
A COMPREHENSIVE VIEW ON HOMOSEXUAL ADOPTION IN INDIA: LEGAL PERSPECTIVES, PROGRESS AND CHALLENGES

Dhaarani S., BCOM.LLB (Hons), School of Excellence in Law (SOEL), Tamilnadu Dr,
Ambedkar Law University

ABSTRACT

Same-sex adoption in India is a complex and controversial issue, closely linked to the changing rights of LGBTQAI+. This article examines inclusiveness, equal parental rights, development and legal approaches to same-sex adoption in India. LGBTQAI+ individuals may have the same rights to a parent as their heterosexual counterparts, but they often face sociocultural barriers to adoption. Discrimination based on sexual orientation is still in existence, leading to a lack of support from the adoption agency, birth parents, and legal system. Getting everyone involved requires a cultural shift in which sexual orientation plays no part in how one can provide a loving and stable home for a child in need. Equal parental rights are central to any adoption process, but same-sex couples in India often face rejection and legal hurdles. Recognizing equal parental rights for same-sex couples is important not only for the legal protection of the child but also for recognizing the importance of family structures, and ensuring the well-being of LGBTQ+ individuals and their families also. Progress in same-sex adoption has been slow but significant, with Indian courts recognizing LGBTQAI+ rights in various spheres of life. However, the legal process for gay adoption is challenging due to the lack of specific legislation. Although adoption laws in India are not gender-specific, social biases can affect their application, creating uncertainty for LGBTQAI+ individuals and couples adopting children. This article addresses the challenges faced by LGBTQAI+ individuals and couples in same-sex adoption in India and explores multiple perspectives including inclusion, equal parental rights, development, and regulatory mechanisms.

Keywords: Homosexual adoption, LGBTQAI+ rights in India, Inclusivity in adoption, Equal parental rights, Legal perspectives

1. INTRODUCTION

Homosexual adoption, often referred to as same-sex adoption, denotes the process wherein individuals or couples from the LGBTQ+ community assume legal parental responsibilities for a child. The core objective is to offer a secure, stable, and nurturing home environment for children in need of permanent care and familial support. Notably, the global landscape has witnessed an increased acknowledgment and acceptance of homosexual adoption, paralleling the evolving attitudes and legal frameworks that emphasize diversity and inclusivity.¹ The procedural aspects of homosexual adoption generally mirror those applicable to heterosexual couples. This encompasses comprehensive background checks, home assessments, and evaluations to ascertain the suitability and preparedness of prospective parents in providing a secure and supportive setting for a child.

Additionally, prospective adoptive parents may engage in adoption education and counseling sessions, fostering readiness for the associated challenges and responsibilities of parenthood. A pivotal motivation underpinning homosexual adoption is the aspiration to furnish stable and affectionate homes for children who may have undergone experiences of abandonment, neglect, or other adversities. By doing so, LGBTQ+ individuals and couples seek to realize their dreams of parenthood while contributing to the welfare and development of a child. Research substantiates that children raised in same-sex households exhibit comparable outcomes to their counterparts raised by heterosexual couples. This pertains to academic performance, psychological well-being, and social functioning.²

Prominent professional organizations, such as the American Psychological Association, endorse homosexual adoption based on empirical evidence supporting the positive outcomes associated with such familial structures. Homosexual adoption serves to broaden the pool of potential adoptive parents, thereby augmenting the likelihood of placing children in suitable and caring homes. Beyond this, it challenges conventional perspectives on family structures, positing that love, commitment, and the capacity to create a nurturing

¹ Johnsen A., *Legal recognition of same sex adoption: Promoting Equality and Inclusion*, 40 J. FAMILY L. 120,123-145(2022).

² Smith E.R., *Creating Loving Families: The case for Adoption*, 28(3) FAMILY STUDIES QUARTERLY 200, 201-219 (2019)

environment are the indispensable factors for effective parenting, superseding considerations of the parents' sexual orientation.

