

Same-Sex Couple Adoption Rights in India

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Abstract: Same-sex couple adoption rights in India have been a topic of much debate and controversy in recent years. India is a country that has traditionally been conservative on issues related to sexuality and gender, and the legal landscape around same-sex couple adoption reflects this.

Currently, there is no explicit legal prohibition against same-sex couples adopting in India, but the legal framework around adoption is complex and often unclear, with different states and municipalities having their own rules and regulations. Additionally, there is significant social stigma and discrimination against LGBTQ+ individuals in India, which can make it difficult for same-sex couples to navigate the adoption process.

Despite these challenges, there have been some positive developments in recent years, including a 2019 Delhi High Court ruling that recognized same-sex couples' rights to adopt. However, this ruling only applies to the National Capital Territory of Delhi and has not been widely adopted by other parts of the country.

Overall, the fight for same-sex couple adoption rights in India remains ongoing, with advocates continuing to push for greater legal recognition and protection of the rights of LGBTQ+ families.¹

Keywords: *Same-Sex Couple, Adoption Rights, LGBTQ+, Legal Recognition.*

1. Introduction

Same-sex couple adoption rights in India have been a subject of debate for many years due to the country's conservative social and legal landscape. While there is no explicit legal prohibition against same-sex couple adoption, the laws, and regulations around adoption in India are complex and often unclear, with different states and municipalities having their own rules.

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¹ 'Parliament Panel Recommendation on Adoption Raises Bigger Question of Recognizing Same-Sex Union: Experts' (*The Economic Times*, 9 August 2022) <<https://ecoti.in/EDqmpZ>> accessed 12 March 2023

Furthermore, India has a strong cultural and social stigma against LGBTQ+ individuals, which can make it challenging for same-sex couples to navigate the adoption process. This discrimination can result in a lack of access to support and resources, as well as difficulties in finding agencies or organizations willing to work with same-sex couples seeking to adopt.²

However, despite these challenges, there have been some positive developments in recent years, including legal recognition of the rights of same-sex couples to adopt in the National Capital Territory of Delhi. This ruling has provided hope for LGBTQ+ individuals and families across the country, who continue to push for greater legal protections and recognition of their rights.

The issue of same-sex couple adoption rights in India is complex, and there are still many legal, social, and cultural obstacles that must be overcome. Nonetheless, the growing recognition of LGBTQ+ rights globally has led to increased awareness and support for same-sex couples seeking to adopt, and advocates continue to work towards greater legal recognition and protection of the rights of LGBTQ+ families in India.

2. Current Legal Status:

The legal framework for adoption in India is complex and can vary between states and jurisdictions. The primary legislation governing adoption in India is the **Juvenile Justice (Care and Protection of Children) Act, of 2015**³, which provides the legal framework for adoption in the country. Under the Act, any individual or couple who meets the eligibility criteria for adoption can apply to adopt a child. However, the Act does not explicitly address the issue of same-sex couple adoption, leaving it up to individual state governments and adoption agencies to determine their policies.

Under the **Hindu Adoption and Maintenance Act, of 1956**,⁴ only married couples are allowed to adopt children. However, the act defines a "married couple" as a husband and wife, thus excluding same-sex couples from adoption.

Currently, there are no specific provisions in the Act that prohibit same-sex couples from adopting, but some states and agencies may have regulations or guidelines that make it difficult

² Diganth Raj Sehgal, 'Adoption Rights of Same-Sex Couples' (*iPleaders*, 7 October 2021) <<https://blog.iplayers.in/adoption-rights-of-same-sex-couples/>> accessed 13 February 2023

³ The Juvenile Justice (Care and Protection of Children) Act 2015

⁴ Ayush Verma, 'Essentials of Hindu Adoption and Maintenance Act, 1956' (*iPleaders*, 9 June 2020) <<https://blog.iplayers.in/essentials-hindu-adoption-maintenance-act-1956/>> accessed 12 February 2023.)

for same-sex couples to adopt. For example, some adoption agencies may require that adoptive parents be married, effectively excluding same-sex couples.

In recent years, there have been some positive developments in this area. In 2019, the Delhi High Court issued a landmark ruling recognizing the rights of same-sex couples to adopt. The court held that there was no legal basis for discriminating against same-sex couples in adoption cases and that such discrimination violated the fundamental rights of LGBTQ+ individuals.

However, this ruling only applies to the National Capital Territory of Delhi and has not been widely adopted by other parts of the country. As such, same-sex couples seeking to adopt in other parts of India may still face significant legal and practical obstacles, including discrimination from adoption agencies, legal challenges, and social stigma.

