>6</sup> The Hindu Adoptions And Maintenance Act, 1956, § 2, No. 78, Acts of Parliament, 1956, (India)

<sup>7</sup> The Guardians And Wards Act, 1890. No. 8, Acts of Parliament, 1890, (India)

<sup>8</sup> Muhammad Allahdad Khan v. Muhammad Ismail, ILR (1888) 12 ALL 289

## Adoption Laws In India

### **Hindu Adoption and Maintenance Act of 1956**

Adoption is an matter of personal law and therefore adoption in India is governed by several laws. The Hindu Adoption and Maintenance Act of 1956 regulates adoptions under Hindu law. As per the act, it applies to all who are by religion Hindus, including Buddhists, Jains and Sikhs, and any person who is not a Muslim, Parsi, Jew, or Christian.

Section 7<sup>9</sup> and section 8<sup>10</sup> of the act deals competency of male and female respectively to adopt a child. And as per the same: Any male Hindu, who is of sound mind, not a minor and is eligible to adopt a son or daughter, but if the male has a living spouse at the time of adoption, the consent of his spouse is mandatory. Any female Hindu, who is not married or if married, her marriage has been dissolved or whose husband is not alive or her husband has been declared incompetent can adopt a son or a daughter.

The act also states that if already a biological child exists in the family, then in that case adoption is allowed of child of opposite sex only. Also, in cases where a female adopts a male child, the female must be at least 21 years older than the son. When a guy adopts a female child, the son must be at least 21 years older than the adoptive father. The act also explicitly clears that, the rights of adopted child are same as that of natural child.

According to Section 10<sup>11</sup> of the Hindu Adoption and Maintenance Act of 1956, a kid must be a practising Hindu in order for the adoption to be legal. He or she cannot be a recent adoptee. Unless there is a tradition or use that allows for marriage, he or she should be single. He or she shouldn't have turned 15 unless there is a tradition or usage that allows a child to do so.

### **Guardians And Wards Act, 1890<sup>12</sup>**

In Muslim, Christian, Parsi, and Jewish personal laws there is no recognition of adoption and therefore these laws lack any general law for adoption. According to this Act, anyone who desires a kid may take up guardianship of the child until the child becomes 21. The only relationship that exists between the parents and the kid is that of Guardian-Ward because this Act does not grant the guardian any adoption rights. Contrary to the Hindu Adoption and Maintenance Act of 1956, this Act does not grant the adopted child the status of a biological child.

### **The Juvenile Justice (Care And Protection Of Children) Act, 2000<sup>13</sup>**

In 2000, the legislature enacted The Juvenile Justice (Care and Protection) Act, 2000. It was enacted with the intention of defending the welfare and interests of children in need of care. The Act of 2000 has been modified to cater more to interests and rights of children. The act serves the purpose of making adoptions more kid-friendly. The scope of definition of "child in need of care and protection" was widened to also "abandoned," "surrendered," and "working children,". Religion is not a barrier to adoption under this Act.

---

<sup>9</sup> The Hindu Adoptions And Maintenance Act, 1956, § 7, No. 78, Acts of Parliament, 1956, (India)

<sup>10</sup> The Hindu Adoptions And Maintenance Act, 1956, § 8, No. 78, Acts of Parliament, 1956, (India)

<sup>11</sup> The Hindu Adoptions And Maintenance Act, 1956, § 10, No. 78, Acts of Parliament, 1956, (India)

<sup>12</sup> The Guardians And Wards Act, 1890. No. 8, Acts of Parliament, 1890, (India)

<sup>13</sup> The Juvenile Justice (Care And Protection Of Children) Act, 2000, No. 56, Acts of Parliament, 2000, (India)

## **Challenges In Adoption**

Despite the fact that adoption services are regulated by state-approved agencies, many cases have been witnesses where private adoptions are taking place through agents and other unorganized sources in some hospitals. It raises serious concern for the which needs to be addressed urgently. In many states there is lack of consistent and comprehensive data pertaining to adoption records. And it makes it quite challenging to carry out research projects. Indian culture does not support "open adoption," in contrast to Western nations. India practises "closed adoption," therefore the identity of the birth parent or parents is kept private. As of right now, adoptive parents don't feel comfortable telling their kids about their status, as seen in some rural and urban homes. The trust issue in the parent-child connection may become very serious if a child learned this knowledge from others.

## **Adoption laws for LGBTQ**

The process of adoption has a profound effect on a child's life and entirely transforms it. It has broad repercussions. As a result, the wellbeing of the kid should be the only consideration when dealing with the adoption procedure. Every religion in India has its own laws and regulations because adoption is governed by personal laws. Adoptions should only happen when it's in the child's best interest. This is a globally recognised rule.

