
FROM DECRIMINALISATION TO PARENTHOOD: THE UNFINISHED JOURNEY OF LGBTQ+ RIGHTS IN INDIA

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ABSTRACT

Parenthood is widely recognized as a fundamental aspect of human life, encompassing emotional, social, and legal dimensions. However, for individuals belonging to the LGBTQ+ community, the realization of parenthood often involves navigating complex legal, social, and institutional barriers. This thesis examines the concept of parenthood rights for the LGBTQ+ community, focusing on the evolving legal recognition, societal attitudes, and challenges faced by LGBTQ+ individuals and couples in exercising their right to form and raise families. The study explores the intersection between human rights, equality, and family law, emphasizing the need for inclusive legal frameworks that recognize diverse family structures. legal systems across the world have been shaped by heteronormative assumptions that recognize families primarily as unions between a heterosexual man and woman. The lack of recognition of same-sex relationships in many jurisdictions further complicates the ability of LGBTQ+ couples to establish legal parent-child relationships. uncertainty in matters such as custody, inheritance, parental authority, This research seeks to analyze the legal developments concerning LGBTQ+ parenthood rights at both national and international levels. It evaluates how constitutional principles of equality, dignity, and non-discrimination form the basis for expanding family rights beyond traditional models. The study also examines international human rights frameworks that advocate for equal treatment regardless of sexual orientation or gender identity. The thesis discusses the broader socio-cultural barriers that LGBTQ+ parents may encounter which include stigma, lack of institutional support, discrimination in healthcare and educational settings, and inadequate legal protections for non-biological parents within same-sex partnerships. This thesis would analyse and give a The issue of parenthood rights for the LGBTQ+ community reflects the evolving understanding of family, equality, and human dignity in modern society. Traditional legal frameworks have often excluded diverse family structures, creating challenges for LGBTQ+ individuals seeking to exercise

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parental rights. As social attitudes and legal perspectives gradually change, the recognition of different forms of parenthood continues to develop. Ensuring inclusive legal and social frameworks remains an important aspect of addressing these challenges. The discourse on LGBTQ+ parenthood therefore continues to shape future discussions on equality, family law, and human rights.

INTRODUCTION

Beyond Labels : Understanding The Spectrum

LGBTQ+ is a community that has a group of people who identify themselves as Lesbian, Gay, Bisexual, Transgender, Queer. The people who work for their rights are also a part of this community. The individual term has its own identification. L in LGBTQ+ stands for Lesbian which means a person basically a female who is sexually or romantically attracted to a female or non- male. G stands for Gay is when a male is attracted sexually and romantically to another male. B stands for Bisexual is a person who is attracted to both male, non male and female romantic attraction, sexual attraction towards both the genders irrespective of their own gender are called bisexuals. t stands for Transgender is when a person's gender identity is different from that typically associated with the sex they were assigned at birth. Q stands for Queer is an umbrella term for sexual and gender minorities. It is alternately used to refer to people who reject sexual and gender norms and share radical politics characterized by solidarity across lines of identity. + is an indication of an exhaustive list that can add up in the future if any new comes into existence.

Unveiling The Past: History Of Existence

The history of LGBTQ is not that in bright colors as of today. Same sex relationship has been seen as a crime and it has always been under marginalization, persecution and seclusion from society. Only in recent days this has come up into light and is being identified as a community. Even now many countries around the world don't accept it. They were often criminalized and socially condemned. Though sources from ancient Greece showed the inclined behaviour and acceptance towards same sex relationships, the later European colonization condemned and criminalized it. Later in the 20th century Early 20th-century activism grew alongside feminist and civil rights movements. However, it often excluded women, people of color, and non-Western identities. Pre-World War II LGBTQ+ life thrived in urban subcultures like Harlem

and Greenwich Village. World War II helped individuals connect, though persecution persisted, including under the Nazis.

