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Navigating Parenthood: Exploring the Impact of Same-Sex Marriage on Adoption Dynamics and Family Well-being

“How has the public's perception of same-sex marriage and adoption evolved over time, and what variables account for the divergent views among various demographic groups?”

Adopting children by same-sex couples is known as same-sex adoption. It could be a couple's joint adoption or one partner adopting the other's biological kid (stepchild adoption). Thirty-seven nations allow same-sex couples to adopt together, and some also allow stepchild adoption. The number of children adopted by same-sex parents is increasing annually in the UK, where same-sex couples and single LGBTQ+ adopters have been able to adopt since 2005.

Many nations have legalized same-sex adoption, and studies have repeatedly demonstrated that lesbian and homosexual parents are just as capable and fit as heterosexual parents. In spite of early objections and resistance.

The Human Rights Campaign Foundation seized the chance to observe global advancements in same-sex marriage legalization. There are now 35 nations that allow same-sex unions: the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, the United Kingdom, the United States of America, and Uruguay; Andorra; Australia; Austria; Belgium; Brazil; Canada; Chile; Colombia; Costa Rica; Cuba; Denmark; Ecuador; Estonia; Finland; France; Germany; Iceland; Ireland; Luxembourg; Malta; Mexico; Andorra.¹

A legally recognized and socially accepted union between two people of the same gender is referred to as a "same-sex marriage." In a married partnership, it gives same-sex couples the same legal privileges, obligations, and rights as heterosexual couples. Worldwide, there are differences in the acceptance of same-sex marriage. While certain nations and areas encourage and legalize it, others may still have limitations or outright bans. In the direction of obtaining equal rights and doing away with discrimination based on sexual orientation, the acceptance and legalization of same-sex marriage have been important steps.

Legal ramifications for same-sex marriage in India

¹ *Marriage Equality Around the World*. (n.d.). Human Rights Campaign.
<https://www.hrc.org/resources/marriage-equality-around-the-world>

Despite continuous efforts to acknowledge and legalise them, same-sex marriages are nonetheless illegal in India. This subject is significant because it touches on the acknowledgement and defence of LGBTQ+ people's relationships as well as their fundamental human rights. Legalising same-sex unions will benefit LGBTQ+ couples by giving them legal protection and recognition, as well as by fostering greater societal acceptance and lowering prejudice against the group. It is a significant issue for global LGBTQ+ rights activists and supporters, and its relevance goes beyond the legal domain to include broader social and cultural perceptions of the LGBTQ+ group.²

Same-sex marriages are not recognized by Indian law, which defines marriage as a partnership between a man and a woman. In 2018, the Supreme Court of India invalidated Section 377 of the Indian Penal Code, which made homosexuality a crime. This decision marked a significant win for LGBTQ+ rights in India. However, same-sex weddings remained illegal despite the decriminalization of homosexuality. Even though there have been numerous court suits filed in Indian courts to legalize same-sex marriage, same-sex couples are still not recognized legally as of yet. The Delhi High Court did not legalize same-sex marriage in 2017, but it did rule that same-sex couples have a right to a stable relationship.

Legal Aspects of Same-Sex Adoption

The legal procedure for a homosexual couple to adopt a child in India is the same as that of a heterosexual couple. A reputable adoption agency must have the couple registered as potential adoptive parents. The couple's suitability for adoption will be evaluated by the adoption agency through a home study.

In India, the Juvenile Justice (Care and Protection of Children) Act, 2015 governs the procedure of adoption. The Act calls for the establishment of a Central Adoption Resource Authority (CARA), which will oversee and control adoption practices in India.³

Social Perspective

Same-sex marriage is frequently seen as an attack on the importance and "naturalness" of the heterosexual married connection, which is thought to be the foundation of a stable society, particularly among conservative religious and social groups.