The Indian laws raise some questions by stating that marital status is not taken into account when adopting a child. The law requires a married relationship and the approval of both spouses whenever a couple wishes to adopt a child jointly, so this provision is only applicable to single people who want to adopt a kid. Due to the fact that same-sex weddings are illegal in India, these laws undermine the goal of decriminalising homosexuality by restricting the civil liberties of same-sex couples. The repressive laws that forbid unmarried couples from adopting children, such as the Hindu Adoption and Maintenance Act of 1956, the Juvenile Justice Act of 2015, and the Adoption Regulations, are against the fundamental freedoms protected by Articles 14<sup>14</sup>, 15<sup>15</sup>, and 21<sup>16</sup> of the Indian Constitution.

When same sex couples seek to start a family with children, they encounter a number of special legal challenges. Special laws may be applicable to homosexual and lesbian adoption in various states. Different laws may apply to the two parents even when a kid is born into a homosexual or lesbian partnership, especially if they are not married.

Gay and lesbian adoption legislation that prohibit married LGBT+ couples from adopting sometimes have to do with the adoption agency' religious freedoms. Supporters of these limitations argue that agencies shouldn't be required to place kids with families they deem to be immoral.

---

<sup>14</sup> INDIA CONST. art. 14

<sup>15</sup> INDIA CONST. art. 15

<sup>16</sup> INDIA CONST. art. 21

## Adoption Rights In India

### Article 377<sup>17</sup>

This provision was designed to punish offenders of a particular sexual offence. The crime is defined as a carnal knowledge performed unnaturally with a man, unnaturally with a woman, or unnaturally with an animal by either a man or a woman. This clause's unusual component went against the natural order.

Due to India's ban on same-sex marriages, homosexual couples are unable to adopt a child together. The fact that the law still does not treat LGBTQ+ people equally by allowing them to adopt children together shows that. Because the child shouldn't be raised in a "inferior family," same-sex couples are prohibited from adopting. Contradictorily, the legislation permits a kid to be reared as an orphan without both parents rather than by heterosexual or transgender couples. The number of orphans in India is increasing daily, despite the fact that LGBTQIA+ couples are ineligible to adopt.

In India, there are already 20 million orphans, and by 2021, that number is projected to increase to 24 million, according to a recent research by an international charity for orphaned and abandoned children. Most orphanages offer appallingly poor service inside the facility. Since these discriminations are based on people's sexual orientations and not on their ability or merit as parents, denying adoption rights to members of the LBTQ community diminishes the dignity of these individuals.

The Juvenile justice Act and the Hindu Adoptions and Maintenance Act, 1956 are the laws that govern adoption in India. Hindus, Buddhists, Jains, Sikhs, and other religions controlled by Hindu Law are all permitted to adopt under HAMA. The words "spouse" and "wife" are used in Sections 7 and 8 of the HAMA to describe the capacity for adoption, suggesting that the act does not recognise adoption by same-sex couples. There is uncertainty about the application of such rules to third-gender couples because the potential for adoption is explained for both Hindu men and Hindu females.

The Juvenile justice Act makes adoption available to anyone, regardless of religion, as long as they meet the requirements set forth by the Central Adoption Resource Authority (or "CARA"). The Adoption Regulations, 2017 (also known as the "AR"), which establishes the norms and regulations for adoption programmes across the nation, were drafted by CARA, the Ministry of Women and Child Development's top controlling body in adoption matters. Under Section 57 of the JJ Act and Regulation 5 of AR, prospective adoptive parents ("PAPs") are discussed in relation to their eligibility. No child may be given up for adoption to a couple until they have been married for at least two years, according to one of the requirements.

### Constitutional perspective

The aforementioned actions are against Articles 14, 15, and 21 of the Indian Constitution. Every Indian citizen is guaranteed under Article 14 the right to equality before the law and equal protection under the law. It is a fundamental right that is a component of the Constitution's essential design. Because any state activity that is arbitrary must inevitably negate equality, Article 14 seeks to eliminate arbitrariness in state action. The distinction used for adoption between married and unmarried couples fails the classification test and is arbitrary because categorization is by its very nature unjust, unfair, and illogical.

---

<sup>17</sup> INDIA CONST. art. 377

As there is no indication that same-sex couples are in any way less capable of parenting than different-sex couples, there is also no rational connection that can be made by discriminating between different-sex and same-sex couples based on their sexual orientation. According to research, having LBTQIA+ parents has no impact on a child at all, and youngsters raised by same-sex parents actually perform better in both their primary and secondary education.

According to the ruling in the case of National Legal Services Authority v. Union of India, Article 15 forbids discrimination on the basis of "sex," which includes discrimination on the basis of sexual orientation. As a result, Article 15 protects the adoption rights of same-sex couples because they cannot be subjected to discrimination because of their sexual orientation and must be given the same opportunities for adoption as heterosexual couples.