The Stonewall Riots marked a turning point in LGBTQ+ liberation movements. This sparked global pride movements and increased visibility. The 1970s saw expansion of activism, including lesbian feminism and political advocacy. Organizations like PFLAG and the Human Rights Campaign supported rights and awareness. In the 1990s and 2000s, media visibility increased, with figures like Ellen DeGeneres coming out publicly. Legal progress followed, including decriminalization and recognition of same-sex marriage. The 21st century emphasized transgender rights and intersectionality. Activism expanded globally, though many countries still criminalize LGBTQ+ identities. Despite progress, challenges such as discrimination, stigma, and inequality continue. The LGBTQ+ movement today focuses on inclusion, global rights, and social acceptance.

Tradition To Transformation: LGBTQ In India

The history of LGBTQ+ identities in India is deeply rooted in its cultural, religious, and social traditions. Contrary to the belief that LGBTQ+ identities are a modern or Western concept, ancient Indian society reflected a more fluid and inclusive understanding of gender and sexuality. In early Indian texts and traditions, references to diverse sexual orientations and gender identities can be found. Epics such as the Mahabharata and the Ramayana include characters and narratives that challenge rigid gender norms. For instance, the story of Shikhandi in the Mahabharata reflects gender transition, while the concept of “tritiya prakriti” (third nature) acknowledged non-binary identities in ancient Indian thought. Temple art and sculptures, especially at sites like Khajuraho Temples, depict same-sex relationships and erotic diversity, indicating a level of social acceptance in pre-colonial India. Additionally, communities such as the Hijras have historically held a recognized social and cultural role, often associated with religious and ceremonial functions. Coming to the parenthood rights, parental rights are the rights and responsibilities bestowed upon the biological parents or adopted parents granting them the authority to make decisions for their children keeping in view the best interests of the child. Which includes decisions like education, healthcare and many significant other decisions that would be with the best interests of the child until he/she attains a majority where he/she is capable of taking decisions of their own with sane mind.

Parenthood rights usually in layman terms always depict a mother and father depicting only

male and female gender. And with the development in the society with regards to LGBTQ+ community, now the rise in granting parenthood rights for the LGBTQ+ community is being brought into light. The definite meaning of Parenthood not been explained anywhere; the parenthood rights to the LGBTQ+, their right for parenthood, their rights for having a family need to be considered, as every human being has the right to have a family.

STATEMENT OF PROBLEM

Despite the country being under many transformations, seen in in many other aspects of society among which was the removal of section 377 of Indian penal code that stated decriminalizing of same sex relationship there's been a gap with regards to the parenthood rights of the LGBTQ+ community still persists. An empirical survey on the public opinion about the LGBTQ+ community and parenting rights depicts systematic research on it.

LITERATURE REVIEW

The issue of parenthood rights for LGBTQ+ individuals in India has been examined across legal scholarship through statutory interpretation, constitutional analysis, and international human rights discourse. A consistent theme in existing literature is the tension between progressive constitutional ideals and the restrictive nature of family laws governing adoption and reproduction. From a statutory standpoint, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides a secular framework for adoption. The law permits adoption by single individuals regardless of gender, which on its face allows LGBTQ+ persons to become parents. However, the requirement that married couples must adopt jointly creates an indirect barrier, since same-sex marriages are not legally recognized in India. Scholars have observed that this creates a situation where individuals may exercise parental rights independently, but same-sex partners are denied recognition as a family unit. As a result, the law stops short of fully accommodating diverse family structures.

A similar limitation is evident in personal laws such as the Hindu Adoption and Maintenance Act, 1956. The provisions governing adoption under this Act are built around a traditional understanding of marriage between a man and a woman. Requirements such as spousal consent and gender-based roles reflect a model of family that does not account for same-sex relationships. For communities not governed by Hindu law, the Guardians and Wards Act, 1890 applies, which offers only guardianship rather than full adoption. Legal scholars have

pointed out that this distinction affects the long-term security of the child, particularly in matters such as inheritance and legal recognition, and does not provide parity with biological parenthood.

The limitations of the legal framework become more pronounced in the context of reproductive rights. The Surrogacy (Regulation) Act, 2021 restricts access to surrogacy primarily to heterosexual married couples, thereby excluding LGBTQ+ persons. Similarly, the Assisted Reproductive Technology (Regulation) Act, 2021 regulates fertility services in a manner that largely confines access to legally recognized heterosexual relationships. Academic discussions have criticized these laws for reinforcing a narrow understanding of family and for limiting the reproductive choices of individuals outside this framework.