1.1 HOMOSEXUAL ADOPTION IN INDIA

Homosexual adoption in India stands as a significant departure from traditional concepts of family structure and parenting, recognizing that the capacity to provide a nurturing environment for a child is independent of the sexual orientation of the parents. Same-sex couples and LGBTQ+ individuals, in their diversity, possess the inherent ability to offer love, care, and stability – fundamental elements for a child's holistic well-being and development.

Despite its significance, the concept of homosexual adoption in India encounters noteworthy challenges. Foremost among these hurdles are prevailing societal attitudes toward homosexuality. India's culturally diverse landscape, while witnessing progressive perspectives in urban areas, still grapples with enduring conservative beliefs in various regions. Consequently, same-sex couples and LGBTQ+ individuals pursuing adoption often contend with discrimination, social stigma, and related challenges.³

The legal framework surrounding homosexual adoption in India adds another layer of complexity. While no explicit laws prohibit same-sex couples or LGBTQ+ individuals from adopting, a lack of clear guidelines and legal recognition creates ambiguity. The Juvenile Justice (Care and Protection of Children) Act, 2015, the governing legislation for adoption in India, does not expressly address same-sex adoption. This regulatory gap allows adoption agencies discretion in assessing applications based on sexual orientation, resulting in uncertainty and the potential for discrimination.

Notwithstanding these challenges, notable progress has been achieved in recent years. The landmark 2018 ruling that decriminalized homosexuality by striking down Section 377 of

³ Arghya, *Can homosexual couples adopt in India?*, LEGAL SERVICES INDIA E-JOURNAL (Jun 6., 2023, 9:29 PM) <https://www.legalserviceindia.com>

the Indian Penal Code has paved the way for enhanced acceptance of LGBTQ+ rights. This legal shift has ignited discussions about the rights of same-sex couples to adopt children.⁴

Despite the obstacles, a growing body of research underscores that children raised by same-sex couples exhibit outcomes comparable to those raised by heterosexual couples. Numerous studies indicate similar emotional, cognitive, and social development outcomes for children raised in same-sex households. These findings underscore the centrality of love, care, and stability – irrespective of parental sexual orientation – in shaping a child's overall well-being.

Advocacy groups and activists in India diligently work toward fostering a more inclusive environment for homosexual adoption. Their objectives include raising awareness, challenging societal norms, and advocating for legal reforms to secure equal rights for same-sex couples and LGBTQ+ individuals desiring to adopt. These concerted efforts contribute significantly to the ongoing discourse on LGBTQ+ rights and parenting in India.

2. HISTORICAL PERSPECTIVE OF HOMOSEXUAL ADOPTION IN INDIA

The landscape of homosexual adoption in India is intricate, shaped by societal attitudes, legal frameworks, and the evolving perspectives on LGBTQ+ rights. To gain insight into this nuanced issue, one must delve into the historical context, tracing the trajectory of homosexuality in India and the gradual acknowledgment of the rights of same-sex couples in adopting children. In the pre-colonial era, homosexuality found acceptance and was often depicted in ancient texts and sculptures. However, the colonial legacy introduced Victorian-era laws criminalizing homosexuality, influencing social perceptions for several decades.⁵

⁴ Amit Anand Choudry, *Adoption by same sex couples should not be allowed : NCPDR to SC*, TIMES OF INDIA (Jun 15, 2023, 11:31 AM) <https://timesofindia.indiatimes.com/>

⁵ Rhythm Karla, *How far are we from granting adoption rights for same sex couples in india?*, ACADEMIKE, (Jul. 7, 2023, 10:02 PM)

A pivotal moment occurred in 2009 when the Delhi High Court, in a groundbreaking judgment, decriminalized consensual homosexual acts between adults, asserting a violation of fundamental rights. This legal shift set the stage for subsequent battles surrounding LGBTQ+ rights, yet the matter of homosexual adoption remained largely unaddressed.

The adoption landscape, guided primarily by the Hindu Adoption and Maintenance Act, 1956⁶, initially recognized only heterosexual couples as eligible adoptive parents. This exclusion posed substantial challenges for same-sex couples aspiring to adopt. In 2019, the enactment of the Transgender Persons (Protection of Rights) Act⁷ marked a significant stride, acknowledging the rights of transgender individuals, including their right to adopt.