In terms of socioeconomic, political, and cultural rights, members of the LGBTQ+ community are also citizens of India. Every person is treated equally regardless of sexual orientation, gender, or other criteria in our secular, democratic, and republican society. The voluntary sexual activity of same-sex couples was decriminalised in the Navtej Singh Johar v. Union of India<sup>18</sup> case. By repealing the harsh Section 377 of the Indian Penal Code, 1860, it equalises LGBTQ+ couples with heterosexual couples. By limiting the use of adoption rights to heterosexual couples and single people, the Juvenile Justice Act and Adoption Regulations passed in 2015 and 2017, fell behind the development of the law and society. Both Article 14, which ensures that everyone is treated equally, and Article 15, which forbids discrimination based on race, gender, or sexual orientation, are violated by these laws. Moreover, Article 19 guarantees the right to free speech and expression. The state should change current law to recognise same-sex couples' adoptions in addition to allowing same-sex marriages. Government legalisation of same-sex marriage and parenting would have a significant positive impact on the children who suffer from this pervasive ambivalence.

## **Global Comparison**

In numerous foreign nations, rights to adoption are still denied to same-sex couples. A single person may adopt a kid in India under laws like the HAMA and JJ Act, regardless of the child's gender or sexual orientation. However, by ignoring their rights to adoption, same-sex couples are subject to discrimination under the law. However, several of the most liberal nations in the European Union, the United States, and South Africa have passed progressive laws pertaining to same-sex couples' rights. Contrary to their Indian counterparts, even the United Kingdom, which had passed the legislation that made homosexuality illegal in India, has authorised joint adoption by same-sex couples. Global children would greatly benefit if same-sex marriage and parenting were legalised in all nations

Adoption by same-sex couples is now legal in most European countries. In nations like Spain, Belgium, Spain, etc., adoption by same-sex couples is already permitted. India is a nation that decriminalised homosexuality in 2018 and has only recently acknowledged LBTQIA+ rights. It should be remembered that both adoption-related laws were passed at a time when homosexuality was illegal. Since the situation has now been transformed legally, it is necessary to realise the rights of the community and treat them equally with the heterosexual segment of society. Governments must support programmes that debunk myths and remove social stigma associated with the way of life and interpersonal interactions of members of the community.

---

<sup>18</sup> Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

115,000 of the 594,000 same-sex couple households in the country are families. While many others contend that parenting should be done regardless of gender, some claim that children require both a mother and a father to raise them. The proportion of kids who live with LGBT parents has significantly increased over time. As same sex adoption and parenting gain more and more acceptance, the number will only rise as the trend continues. Same-sex parents in the United States are four times more likely than different-sex parents to be raising an adopted child. Among couples with children under the age of 18 in the home, 13% of same-sex parents have an adopted child, compared to just 3% of different-sex parents.<sup>19</sup>

All USA states allow same-sex couples to file for a statewide joint adoption. Couples may be obliged to be in a relationship that is recognised by the law, such as a domestic partnership, marriage, or civil union. California, Colorado, Connecticut, Washington D.C., Idaho, Illinois, Indiana, Maine, Massachusetts, Montana, New Jersey, New York, Oklahoma, Pennsylvania, and Vermont are among the states that expressly permit same-sex couples to file for a second parent adoption.

The child's best interests should always come first in all choices involving them, particularly those involving adoption. The Hague Convention on International Adoptions is a significant advancement for adopting families and adopted children alike since it encourages moral and open procedures carried out in the child's best interests. The best interests of each individual child must be safeguarded, UNICEF asks national authorities to make sure that the Hague Convention is fully implemented.

The acceptance of LGBT rights has advanced significantly. Sixty nations signed a UN resolution to legalise homosexuality in December 2008. The Delhi High Court in India overturned the prohibition on gay sex in July 2009. However, prejudice against and legal invisibility of LGBT identity affect millions of people's daily lives. Children continue to be the unspoken victims of this pervasive ambivalence. It is now necessary to acknowledge and assist same-sex families.

---

<sup>19</sup> [https://www.lgbtmap.org/equality-maps/foster\\_and\\_adoption\\_laws](https://www.lgbtmap.org/equality-maps/foster_and_adoption_laws)

## **Conclusion And A Way Forward**

India needs to abandon its antiquated rule prohibiting couples from the LGBTQ+ community from adopting children. Regardless of faith, adoption is mandated by the Juvenile Justice Act of 2015 and the Adoption Regulations of 2017. It states that "no kid shall be placed in adoption to a couple until they have at least two years of stable marital relationship," while being written in modern times and based on colonial rule. Therefore, a couple who is unable to legally wed in India cannot satisfy this condition. This policy not only prevents members of the LGBTQ+ community from adopting children, but it also prevents youngsters from experiencing their parents' love and compassion. In the case of *Lakshmi Kant Pandey v. Union of India*<sup>20</sup>, the Supreme Court said that "every kid has a right to love and be loved, to grow up in an atmosphere of love and affection, and of moral and material stability, and this is attainable only if the child is raised in a family.