In contrast to these statutory restrictions, the Indian constitutional framework adopts a broader and more inclusive approach. The guarantees of equality, non-discrimination, and personal liberty under Articles 14, 15, and 21 of the Constitution provide a strong basis for recognizing LGBTQ+ rights. In *Navtej Singh Johar v. Union of India*, the Supreme Court affirmed that sexual orientation is an essential aspect of identity and cannot be a ground for discrimination. Further, in *Justice K.S. Puttaswamy v. Union of India*, the Court recognized privacy as encompassing personal choices relating to relationships and family life. These judgments collectively highlight that the ability to form intimate relationships and families is closely linked to individual dignity and autonomy. Despite these developments, judicial restraint is evident in *Supriyo v. Union of India*, where the Supreme Court declined to extend legal recognition to same-sex marriages. By leaving the matter to the legislature, the Court effectively maintained the existing legal framework, which continues to limit access to joint parenthood rights for LGBTQ+ couples.

International human rights law provides an additional layer of support for LGBTQ+ parenthood. Instruments such as the Universal Declaration of Human Rights emphasize equality and the right to family life, while the International Covenant on Civil and Political Rights reinforces protections relating to privacy and equal treatment. The interpretation of these provisions has evolved over time, as illustrated in *Toonen v. Australia*, where sexual orientation was recognized within the scope of non-discrimination. The Yogyakarta Principles further clarify that individuals, regardless of sexual orientation or gender identity, are entitled to form families and access parenting opportunities.

Empirical research also plays a significant role in shaping this discourse. Studies conducted by bodies such as the American Psychological Association indicate that children raised by LGBTQ+ parents demonstrate outcomes comparable to those raised in heterosexual households in terms of emotional and social development. These findings challenge long-standing assumptions embedded in traditional legal frameworks and suggest that the barriers faced by LGBTQ+ parents are primarily legal and societal rather than based on any deficiency in parenting ability. In summary, the existing body of literature highlights a clear divide between constitutional and human rights principles, which advocate inclusivity, and statutory laws, which continue to reflect conventional family models. While judicial decisions have expanded the recognition of LGBTQ+ rights, the absence of corresponding legislative reform has resulted in limited access to parenthood rights. Bridging this gap requires a re-examination of family law to ensure that it aligns with constitutional values and contemporary social realities. Indian family law, across personal and statutory frameworks, consistently structures the concept of marriage and family around a heterosexual union, which in turn determines eligibility for parenthood rights such as adoption, guardianship, and surrogacy.

Under the Hindu Adoption and Maintenance Act, 1956, adoption is closely tied to a marital relationship between a husband and wife. Provisions relating to the capacity to adopt require the involvement or consent of a spouse of the opposite sex, thereby presuming a man–woman marital unit. This framework reflects the understanding that a valid family consists of a male and female parent, leaving no scope for same-sex couples to adopt jointly. Similarly, the Guardians and Wards Act, 1890, though secular in application, operates within a traditional understanding of family. Courts, while deciding guardianship, rely on the “welfare of the child” standard, which has historically been interpreted in favour of a conventional family structure involving both a father and a mother. The law also reinforces paternal preference in guardianship, further reflecting a gendered family model. In the context of marriage, personal laws such as the Hindu Marriage Act, 1955 and the Indian Christian Marriage Act, 1872 define marriage explicitly or implicitly as a union between a man and a woman. Since parenthood rights such as legitimacy of children, adoption, and custody are derived from marriage, this definition restricts legal recognition of family to heterosexual couples.

Further, under Muslim Personal Law, the concept of family is rooted in marriage between a man and a woman, and formal adoption is not recognized; instead, guardianship is allowed within a framework that preserves biological lineage. This again reinforces a traditional,

heterosexual understanding of family. Modern statutory laws also reflect similar limitations. The Surrogacy (Regulation) Act, 2021 permits surrogacy only for legally married heterosexual couples, thereby explicitly excluding same-sex couples. Likewise, the Assisted Reproductive Technology (Regulation) Act, 2021 regulates access to reproductive technologies in a manner that largely confines eligibility to heterosexual relationships.