The judiciary has played a crucial role in shaping discourse on homosexual adoption. In 2020, the Madras High Court's decision to permit a same-sex couple to register as adoptive parents, defying existing adoption laws' gender restrictions, signaled a pivotal step towards inclusivity and a more expansive understanding of family structures.

While legal progress unfolds, societal acceptance remains a hurdle. Stigma and discrimination against homosexuality persist in many segments of Indian society. Traditional family norms and conservative attitudes present challenges for same-sex couples seeking adoption, despite legal advancements.

Encouragingly, there are signs of positive change. LGBTQ+ advocacy groups, bolstered by influential figures, actively promote awareness, acceptance, and equal rights for same-sex couples. The amplifying public discourse challenges societal norms, fostering dialogue on the primacy of love and care as fundamental criteria for parenting, regardless of sexual orientation.

2.1 SECTION 377: DECRIMINALIZATION

Section 377 of the Indian Penal Code⁸, enacted in 1862, criminalizes consensual

⁶ The Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

⁷ Transgender Protection of Rights Act, 2019, No. 40, Acts of Parliament, 2019 (India)

⁸ The Indian Penal Code, 1860, S 377, No. 45, Acts of Parliament, 1860 (India).

homosexuality, terming it as Unnatural Offenses. The provision imposes severe penalties, including life imprisonment, for engaging in sexual intercourse against the perceived order of nature. However, a landmark decision by the Supreme Court of India on September 6, 2018, brought a significant shift by decriminalizing gay sex among consenting adults in private under Section 377.

This pivotal ruling, recognizing that consenting adult gay intercourse is not illegal, was based on the understanding that sexual orientation is natural and intrinsic to individuals. The legal journey to decriminalize Section 377 witnessed critical instances, in the following cases:

Naz Foundation v. Government of NCT Delhi, 2009⁹

The Naz Foundation is a non-governmental organization that works to combat AIDS and other health challenges. In this case, one question arose: should Section 377 be removed or not? The court addressed this in two ways: the first is (Right to Life, Article 21) that without dignity or privacy, no one would be able to enjoy a life, and the second is (Right to Equality, Article 14&15) that Section 377 was in violation of Article 14 because it is discrimination on unreasonable grounds.

Suresh Kumar Koushal v. Naz Foundation, 2013¹⁰

In the Suresh Kumar Koushal case, the two arguments arose. The first is that homosexuality is a criminal offense that can only be decriminalized by Parliament; the Court should not get involved. The second is that the right to privacy does not apply to the Homosexual Act. Following the Naz Foundation case in 2009, the person who announces their identity and freely displays their sexual orientations in a society. Following the conviction of Suresh Kumar Koushal, the society labeled them as criminals or perpetrators. It discriminated against homosexuals as a class and against consensual sex. Section 15 states

⁹ Naz. Foundation v. The Government of NCT Delhi, 15 SCC 619 (2009).

¹⁰ Suresh Kumar Koushal v. Naz Foundation, 2014 1 SCC 1.

that no one should be discriminated against because of their gender. Only biological sex is not included, but sexual orientation is.

NALSA v. Union of India & Others, 2014¹¹

All present Indian laws are binding on all genders; they do not discriminate between men and women. No provision protects the rights of the transgender community. That is one of the reasons why the transgender community faces discrimination in society.

The decriminalization of homosexuality under Section 377 brought immense relief to the LGBTQ+ community in India. It marked a significant step towards equality, acceptance, and social progress. The judgment provided hope and encouragement for LGBTQ+ individuals to live their lives authentically, free from fear and persecution. The ruling also had a ripple effect beyond the legal realm. It sparked public discussions, increased awareness, and contributed to changing societal attitudes towards homosexuality. Organizations and activists advocating for LGBTQ+ rights gained momentum, and support for the community grew across various sectors of society.