² *Same Sex Marriages in India: A complete overview.* (2023, May 6). Times of India Blog. <https://timesofindia.indiatimes.com/readersblog/dopamineffable/same-sex-marriages-in-india-a-complete-overview-53507/>

³ *Can Homosexual Couples Adopt In India?* (n.d.). [https://www.legalserviceindia.com/legal/article-10416-can-homosexual-couples-adopt-in-india-.html#:~:text=Adoption%20by%20a%20homosexual%20\(couple,of%20the%20couple%20for%20adoption.](https://www.legalserviceindia.com/legal/article-10416-can-homosexual-couples-adopt-in-india-.html#:~:text=Adoption%20by%20a%20homosexual%20(couple,of%20the%20couple%20for%20adoption.)

Thus, same-sex marriage and civil unions pose issues of social "rights" and duties, sexual politics, citizenship, and sexuality—all of which are significant sociological themes related to sexuality, family life, and social change. Discussions on the death of the "traditional" family, the validity of new family structures, and the fuzziness of "public" and "private" in modern social circumstances frequently touch on this subject.

Theoretical and research to date has concentrated on the social, cultural, and political factors that have elevated the issue; the degree to which same-sex marriage symbolises complete "sexual citizenship"; the significance that lesbians and gay men assign to the recognition of their partnerships; and the consequences of recognition for couples and their "blood" or "chosen" families.

Lesbian and homosexual politicians currently focus on same-sex marriage due to a variety of social developments. Some theorists contend that in the 1980s, AIDS served as a catalyst for the mobilization of a new lesbian and gay relational politics. At first, the emphasis was on recognizing the caring responsibilities of same-sex partners and safeguarding their "rights" with regard to property and matters pertaining to next of kin. The institutionalization and political confidence that made same-sex marriage appear like a realistic political goal were made possible by community reactions to the AIDS epidemic. A growing number of same-sex couples are choosing to parent since the 1980s, when new opportunities for lesbian and gay parents have arisen (via self and aided insemination, surrogacy, fostering, adoption, and so on). One of the most important strategies for identifying and safeguarding co-parenting commitments is same-sex marriage.⁴

There is no distinction between parenting of the same sex and parenting of the opposing sex. Offspring of same-sex parents perform comparably, if not better, than their classmates. It doesn't, however, stop people from spreading outmoded myths regarding LGBTQ parents. LGBTQ people and children are both vulnerable to severe discrimination. Same-sex adopted parents and other individuals will be subject to social stigma and humiliation. They frequently face discrimination at work, in the classroom, and in other social settings.

It is often observed that public attitude towards gay sexual relationships is more closely associated with religious practices and theological conservatism than it is with heterosexual marriage and adoption. Even while same-sex couples receive a great deal of support, it regularly happens that adoption centres with a religious background discriminate against them by excluding them from the adoption process. However, many states have passed legislation

⁴ *Same Sex Marriage and Civil Unions - Sociology of Family - iResearchNet*. (2019, January 8). Sociology. https://sociology.iresearchnet.com/sociology-of-family/same-sex-marriage-and-civil-unions/#google_vignette

banning homosexual adoption on the grounds of religious freedom, even though it is unconstitutional for a governmental agency to deny married same-sex couples the right to adopt.⁵

The JJ Act (Juvenile Justice Act), 2015, which permits adoption by anybody, regardless of religion, includes provisions pertaining to the Central Adoption Resource Authority. A legal requirement states that no couple may adopt a child unless they have maintained a stable marital unity for at least two years. In India, same-sex weddings are still not accepted, therefore same-sex couples are unable to prove they have been married for two years. Consequently, they are not qualified. In addition, the government is discouraged from authorising adoptions for these families due to the societal stigma attached to these connections.