RESEARCH QUESTIONS

- What is the level of public awareness regarding LGBTQ+ individuals and their parenthood rights in India?
- Do people believe that sexual orientation affects an individual's ability to be a good parent?
- How do sources of public opinion, such as media, peers, and news, interact with demographic factors like age, gender, education, and occupation in shaping attitudes toward LGBTQ+ parenthood?
- What is the level of public support for legal recognition of LGBTQ+ families, including adoption and surrogacy?
- How does societal stigma impact perceptions of LGBTQ+ individuals as parents?

RESEARCH METHODOLOGY

The research methodology used in this research paper is a combination of doctrinal research where primary and secondary data is been collected through various websites, research journals and articles along with refereeing to the constitution, statutes of Indian penal code and also from international human rights, and descriptive research methodology that explains what society thinks about the LGBTQ+ community and their rights.

ANALYSIS OF THE SURVEY: THE SURVEY OUTCOME

Assessing Public Awareness of LGBTQ+ Identities and Parenthood Rights in India

The LGBTQ+ community though had been into existence since ancient times seen in Greek civilizations and also depiction of the third gender in the ancient scripts of Indian mythology it has been recognised only in the early 19th and 20th centuries. Though we may now see many awareness parades regarding the LGBTQ+ community being done, there are still a part of

society who are not aware about the term LGBTQ+ and also about them being classified under LGBTQ+ community on the basis of their sexual orientation. There are people who still have no knowledge of what does LGBTQ+ means and why they have been classified. The only classification they know and identify is on the basis of gender that has been given at the time of birth. In simpler terms it is either male or female. And when asked about parenthood rights it was clearly seen that their unawareness about the LGBTQ+ community resulted in their perception of parenthood restricted to a family consisting of father and mother in respective genders that they identify as male and female.

Even after telling about the existence of LGBTQ+ community their very understanding of parenthood lies restricted to the traditional male and female forming a family and the responsibility that would come with parenthood to be restricted to the male and female setup.

Perceptions of Sexual Orientation and Its Influence on Parenting Capability

Parenthood in layman terms is understood as having a child and taking up the responsibility of the child until it becomes capable of deciding things on its own. But parenthood is a long journey that starts with having an infant totally dependent on them. i.e parents for everything physically emotionally until it becomes an adult and enough that it could handle itself on its own as an independent adult. This journey involves the journey towards adulthood for the infant on a path taken up by the parents. On a survey being done it was clear that people strongly agree that sexual orientation of a person directly influences the parenting capability and the effects of it on upbringing of the child.

As seen earlier, part of major society still believes that females are good as mothers and as per the old saying “home is the first school and mother is the first teacher” the foundation of the child upbringing is about the mother as per the traditional setup. But the LGBTQ+ community whose classification is solely based on the sexual orientation leads to chaos in the roles being played of a mother and father as the LGBTQ+ is about same sex relationships may disrupt the system of parenthood.

Interplay of Media Influence and Demographic Dynamics in Shaping Attitudes Toward LGBTQ+ Parenthood

As we see that today social media is considered as one of the fastest news transmitting mediums, the LGBTQ+ have widely gained its recognition through social media. The majority

of the society now knows about this LGBTQ+ through various social media platforms, a major contribution by Instagram. And this has affected a large amount of people's perception about the LGBTQ community and their activities. And the people from the age group of 18-25 opine that children raised by LGBTQ+ parents would largely agree that there would be high chances of the children being affected in the society with regards to them being brought up by LGBTQ+ parents that would affect adversely but there is 1% that would disagree about it. Whereas from the view of the people around the age group of 26- 35 has neutral opinion on it and the age group above 35 opine that with certain conditions arise they may have a normal and healthy upbringing. If seen there are neutral opinions prevailing where a clear conclusion cannot be brought with regards to the demographic dynamics affecting the attitude towards lgbtq community. And moreover only the part of society which is into legal studies are aware about the laws that are being brought with respect to the LGBTQ+ community and law relating to them and the rest of them are unaware about any laws that are brought up for the LGBTQ+ community including the parenthood rights.