2.2 HINDU ADOPTION AND MAINTENANCE ACT, 1956

In 1956, the Hindu Adoptions and Maintenance Act (HAMA)¹² was enacted in India to regulate the legal process of adoption for Hindu adults and outline their responsibilities to support family members. Sections 7 and 8(c) of HAMA specify situations where authorization is not required for adoption, such as when a spouse is mentally incapacitated, has withdrawn from societal involvement, or has forsaken their children. This provision also grants unmarried individuals of sound mind and majority age the right to adopt a child.

According to Section 2(1) of the Act, the term "Hindu" encompasses not only Hindus but also Buddhists, Jains, Sikhs, Virashaiva, Lingayat, and followers of Arya Samaj, Brahmo, and Prarthana. In practical terms, HAMA applies to everyone in India who is not a

¹¹ NALSA v. Union of India & Ors., AIR 2014 SC 1863.

¹² The Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

Christian, Muslim, Parsi, or Jew. Sections 7 and 8 specifically use the terms "spouse" and "wife," thereby excluding same-sex couples from the adoption provisions. Additionally, the Act clearly defines the adoption capacity for Hindu males and females, introducing ambiguity when applying these restrictions to third-gender couples.

In essence, the Hindu Adoptions and Maintenance Act, while providing a legal framework for adoption within the Hindu community, presents challenges related to gender inclusivity and the recognition of diverse family structures. The language used in the Act raises questions about its applicability to same-sex couples and those identifying with third-gender categories, highlighting the need for a nuanced examination of adoption laws to ensure inclusivity and reflect the evolving understanding of family dynamics.

3. PROCESS FOR HOMOSEXUAL COUPLES TO ADOPT IN INDIA

In recent years, India has witnessed substantial advancements in the legal landscape surrounding the adoption process for homosexual couples. Although the country has yet to formally recognize same-sex marriage, positive changes in adoption procedures can be attributed to both judicial interventions and evolving societal attitudes. Below is an elucidation of the adoption journey for homosexual couples in India.

3.1 Eligibility:

Prospective homosexual couples, like any other individuals aspiring to adopt, must meet specific eligibility criteria. This includes compliance with legal age requirements, maintaining stable mental and physical health, and demonstrating financial capability to provide for a child.¹³

3.2 Adoption Agencies:

Homosexual couples seeking adoption are required to engage with licensed adoption agencies recognized by the government. These agencies serve as facilitators, overseeing

¹³ CENTRAL ADOPTION RESOURCE AUTHORITY, <https://cara.nic.in/> (last visited Jul.16, 2023).

and coordinating the adoption process between the adoptive parents and child welfare authorities.

3.3 Documentation:

Couples must furnish relevant documents, such as identification proof, proof of residence, income certificates, and, if applicable, documents related to their partnership or cohabitation. While same-sex marriage lacks official recognition in India, partnership or cohabitation agreements are considered to establish the nature of their relationship.

3.4 Home Study:

An integral phase in the adoption process involves a home study, where social workers from the adoption agency conduct visits to the couple's residence. This aims to assess their living conditions, emotional stability, and ability to create a nurturing environment for a child.¹⁴

3.5 Background Checks:

Prospective parents undergo thorough background checks, including police verification, to ascertain their suitability for adoption. This process ensures that the individuals have no criminal record or history of child abuse.¹⁵

3.6 Parenting Training:

Adoption agencies often mandate parenting training programs for prospective adoptive parents. These programs provide valuable guidance on various aspects of child care, development, and the responsibilities associated with parenthood.

3.7 Matching Process:

Upon completing the necessary procedures, the adoption agency initiates the matching

¹⁴ UNITED NATIONS HUMAN RIGHTS, <https://www.un.org/> (last visited Jul.1, 2023).

¹⁵ CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/> (last visited Jun. 30,2023).

process. Considering the couples' preferences, such as age, gender, and health conditions, the agency endeavors to align them with a child available for adoption. The paramount consideration during this process is the welfare of the child.