Benefits of Same-sex Adoption

According to Charlotte J. Patterson, PhD, a psychology professor at the University of Virginia, new research indicates that children adopted into lesbian and gay households follow comparable patterns of gender development and are as well-adjusted as children adopted by heterosexual parents. It is difficult to comprehend all the drama surrounding LGBT adoption when there are so many children, born and unborn, in need of a loving and caring family. Given the abundance of inspiring tales of LGBT adoption from around the globe, the majority of the arguments against it are founded in prejudice. The benefits of LGBT adoption for their children are numerous.

Whether a person loves someone of the same sex or the opposing sex has no bearing whatsoever on their capacity to be a good parent. Saying that gay parents are awful just because they are gay is utterly illogical and unfounded. Studies reveal that in terms of social functioning and academic achievement, children of same-sex couples do not vary from those of heterosexual couples. This argument is significant because it addresses one of the primary and most frequently brought up "disadvantages" of LGBT adoption: the fact that all children require a mother and a father.

Therefore, since this is untrue, it cannot be taken into consideration based on all of the study that has been done. This advantage of LGBT adoption should be discussed since it may eventually lead to something more significant. In actuality, LGBT couples' kids are more tolerant of same-sex and non-traditional households. The legal advantages of same-sex marriages and other LGBT rights, as well as their societal acceptance, would increase far faster if there were more LGBT adoptions.⁶

⁵ Centre, J. (2023, October 16). *A Legal Study on Issues Faced by LGBTQ During Adoption: In Respect to Human Rights and Adoption Laws in India*. Juris Centre. <https://juriscentre.com/2023/10/16/a-legal-study-on-issues-faced-by-lgbtq-during-adoption-in-respect-to-human-rights-and-adoption-laws-in-india/#:~:text=%5B13%5D%20Both%20the%20children%20and,and%20in%20other%20social%20gatherings>.

⁶ Adoptions, L. (n.d.). *Benefits of LGBT Adoption*. <https://www.lifelongadoptions.com/13-lgbt-adoption/241-benefits-of-lgbt-adoption>

Challenges of Same-sex adoption

Raising worries about same-sex couples adopting children, the National Commission for Protection of Child Rights (NCPCR) filed an intervention plea in the Supreme Court's marriage equality cases. The statutory authority declared that laws like the Juvenile Justice Act and the Hindu Marriage Act do not acknowledge adoptions by same-sex couples.

While this may not be an issue in every relationship, some LGBT couples may be concerned about the impact on their children of not having a mother or father role. They may worry that their child will always be missing something or yearn to be with the kind of parent they were never able to have. Feelings such as this can leave same-sex couples questioning if they will be sufficient.

Impact on children

As more states pass laws restricting LGBT+ rights, research published Monday in *BMJ Global Health* further undermines the widely held but unfounded argument against equal marriage and adoption: children of gay, lesbian, transgender, or other sexual minority parents do as well as, or better than, children of parents of the opposite sex.

Based on a review of 34 studies conducted in nations that officially recognise same-sex couples and published between 1989 and April 2022, researchers concluded that parents' sexual orientation is not a significant factor in their children's development.

According to the analysis, children from families with parents who identify as sexual or gender minority—a catch-all term for people whose sexual or gender identities are viewed as outside of social and cultural norms—performed worse than children from "traditional" opposite-sex parent families on a number of metrics, including outcomes related to their physical and mental health.

International Comparison

Global attitudes about same-sex marriage are very diverse, as evidenced by multiple Pew Research Centre surveys conducted in 32 locations during the past two years. Public support for lawful same-sex marriage is highest (92% of adults in Sweden) and lowest (2% of Nigerian adults) among the polled populations. 63% of adults in the United States, where same-sex marriage was made legally legal by the Supreme Court in 2015, are in favour of it while 34% are against it. However, opinions are sharply divided along demographic and political lines.

For instance, support for same-sex marriage rights is almost twice as high among Democrats and independents leaning Democratic as it is among Republicans and Republican leaners (82% vs. 44%). In a similar vein, over three-quarters (73%) of Americans under 40 say they support legalising homosexual and lesbian marriage, which is sixteen percentage points more than the percentage of Americans over 40 who agree (57%).