Evaluating Public Support for Legal Recognition of LGBTQ+ Families and Reproductive Rights”

It is very clearly depicting that public support with regards to the LGBTQ+ community, giving them the recognition for their existence is seen and appreciated but when it comes to the parenthood rights being given to the LGBTQ+ community may hardly be seen. A very minor part of the society majorly the younger generation who is not yet into the parenthood phase are inclined positively towards granting the parenthood rights whereas the older generation are still not inclined towards the parenthood rights being given. They are appreciating the recognition of the community but when it comes to the parenthood rights specifically they still stand in negative. The opinion goes that it is sexual orientation not according to nature. It is meant for pleasuring each other who have similar sexual orientation. To put a child who may not be in the same orientation might have distorted and unnatural growth. Involving third person for family may not be justified as how the psychology and generative thoughts of adopted or born to bi sexual child will be challenging and unnatural. And this opinion is from the larger part of the society who are already parents and from their experience they would strongly stand against the legal representation for the LGBTQ+ family.

Examining the Impact of Societal Stigma on Perceptions of LGBTQ+ Parenting

As the recognition of the LGBTQ+ community itself is being questioned the same opinion follows down with regards to the impact and societal pressure. Though various professional, educational and corporate institutions are recognising this community, the discrimination faced is still there. And in a country like India it is still a taboo concept of taboo and people do not appreciate it which would directly affect the children if parenthood rights are given. And it's highly agreed that there will be an impact on the upbringing of children and on their mental health as the societal stigma and perception towards LGBTQ+ is not highly appreciated in a nation like India.

UNADDRESSED DIMENSIONS AND THE NEED FOR LEGAL EVOLUTION

Human Rights Law: Present Structure and Scope

As seen above the human rights clearly defines itself as the rights available for the individuals by the virtue of being a human being. These are the inherent rights obtained for being a human. And as per the articles given in the various human rights conventions such as UDHR, ICCPR, ICESR, Convention on the child of rights etc all clearly states about right to equality, right against discrimination on the basis of caste, gender, sex and all are to be treated equally and right to marry and choose a family. Though all these international conventions state about equality nowhere they have specially mentioned about the LGBTQ community. When it's about equality and against discrimination its implied and interpreted that even people identifying themselves under this community have equal rights just like other heterosexual human beings have.

Equality in Principle, Exclusion in Practice: The Indian Legal Position

Coming to the Indian perspective though our Indian constitution has imbibed certain principles from the international conventions and has given articles in the constitution like article 14, article 21 and many other articles which have a wider purview with regards to equality and non discrimination on basis of gender caste etc giving fundamental rights ,nowhere its specifically mentioned with respect to the LGBTQ Community. After Navtej Singh judgement came the section 377 of IPC – decriminalisation of same sex relationship was seen. The recognition of same sex or homosexual marriages is still not recognised. Though all the articles and sections

from various acts like juvenile justice act or etc may tell about the equality rights but practically never stepped up to take for their recognition.

Adoption under Personal Laws: A Heterosexual Construct of Family

Coming to parenthood there are either ways one is adoption and second is surrogacy. If the adoption is seen through the lenses of personal laws, adoptions in hindu law are in accordance with the Hindu adoption and maintenance act which clearly states who can adopt. Section 6 mentions the criteria who can adopt and section 7 and section 8 states that a man or a woman if they want to adopt what's the criteria to be fulfilled. This clearly indicates that the heterosexual couple can adopt and have parenthood. No where the law mentions a same sex or homosexual couple having given the adoption rights. Coming to the muslim law they have no concept of adoption at all like in the hindu law and hence the question of homosexual couples being granted with parenthood rights doesn't seem to exist at all.

Barriers in Reproductive Laws

Surrogacy represents another pathway to parenthood, particularly for individuals who cannot biologically conceive. However, the legal framework governing surrogacy in India is highly restrictive. The Surrogacy (Regulation) Act, 2021 permits only altruistic surrogacy and limits eligibility primarily to legally married heterosexual couples. Single women in specific circumstances are included, but single men and LGBTQ+ couples are excluded. This exclusion is explicit and reflects a legislative intent to confine parenthood within traditional marital norms. Similarly, the Assisted Reproductive Technology (Regulation) Act, 2021 regulates access to reproductive technologies such as IVF and sperm donation. The Act restricts access largely to heterosexual couples and certain categories of women, thereby limiting the reproductive autonomy of LGBTQ+ individuals.