3.8 Legal Adoption:

Upon finding a suitable match, prospective adoptive parents must file a formal petition for adoption with the court. The court meticulously reviews the case, conducts hearings, and may request additional documentation. If the court determines that the adoption is in the best interest of the child, it issues an adoption order, officially recognizing the couple as the legal parents of the child.

3.9 Post-Adoption Follow-Up:

Adoption agencies conduct post-adoption follow-up visits to ensure the well-being of the child and to monitor the parent-child bonding. These visits are essential to assess the child's adjustment to the new family environment and address any concerns or challenges that may arise. It is crucial to acknowledge that while significant strides have been made in recognizing adoption rights for homosexual couples in India, there may still be variations in the implementation and acceptance of these rights across different states and regions. Prospective adoptive parents are advised to seek guidance from adoption agencies and legal professionals to comprehend the specific processes and requirements applicable in their respective jurisdictions.

4. PROS AND CONS OF HOMOSEXUAL ADOPTION

4.1 PROS

4.1.1 Fostering Supportive Homes:

Homosexual couples and individuals possess the inherent ability to create stable and nurturing environments for children seeking adoption. Extensive research consistently emphasizes that a child's well-being hinges on the quality of parenting, the love they

receive, and the supportive environment provided, rather than the sexual orientation of their parents.

4.1.2 Enriching Adoption Opportunities:

Granting the opportunity for same-sex couples and individuals to adopt enriches the diversity of potential adoptive parents. This inclusivity directly addresses the substantial number of children eagerly anticipating adoption, presenting them with enhanced prospects of finding enduring, caring families.

4.1.3 Positive Parenting Outcomes:

Numerous studies validate that children raised by homosexual parents exhibit outcomes on par with those raised by heterosexual parents in terms of psychological well-being, social adjustment, and academic performance. The sexual orientation of parents appears to have minimal impact on a child's development or overall happiness.

4.1.4 Cultivating Diversity and Tolerance:

Homosexual adoption actively contributes to the cultivation of diversity and tolerance within society. By challenging stereotypes and fostering acceptance of varied family structures, it facilitates an environment where children develop empathy, respect, and an open-minded perspective.

4.1.5 Nurturing Supportive Communities:

Homosexual adoption plays a crucial role in nurturing communities that understand and embrace diverse family structures. These communities serve as valuable sources of resources, support networks, and acceptance, fostering the well-being of both parents and adopted children.

4.1.6 Mitigating Discrimination and Prejudice:

The inclusion of homosexual couples and individuals in the adoption process actively

works towards mitigating discrimination and prejudice against the LGBTQ+ community. It advocates for a more inclusive society that upholds equal rights and opportunities for all individuals, regardless of their sexual orientation.

4.2 CONS

4.2.1 Addressing Societal Concerns:

An overarching concern involves potential societal resistance and discrimination faced by children adopted by homosexual parents. Critics express worry that these children might encounter stigmatization or bullying from peers and face prejudice or discrimination from those unsupportive of same-sex parenting.

4.2.2 Exploring Gender Role Models:

An argument raised revolves around the absence of gender role models for children raised by same-sex couples. Critics contend that exposure to both male and female parental figures is beneficial, asserting that children may encounter challenges in understanding gender identity and traditional gender roles.

4.2.3 Navigating Religious or Moral Objections:

Certain religious or moral beliefs oppose homosexuality, potentially viewing homosexual adoption as incongruent with their values. These objections can manifest as social and legal barriers, impeding the adoption process or presenting challenges for homosexual parents in nurturing their adopted children.

4.2.4 Assessing Psychological and Emotional Impacts:

Concerns are voiced about potential negative psychological or emotional effects on children growing up with homosexual parents. However, extensive scientific research has largely refuted these claims, indicating that children raised by same-sex couples generally exhibit similar levels of well-being and adjustment as those raised by heterosexual couples.

4.2.5 Recognizing Biological Connections:

There's a perspective suggesting that children adopted by homosexual parents may experience a sense of loss or yearning for a biological connection or a traditional family structure with both a mother and father. Nevertheless, research underscores that children's well-being is primarily influenced by the quality of parenting, stability, and love provided by their caregivers, rather than the specific family structure.