Australia and Japan have the strongest pro-same-sex marriage sentiments in the Asia-Pacific area. In Australia, 75% of adults support legal same-sex marriage, while in Japan, 68% of adults support it. However, whereas 52% of Australians who support same-sex marriage say they strongly support it, support for the practice is lower in Japan, where 56% of respondents say they somewhat like it. Japan does not allow same-sex marriage, while Australia does.

In Vietnam, where 65% of people say they support same-sex marriage, attitudes towards its legalisation are similarly positive.

In India, 43% of adults are against same-sex marriage, while 53% believe it should be permitted. Recently, the Indian Supreme Court denied a request to allow same-sex unions.

In Taiwan, almost equal percentages declare that they oppose same-sex marriage (43%) and support it (45%), with the remaining respondents giving no response. The only country in Asia where same-sex marriage is accepted is Taiwan.

Same-sex marriage is illegal in South Korea, yet some MPs have suggested that this be changed. 41% of South Koreans support legal same-sex marriage, while 56% are against it.

It is strongly opposed by Indonesians to legalise same-sex marriage. Nine out of 10 people (92%) are against allowing homosexuals and lesbians to be married, with 88% stating they are strongly against it. Only 5% of Indonesians are in favour of same-sex unions.⁷

Inspector General of Registration v. Arun Kumar Sreeja (2019)

In the Navtej Johar ruling, the court acknowledged same-sex couples' legal rights in India and decriminalised homophobic laws. The societal stigma associated with the group, however, continues to be a significant barrier to same-sex couples exercising some rights. These rights are not exercisable, even if they are acknowledged. In the case of Arun Kumar Sreeja v. Inspector General of Registration (2019), wherein Arun Kumar married Sreeja, a transwoman, on October 31, 2018, at a temple in Madras, the Madras High Court has taken a different stance than the Supreme Court in dismissing a petition for the recognition of civil rights like adoption and marriage for members of the heterosexual community. The Joint Registrar No. II of Tuticorin declined to register their marriage when they brought in a memorandum for registration. In proceedings dated November 16, 2018, the petitioners contested this decision before the District Registrar of Tuticorin, who subsequently upheld the Joint Registrar's ruling on December 28, 2018. An appeal against this ruling was filed with the Madras High Court.

Decision

⁷ *Global views of same-sex marriage vary widely* | Pew Research Center. (2023, November 29). Pew Research Center. <https://www.pewresearch.org/short-reads/2023/11/27/how-people-around-the-world-view-same-sex-marriage/#:~:text=At%20least%20eight%2Din%2Dten,it%20is%20not%20legal%20there.>

The Court declared that a marriage that was legally consummated between a transwoman and a man who identified as Hindu was legitimate. The Supreme Court affirmed the right of transgender people to choose their self-identified gender in *NALSA v. Union of India* (2014). This ruling was reaffirmed in *Justice K. Puttaswamy v. Union of India* (2018) and *Navtej Singh Johar v. Union of India*.

The Court further decided that the word "bride" in the HMA cannot have a fixed meaning and must instead be understood in the context of the current legal system. The Court then cited *Shafin Jahan v. Asokan K.M. and Ors* (2018), where it was decided that the right to marry the person of one's choosing is essential to Article 21 of the Indian Constitution, as well as Article 16 of the Universal Declaration of Human Rights, which lists the freedom to marriage as a human right. The Court proceeded to quote Justice K. Puttaswamy, citing the US Supreme Court ruling in *Obergefell v. Hodges* (2015), where the Court observed that it would be incoherent to acknowledge a right to privacy with regard to other aspects of family life, rather than the choice to enter a relationship, which forms the cornerstone of the family in society. Transgender people cannot be excluded from the advantages of social institutions that are already established in the mainstream since the Indian Constitution is an enabling instrument that welcomes them to integrate. The Court ruled that Ms. Sreeja's fundamental rights under Articles 14, 19(1)(a), 21, and 25 of the Indian Constitution would be violated if her marriage was not registered. As a result, the Court quashed the orders of the Joint Registrar No. II and the District Registrar of Tuticorin and ordered the Joint Registrar No. II to register the Petitioners' marriage.⁸