From Rights to Recognition: Judicial Gaps

In contrast to statutory and personal laws, the Constitution of India offers a more expansive framework for understanding rights related to family and parenthood. Articles 14, 15, and 21 guarantee equality, non-discrimination, and the right to life and personal liberty. Judicial interpretations have significantly advanced LGBTQ+ rights. In *Navtej Singh Johar v. Union of India*, the Supreme Court affirmed that sexual orientation is an inherent aspect of identity and

is protected under the Constitution. In Justice K.S.Puttaswamy v. Union of India, the Court recognized the right to privacy, including personal decisions relating to relationships and family life. However, the judgment in Supriyo v. Union of India reflects the limitations of judicial intervention. While acknowledging the rights and dignity of LGBTQ+ individuals, the Court declined to extend legal recognition to same-sex marriages, thereby leaving issues related to adoption and parenthood unresolved.

Global Divide on LGBTQ+ Parenthood Rights

There are countries in the world that support and are working for the parenthood rights of LGBTQ+ community imbibing the basic principle of right to equality . The countries are Canada, Malta, Portugal where laws relating to recognition of same sex marriages supporting homosexuality have been seen. Contradictorily there are nations that do not appreciate it and have criminalised the same sex relationships like parts of Africa, the Caribbean nations, few countries of South and east asia still are the countries that favor, recognise heterosexual relationships and criminalise same sex relationships. Though with the recent developments seen through the judgement from navjot singh case , the section 377 of IPC that criminalised the same sex relationships was removed,can be considered as a positive move towards equality and against discrimination on the basis of sexual orientation, nowhere the law has been passed to recognise them or to define their relationships as legal been seen.

Author's Perspective: Recognition First for Granting Parenthood Rights

No recognition of their marriages is seen. Which implicates the non availability of all the benefits, opportunities that are usually available for the normal heterosexual couple making India yet one among the developing countries with ancient thought process. As seen in the above survey responses it can clearly be stated that societal stigma and lack of recognition would directly harm the welfare of the kid being brought up by the same sex relationship parents. When the parents being adults, fully developed brains and developed emotional quotient themselves are yet to be recognised and struggling for their recognition in such case concerns with regards to the child raised by them would be raised. And moreover in the nation like India which is in its progressive state though might have bought reformative laws and judicial precedents that may be changing societal thinking but in a nation like ours societal stigma still prevails and with prevailing circumstances currently seen through society lenses when survey was done , it is opined that parenthood rights to the LGBTQ+ community need to

undergo more of review. The recommendation would be that once the legal recognition of same sex and the marriages be done, it would help in reducing the societal stigma and then such couples may be given the rights of parenthood.

One dealing and facing struggles with the identification and recognition of their own sexual orientation cannot make a child undergo the effects of it in the current prevailing society where acceptance of LGBTQ+ community is rarely seen. Hence keeping in view child welfare I would recommend that parenthood rights to the LGBTQ community need to be reviewed again

CONCLUSION

The examination of Indian family laws makes it clear that parenthood rights are closely tied to the idea of a legally recognized marriage, which is presently understood in heterosexual terms. Adoption laws, personal laws, and regulations governing reproductive technologies all operate on the assumption of a family structure built around a man and a woman. Because of this, while individuals from the LGBTQ+ community may, in certain situations, access parenthood independently, the law does not yet acknowledge them as forming a family unit with joint parental rights. This creates a situation where constitutional values of equality and dignity are gradually evolving, but the supporting legal framework has not kept pace. The absence of formal legal recognition for same-sex relationships continues to limit access to full parenthood rights, particularly in areas such as joint adoption and assisted reproduction. In its present form, the legal system offers only partial pathways to parenthood for LGBTQ+ individuals rather than complete recognition of their families. Any meaningful extension of parenthood rights will therefore depend on broader legal changes that recognize diverse forms of relationships and family structures within the Indian context.