5. PUBLIC PERCEPTION

Public perspectives on homosexual adoption in India reflect a nuanced and diverse landscape, shaped by a blend of traditional values, religious convictions, and evolving social attitudes. The country's rich cultural tapestry gives rise to a spectrum of opinions, ranging from endorsement and encouragement to staunch opposition.

India, rooted in conservative traditions and religious beliefs, often upholds conventional views on family structures, deeming heterosexual marriages as the optimal environment for child rearing. Consequently, there exists a prevalent stigma associated with homosexuality, with same-sex relationships sometimes viewed through a lens of deviance or immorality.¹⁶

Religious institutions significantly mold public sentiment, with Hinduism, the predominant religion, generally discouraging homosexuality. Conservative interpretations within Islam and Christianity also label it as sinful, contributing to negative perceptions of same-sex couples adopting children.

Nevertheless, India has witnessed a gradual transformation in public attitudes, with an increasing acceptance of homosexuality and LGBTQ+ rights. The past decade has seen a rise in LGBTQ+ activism, visible through pride parades, support groups, and prominent advocacy organizations. This surge has effectively heightened awareness and challenged

¹⁶ Farr, R. H., & Patterson, C. J., *LGBTQ+ Adoption in the United States: The Current Landscape and Implications for Future Research and Practice*, 68(2) FAMILY RELATIONS 192, 201 -208(2019).

societal biases.

Public opinion is shaped by multiple factors, including education, exposure to diverse perspectives, and generational disparities. Younger generations, particularly in urban settings, tend to embrace a more open-minded stance, influenced by internet exposure, social media, and Western cultural influences.¹⁷

Media also plays a pivotal role in shaping public perception. While certain outlets perpetuate negative stereotypes, others strive to foster awareness and challenge discriminatory attitudes. Television, movies, and documentaries featuring LGBTQ+ characters contribute to a more nuanced understanding of homosexuality.¹⁸

Legal advancements have further impacted public attitudes. The 2018 Supreme Court ruling, decriminalizing homosexuality by overturning Section 377, marked a significant stride in recognizing LGBTQ+ rights, profoundly influencing public discourse.

Yet, a notable segment of Indian society remains opposed to homosexual adoption. Concerns regarding the child's well-being, societal norms, and potential impacts on upbringing are commonly cited arguments against same-sex couples adopting children. Persistent misconceptions and stereotypes about homosexuality contribute to biases and discrimination.

It is imperative to recognize that public sentiments can markedly differ across regions and communities in India. Urban centers often exhibit greater acceptance and progressiveness, while rural areas, deeply entrenched in traditional values, may display more resistance to homosexual adoption.

6. EQUAL PARENTAL RIGHTS

The ongoing dialogue surrounding equal parental rights and the endorsement of

¹⁷ Goldberg, A. E., & Allen, K. R., *LGBT-Parent Families: Innovations in Research and Implications for Practice*, 14 NEW DIRECTIONS FOR CHILD AND ADOLESCENT DEVELOPMENT, 1-9 (2013).

¹⁸ Mallon, G. P., *LGBT Adoption: A Comprehensive Research Review*, 22(4) ADOPTION QUARTERLY 277, 289 - 300(2019).

homosexual adoption has become a central focus of contemporary discussions. Acknowledging and safeguarding the rights of same-sex couples to adopt children is pivotal for advancing equality and nurturing inclusive societies.¹⁹ This essay explores the critical reasons behind ensuring equal parental rights through legalizing homosexual adoption, emphasizing its significance for children's well-being and the cultivation of a just and inclusive society.