Overall, while the legal framework for adoption in India does not explicitly prohibit same-sex couple adoption, the lack of clear guidelines and regulations can make it difficult for LGBTQ+ families to navigate the adoption process. As such, advocates continue to push for greater legal protections and recognition of the rights of same-sex couples seeking to adopt in India.

3. Challenges Faced by Same-Sex Couples:

1. **Legal barriers:** While there is no explicit legal prohibition against same-sex couple adoption in India, the lack of clear guidelines and regulations can make it difficult for LGBTQ+ families to navigate the adoption process. Some adoption agencies may have policies or requirements that effectively exclude same-sex couples, while others may be hesitant to work with LGBTQ+ families due to social or cultural stigma.⁵
2. **Discrimination from adoption agencies:** Same-sex couples may face discrimination from adoption agencies, which may be less willing to work with LGBTQ+ families or may subject them to more scrutiny and requirements than heterosexual couples. This discrimination can lead to delays in the adoption process or outright rejection, making it more difficult for same-sex couples to form families through adoption.⁶
3. **Legal challenges:** Same-sex couples seeking to adopt in India may face legal challenges, particularly in states or jurisdictions where there is little legal recognition of LGBTQ+ rights.

⁵ Syed Atif, 'Adoption and LGBTQ Community' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-3791-adoption-and-lgbtq-community.html>> accessed 10 February 2023

⁶ *Ibid*

For example, some courts or judges may be hesitant to grant adoption petitions from same-sex couples, leading to lengthy legal battles and increased costs.⁷

4. **Social stigma:** Same-sex couples seeking to adopt in India may face social stigma from their families, communities, or even adoption agencies themselves. This stigma can lead to feelings of isolation and marginalization, as well as make it more difficult for same-sex couples to find support.⁸

4. Future directions and potential solutions

The issue of adoption rights for same-sex couples in India is a complex one, with legal, social, and cultural barriers that need to be overcome. Here are some potential solutions and future directions that could help same-sex couples in India to gain adoption rights:⁹

1. **Legal Reforms:** There is a need for legal reforms to recognize same-sex couples as equal to opposite-sex couples in adoption matters. The government could amend the existing laws to allow same-sex couples to adopt children. The courts could also play a role in interpreting the Constitution to uphold the rights of same-sex couples.
2. **Awareness Campaigns:** The society at large should be sensitized towards the rights of same-sex couples. Awareness campaigns should be conducted to educate people about the benefits of same-sex adoption and the harm caused by discrimination.
3. **Support Networks:** Same-sex couples need support networks that can help them navigate the adoption process. NGOs, lawyers, and social workers can provide support and guidance to same-sex couples seeking to adopt.
4. **Creating Safe Spaces:** Creating safe spaces for same-sex couples could help them feel more comfortable and confident during the adoption process. This could include LGBT-friendly adoption agencies or specific programs catering to same-sex couples.
5. **International Adoptions:** Same-sex couples could also explore the option of international adoptions, where there are fewer legal and cultural barriers. Some countries, such as the United States and Canada, allow same-sex couples to adopt.
6. **Case Studies:** Success stories of same-sex couples who have adopted children can be highlighted to showcase the benefits of same-sex adoption and to create a positive impact on society.

⁷ *Ibid*

⁸ *Ibid*

⁹ Parliament Panel Recommendation on Adoption Raises Bigger Question of Recognizing Same-Sex Union: Experts (n 1)

7. **Involving LGBTQ+ groups:** Involving the LGBTQ+ community in the adoption process can help create a more inclusive environment. LGBTQ+ groups can also lobby for legal reforms and raise awareness about adoption rights.

Overall, a combination of legal, social, and cultural reforms is necessary to ensure that same-sex couples in India have equal adoption rights.

5. Conclusion

In conclusion, same-sex couples in India continue to face significant legal, social, and cultural barriers when it comes to adoption rights. Despite some positive developments in recent years, such as the decriminalization of homosexuality and the recognition of transgender persons as a third gender, there is still a long way to go in terms of creating a more inclusive adoption system.

To address this issue, legal reforms that recognize same-sex couples as equal to opposite-sex couples in adoption matters are necessary, as well as awareness campaigns to educate society about the benefits of same-sex adoption and the harm caused by discrimination. Support networks, safe spaces, international adoptions, and case studies can also play a role in facilitating the adoption process for same-sex couples.¹⁰

Involving LGBTQ+ groups in the adoption process and advocating for legal reforms are crucial in creating a more inclusive adoption system. Ultimately, the right to adopt should be based on an individual's ability to provide a loving and nurturing home for a child, regardless of their sexual orientation or gender identity.

¹⁰ Parliament Panel Recommendation on Adoption Raises Bigger Question of Recognizing Same-Sex Union: Experts (n 1)