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LEGAL RIGHTS OF SAME-SEX COUPLES IN ADOPTION AND DIVORCE:

Introduction:

In recent years, there has been a significant shift in societal attitudes towards the LGBTQ+ community worldwide, including in India. However, legal recognition and protection of the rights of same-sex couples, particularly concerning adoption and divorce, remain complex issues in India. The legal landscape concerning the rights of same-sex couples in adoption and divorce is complex and evolving. Despite significant strides globally towards

recognizing and protecting the rights of LGBTQ+ individuals, India still grapples with legal ambiguities and societal challenges in this regard. This blog aims to explore the legal rights of same-sex couples in adoption and divorce within the Indian context, shedding light on existing laws, recent developments, and potential avenues for progress. This blog aims to explore the legal landscape surrounding these matters and the rights afforded to same-sex couples in adoption and divorce within the Indian legal system.

Legal Framework in India:

India, a diverse and culturally rich nation, has historically held conservative views regarding marriage and family. The legal framework governing marriage, adoption, and divorce is primarily based on traditional societal norms, which have been slow to adapt to changing perspectives. India's legal framework historically has not been favourable to same-sex couples. Until 2018, homosexuality was criminalized under Section 377 of the Indian Penal Code. However, in a landmark judgment, the Supreme Court of India decriminalized consensual homosexual acts, recognizing the rights of LGBTQ+ individuals to live with dignity and equality under the constitution. Despite this progressive step, India does not have specific legislation recognizing same-sex marriages or partnerships. Consequently, same-sex couples face numerous legal hurdles, particularly in matters of adoption and divorce.

Adoption Rights:

The adoption laws in India do not expressly prohibit same-sex couples from adopting a child. However, the legal framework is ambiguous and lacks explicit provisions addressing the adoption rights of LGBTQ+ individuals or

couples. The primary legislation governing adoption in India is the Juvenile Justice (Care and Protection of Children) Act, 2015. Under this act, any individual, regardless of sexual orientation, can adopt a child. However, the adoption process is often fraught with challenges for same-sex couples. Social stigma, discrimination, and administrative hurdles can hinder their ability to adopt a child, despite there being no explicit legal barrier.

Furthermore, some states in India have their adoption laws and regulations, which may further complicate the process for same-sex couples. In 2019, a lesbian couple from Gujarat made headlines by successfully adopting a child through the courts, marking a significant but rare instance of legal recognition of adoption by a same-sex couple in India. Adoption can be classified into 3 kinds:

- **Joint Adoption:** In many jurisdictions, same-sex couples have the right to jointly adopt children, meaning both partners can legally become parents to the child. This allows them to share parental responsibilities and rights equally.
- **Second-Parent Adoption:** In cases where only one partner is the legal parent of a child, the other partner may pursue second-parent adoption, which allows them to become a legal parent without terminating the rights of the first parent. This is especially relevant in cases where one partner has biological ties to the child.
- **Foster Care and Adoption Agencies:** Same-sex couples also have the right to access foster care and adoption services without discrimination based on sexual orientation. Some jurisdictions may have specific laws or regulations to ensure this access.

Divorce Rights:

In India, divorce laws are primarily governed by personal laws based on religion, such as Hindu, Muslim, Christian, and Parsi laws, as well as civil laws like the Special Marriage Act, 1954. These laws do not specifically address the dissolution of marriages between same-sex couples, as the legal recognition of same-sex marriage itself is absent in India. However, the Supreme Court of India, in its landmark judgment in *Navtej Singh Johar v. Union of India* (2018), decriminalized homosexuality and affirmed the fundamental rights of LGBTQ+ individuals. While this judgment was a significant step towards equality, it did not explicitly recognize same-sex marriages or provide guidance on divorce proceedings for such couples. Legal Recognition: Same-sex couples have the same rights to divorce as heterosexual couples in jurisdictions where same-sex marriage is legal. This means they can seek a legal dissolution of their marriage through divorce proceedings.

- **Division of Assets and Debts:** Just like heterosexual couples, same-sex couples going through a divorce are subject to laws governing the division of assets and debts acquired during the marriage. This typically involves equitable distribution, where assets and debts are divided fairly but not necessarily equally.
- **Child Custody and Support:** In cases where the same-sex couple has children, custody and support arrangements are determined based on the best interests of the children. Courts typically consider factors such as parental roles, relationships with the children, and ability to provide care and support.
- **Spousal Support:** Depending on the jurisdiction and the circumstances of the marriage, same-sex couples may be entitled to spousal support (alimony) from their former partners following a divorce.

It is essential for same-sex couples considering adoption or facing divorce to consult with legal professionals who specialize in family law in their jurisdiction. These professionals can provide guidance tailored to the specific laws and regulations that apply to their situation. The legal rights of same-sex couples in adoption and divorce can vary depending on the jurisdiction and the specific laws in place. However, many countries have made significant strides in recognizing the rights of same-sex couples in these areas.

Challenges and Discrimination:

Despite the evolving legal landscape and growing societal acceptance, same-sex couples in India continue to face numerous challenges and discriminatory practices. Adoption agencies, government institutions, and even legal professionals may exhibit bias or reluctance to assist same-sex couples in matters related to adoption or divorce. Moreover, the lack of legal recognition for same-sex relationships creates practical difficulties in accessing various rights and benefits enjoyed by heterosexual couples, such as inheritance rights, spousal benefits, and child custody arrangements. The societal stigma surrounding homosexuality and non-traditional family structures further exacerbates the challenges faced by same-sex couples, often leading to social ostracization, discrimination, and mental health issues.

Legal Reforms and Advocacy Efforts:

Efforts to advocate for the rights of LGBTQ+ individuals and same-sex couples in India have gained momentum in recent years. Activist groups, legal organizations, and civil society movements have been instrumental in raising awareness, challenging discriminatory laws, and advocating for legal reforms. Several petitions have been filed in Indian courts seeking recognition of same-sex marriages, adoption rights, and protection against discrimination. While progress has been slow, each legal victory and precedent set contributes to the gradual expansion of rights and recognition for the LGBTQ+ community in India.

Conclusion:

The legal rights of same-sex couples in adoption and divorce in India are still evolving, reflecting broader societal attitudes and cultural shifts. While significant strides have been made in recent years towards LGBTQ+ rights, challenges persist due to legal ambiguities, social stigma, and institutional barriers. It is imperative for policymakers, lawmakers, and stakeholders to recognize the inherent dignity and rights of all individuals, irrespective of their sexual orientation or gender identity. Legal reforms, education, and advocacy efforts are crucial in ensuring equal rights and protections for same-sex couples in adoption, divorce, and all aspects of family life in India. As the country continues its journey towards greater inclusivity and equality, it is essential to uphold the principles of justice, fairness, and respect for diversity, thereby fostering a more inclusive society where every individual can live authentically and with dignity.