6.1 Cultivating Equitable Opportunities for Children:

Every child deserves a supportive and loving family environment, irrespective of their parents' sexual orientation. Robust research consistently underscores that children's psychological, emotional, and social development remains unaffected by the sexual orientation of their parents. The denial of the right to adopt for same-sex couples perpetuates discrimination and deprives children of the opportunity to be placed in stable, caring homes.²⁰

6.2 Championing Diversity and Inclusion:

The legalization of homosexual adoption actively champions diversity and inclusion within the spectrum of family structures. It conveys a resounding message that all configurations of families are valid and warrant recognition and protection.²¹ Recognizing the rights of same-sex couples to adopt marks a substantive stride in dismantling harmful stereotypes and prejudices. Embracing diverse family structures contributes to communities by nurturing tolerance, respect, and understanding.

6.3 Ensuring Equitable Parental Responsibilities:

Bestowing equal parental rights upon same-sex couples ensures that both parents bear equivalent legal responsibilities and protections for their children. Legal recognition of

¹⁹ Tasker, F., & Golombok, S., *Adoption by Same-Sex Couples: Who Does It and How Do They Compare with Heterosexual Couples?*, 12(1) J. LGBT Youth, 1-17(2015).

²⁰ Mialon, H. M., & Wright, M., *Sexual Orientation and Child Well-Being: A Meta-Analysis*. *Demography*, 54(2) J.L. REV., 1331-1357(2017).

²¹ Bos, H. M., van Balen, F., & van den Boom, D. C., *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, 77(1) AMERICAN J. ORTHO. 38, 39-48(2007).

homosexual adoption establishes stability and security for children and their parents, ensuring access to essential benefits such as healthcare, inheritance rights, and custody rights in cases of separation or divorce. The denial of these rights to same-sex couples undermines the well-being of children and perpetuates discrimination against individuals with diverse sexual orientations.

6.4 Improving the Adoption System:

The legalization of homosexual adoption broadens the pool of potential adoptive parents, bolstering the chances of finding suitable homes for children in need. Permitting same-sex couples to adopt helps alleviate the strain on the adoption system, reducing the number of children awaiting placement. By expanding adoption opportunities, we can enhance the efficiency and effectiveness of the adoption process, ultimately benefiting the children involved.²²

6.5 Safeguarding Human Rights and Upholding Equality:

Equal parental rights through homosexual adoption are fundamentally grounded in principles of human rights and equality. Denying same-sex couples the ability to adopt based solely on their sexual orientation violates their right to family life, as enshrined in various international human rights instruments. The legalization of homosexual adoption underscores societies' commitment to equality, fairness, and the protection of basic human rights for all individuals, irrespective of their sexual orientation.

7. CONCLUSION

Homosexual adoption remains a topic of ongoing discussion in India, where legal acknowledgment and societal acceptance are gradually evolving. Although the legal framework doesn't explicitly outline the eligibility of homosexual couples for adoption, progressive judgments like *Navtej Singh Johar* and *National Legal Services Authority* have

²² Carone, N., & Hollingsworth, L. D., *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 73 (1-2) SEX ROLES 37, 38-49(2015).

laid the groundwork for recognizing the rights of the LGBTQ+ community. Scholarly research underscores the positive outcomes for children raised by same-sex couples, emphasizing the crucial need for a nurturing and stable family environment, irrespective of sexual orientation.

Sustained dialogue, advocacy efforts, and legal reforms play pivotal roles in promoting inclusivity and safeguarding the well-being of children in search of adoption. Homosexual adoption significantly contributes to the establishment of loving families and the cultivation of inclusivity within our society. A wealth of research supports the notion that same-sex couples can offer nurturing environments with outcomes comparable to those in heterosexual households.

By dismantling legal barriers and fostering understanding, societies can ensure that children in need of permanent care find loving homes, regardless of the sexual orientation of their prospective parents. Embracing homosexual adoption not only upholds principles of equality and fairness but also enriches the lives of numerous children and families. Adoption legislation in India operates under personal laws, supplemented by secular laws protecting individual rights. However, these laws currently do not recognize the right of homosexual couples to adopt a child.

Given that the primary concern in adoption is the 'best interest' of the child, the sexual orientation of the spouse should not pose a hindrance to adoption agencies, as long as it does not adversely affect the child's development. Consequently, this is an area that demands attention, urging the judiciary or legislature to issue directives or enact legislation that formally acknowledges the right of homosexual couples to adopt.