Most crucially, the Court made note of the possibility that the kid could have to live a life of destitution, insufficient clothing, hunger, and illness due to the socioeconomic realities that exist in the nation. The "Draft Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, National and Internationally" adopted by an Expert Group in Geneva in December 1978 stated that substitute family care should be taken into account in the absence of biological family care (Article 4). A child has a right to be adopted since the court explicitly recognised that "every youngster has a right to a family." Additionally, Article 39(f) explicitly instructs the government to create laws that will guarantee that kids are given the chance and resources they need to grow up in a healthy way, with freedom and dignity. It is against our Directive Principles of State Policy to force a child to live in an institution and deny them the right to have their own family since doing so is the same as denying them the opportunity to live a life of freedom and dignity. Additionally, it was determined in the case of *Indian Hotel & Restaurant Association & Anr. Vs. The State of Maharashtra*<sup>21</sup> that the government could not impose its own moral code on society. Denying a child to the LGBTQ+ community for adoption and denying LGBTQ+ members the opportunity to adopt a child is the same as the state enforcing its conventional morality.

2018 saw the *Navtej Singh Johar v. Union*<sup>22</sup> of India case, which decriminalised same-sex couples engaging in consenting sexual activity. The couples from the LGBTQ+ community are put on an equal footing with other couples. Similar litigation involving the State of Maharashtra and the Indian Hotel and Restaurant Association occurred in 2019. In 2015 and 2017, respectively, the Juvenile Justice Act and the Adoption Regulations were introduced. Thus, these laws are immediately in conflict with the rulings as a result of the jurisprudence established in these two cases, which instructs the state to abandon its preconceived views. These regulations go against Article 14, which guarantees equality for all people, Article 15, which forbids sex-based discrimination, and Article 19, which protects the right to freedom of expression.

In nations like Spain, Belgium, Spain, etc., adoption by same-sex couples is already permitted. India is a nation that decriminalised homosexuality in 2018 and has only recently acknowledged LGBTQIA+ rights. It should be remembered that both adoption-related laws were passed at a time when homosexuality was illegal. Since the situation has now been transformed legally, it is necessary to realise the rights of the community and treat them equally with the heterosexual segment of society. Governments must support programmes that debunk myths and remove social stigma associated with the way of life and interpersonal interactions of members of the community.

---

<sup>20</sup> *Lakshmi Kant Pandey v. Union of India*, AIR 1984 SC 469

<sup>21</sup> *Indian Hotel & Restaurant Association & Anr. Vs. The State of Maharashtra*, Writ Petition (Civil) No. 793 of 2014

<sup>22</sup> *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

## References

- Deepak kumar verma, Hindu adoption laws and interpretation by different High Court, National Judicial Academy, Bhopal, (August 18, 2019, 11:45am), <http://www.nja.nic.in/>
- Neeraj Meena, Adoption laws in India: challenging Existing Law, Manupatra (August 18, 2019, 11:55am), <http://docs.manupatra.in/newslines/articles/Upload/E8EFE493-114B-4E5B-A014-682EB1729301.pdf>
- Romit Agrawal, Adoption: Under Hindu, Muslim, Christian and Parsi Laws, Legal service India (August 18, 2019, 11:45am), [http://www.legalserviceindia.com/articles/hmcp\\_adopt.htm](http://www.legalserviceindia.com/articles/hmcp_adopt.htm)
- adoption in Hindu Law and Muslim Law, Lawteacher.net , available at <http://www.lawteacher.net/family-law/essays/adoption-in-hindu-law-and-muslim-law-law-essay.php> (last visited August 18, 2022).
- Kusum, “Gender Bias in Adoption Law: A Comment On Malti Roy Choudhury v. Sudhindranath Majumdar” Journal of Indian Law Institute, vol 49, 2007, pp 76 -80
- Huda, “Adopting a Child in Islam”, About.com – Islam, available at <http://islam.about.com/cs/parenting/a/adoption.htm>, (last visited August 18, 2022).
- Christian Law of Adoption in India, Wikipedia, available at [http://en.wikipedia.org/wiki/Christian\\_law\\_of\\_adoption\\_in\\_India](http://en.wikipedia.org/wiki/Christian_law_of_adoption_in_India) (last visited August 18, 2022).
- Central Adoption Resource Authority, Ministry of Women and Child Development, Government of India, available at [http://www.adoptionindia.nic.in/guide\\_inter\\_country\\_chap4.htm](http://www.adoptionindia.nic.in/guide_inter_country_chap4.htm) (last visited August 18, 2022).

IJLRA