Same-Sex Adoption Case in India

One of the first same-sex couples in India to legally adopt a kid was a gay couple from Mumbai in 2017. After a lengthy legal process, the couple was granted guardianship of the son they had been raising since he was a newborn. In light of the child's best interests, the court awarded them guardianship even though there are no statutes specifically addressing same-sex adoption.

This case brought to light an increasing tendency in Indian courts where the child's wellbeing is given precedence over the prospective parents' sexual orientation in adoption cases. It's important to keep in mind that, even while same-sex adoption may not be specifically allowed by federal law in India, state adoption laws may differ and judges may have discretion over certain instances. Furthermore, in India, cultural perceptions and acceptance of same-sex couples and their capacity for adoption have been changing.

Future Trend

⁸ Sehgal, D. R. (2021, October 6). *Adoption rights of same-sex couples - iPleaders*. iPleaders. https://blog.ipleaders.in/adoption-rights-of-same-sex-couples/#Arun_Kumar_Sreeja_v_Inspector_General_of_Registration_2019

First, as a result of LGBT rights activities, we might witness an increase in the adoption of marriage alternative and marriage similar statuses (such as domestic partnerships) by couples of different sexes. People in their middle age or older will be the group of different-sex couples most likely to request access to these new statuses if current demographic trends continue.

Second, if the Defence of Marriage Act is declared void or repealed, there will be a federal acknowledgement of same-sex marriage, which could lead to a notable rise in the number of same-sex marriages. As more homosexual couples have their marriages recognised for federal law purposes, like taxation, but not under state laws that govern divorce, custody, and property division, the repeal of DOMA is also expected to significantly complicate the issue of interstate recognition. Given that sixty percent of same-sex marriages are performed for out-of-state residents, there will certainly be a significant increase in the complexity of the federal-state conflict surrounding the recognition of specific marriages.

Thirty-three nations—including the US—have made same-sex marriage legal, while a few more accept same-sex civil unions. However, there are still numerous nations that forbid same-sex unions, and there has been a disparity in the global expansion of LGBTQ+ rights. Human rights organisations claim that although international organisations like the UN have passed resolutions supporting LGBTQ+ rights, their ability to implement them is restricted.

The research and advocacy organisation Freedom House lists almost all the nations with marriage equality—when same-sex couples have the same legal right to marry as different-sex couples—as "free." Rights monitors find a strong association between LGBTQ+ rights and democratic societies. According to Julie Dorf, senior advisor to the Council for Global Equality, a Washington-based organisation that advances LGBTQ+ rights in American foreign policy, "wherever you see restrictions on individuals—in terms of speech, expression, or freedom of assembly—you see a crackdown on LGBT rights." She describes it as the "canary in the coal mine."

The UN Human Rights Council ordered the body's first research on the subject in 2011 after expressing "grave concern" over acts of violence and discrimination against people based on their gender identity and sexual orientation. A resolution to stop anti-LGBTQ+ violence and discrimination was voted by the council in 2014. The first-ever impartial expert on gender identity and sexual orientation was appointed by the UN two years later. According to Graeme Reid, head of Human Rights Watch's lesbian, homosexual, bisexual, and transgender rights programme, "what is important here is the gradual building of consensus." "More and more moral pressure is being placed on member states to address the most blatant forms of violence and discrimination."⁹

⁹ *Marriage Equality: Global Comparisons*. (2022, December 22). Council on Foreign Relations. <https://www.cfr.org/background/marriage-equality-global-comparisons>