REFERENCES

1. Johnsen A., *Legal recognition of same sex adoption: Promoting Equality and Inclusion*, 40 J. FAMILY L. 120,123-145(2022).
- 2.Smith E.R., *Creating Loving Families: The case for Adoption*, 28(3) FAMILY STUDIES QUARTERLY 200, 201-219 (2019).
- 3.Arghya, *Can homosexual couples adopt in India?*, LEGAL SERVICES INDIA E-JOURNAL(Jun 6., 2023,9:29 PM)<https://www.legalserviceindia.com>
- 4.Amit Anand Choudry, *Adoption by same sex couples should not be allowed : NCPCR to SC*, TIMES OF INDIA (Jun 15, 2023, 11:31 AM)<https://timesofindia.indiatimes.com/>
5. Rhythm Karla, *How far are we from granting adoption rights for same sex couples in india?*, ACADEMIKE, (Jul. 7, 2023, 10:02 PM)
6. Arushi Dogra,*Why do courts curb adoption rights for LGBTQIA+ couples?*, FEMINISM INDIA,(Jul.8,2023, 11:30AM)<https://feminisminindia.com/>
- 7.CENTRAL ADOPTION RESOURCE AUTHORITY,<https://cara.nic.in/>(last visited Jul.16, 2023).
- 8.CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/>(last visited Jun. 30,2023).
9. UNITED NATIONS HUMAN RIGHTS, <https://www.un.org/>(last visited Jul.1, 2023).
10. Farr, R. H., & Patterson, C. J., *LGBTQ+ Adoption in the United States: The Current Landscape and Implications for Future Research and Practice*, 68(2) FAMILY RELATIONS 192, 201 - 208(2019).
- 11.Mallon, G. P. ,*LGBT Adoption: A Comprehensive Research Review*,22(4) ADOPTION QUARTERLY 277, 289 -300(2019).
12. Goldberg, A. E., & Allen, K. R., *LGBT-Parent Families: Innovations in Research and Implications for Practice*, 14 NEW DIRECTIONS FOR CHILD AND ADOLESCENT DEVELOPMENT, 1-9 (2013).
13. Tasker, F., & Golombok, S., *Adoption by Same-Sex Couples: Who Does It and How Do They Compare with Heterosexual Couples?*, 12(1) J. LGBT Youth,1-17(2015)

14. Mialon, H. M., & Wright, M., *Sexual Orientation and Child Well-Being: A Meta-Analysis. Demography*, 54(2) J.L. REV., 1331-1357(2017).
15. Bos, H. M., van Balen, F., & van den Boom, D. C., *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, 77(1) AMERICAN J. ORTHO. 38, 39-48(2007).
16. Carone, N., & Hollingsworth, L. D., *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 73 (1-2) SEX ROLES 37, 38-49(2015).
17. Golombok, *Single mothers by choice: mother - child relationships and children's psychological adjustment*, 30(4) J. FAMILY PSCH. 409,410-418(2016).
18. Alicia Fedewa, *Children and adolescents with same gender parents: a meta analytic approach in assessing outcomes*, 11 J. GLBT FAMLIY STUDIES 1, 2 -34(2014).
20. Stacey, J., & Biblarz, T. J. *.(How) Does the Sexual Orientation of Parents Matter?*,66(2) AMERICAN SOCIOLOGICAL REV. 159, 159-183(2001).
21. Jennifer Wainright, *Psychological Adjustment, School outcomes, and romantic relationships of adolescents with same sex parents*, SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT,(Jul. 9, 2023, 10:29 PM)<https://www.livemint.com>.
22. AMERICAN PSYCHOLOGY ASSOCIATION, <https://psycnet.apa.org/>(last visited Jul.2 2023).
23. Janette Logam, *Lesbian and gay fostering and adoption in the United Kingdom: Prejudice, progress and the challenges of the present*, 13(2) SOCIAL WORK SOCIAL SCI. REV. 35, 40 - 47(2007).