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## Effects of archaic family laws on LGBTQ+ community

### Abstract

This article aims to address the challenges faced by the LGBTQ+ community, in this new era, after the abrogation of section 377 of IPC the colonial law being struck down opened the doors to equality for the transgender community. But is just decriminalizing homosexuality enough? The article focuses primarily on the discriminating archaic family laws and their impact on the sexual minorities.

### Introduction

The LGBTQ+ community faces social prejudice and are subjected to the shame of being their natural selves. Many laws need to be modified and framed taking this large community in consideration.

In India, same sex marriages are not yet legal which prevents homosexual couples from gaining the same status as that in a heterosexual marriage. The society is evolving and thus, the laws should too. As a result of their marriages not being legal, they are not allowed to adopt a child as a couple together and are also not eligible to have a child via surrogacy. The system bases their arguments on the claim that LGBTQ+ couples are still not accepted by the Indian society which makes them an 'inferior' couple and a child can thus not be given to them.

It is hysterical, there are about twenty million orphans in our country and on a rise, but we prefer keeping them in orphanages rather than giving them to a couple who is wanting to have them. The surrogacy laws present, add to worsen the situation further, with the LGBTQ+ couples side lined.

### The transgender persons protection of rights act 2019

The act in its true definition of 'transgender person' mentions them to be any person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone sex reassignment surgery or hormone

therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio cultural identities such as kinner, hinjra, aravani, and jogta. The Act also clearly states that 'family' means a group of people related by blood or marriage or by adoption made in accordance with law. The parents are not generally accepting of their child's sexual orientation or identity under the influence of societal expectations which created a wedge between them. The negative response breaks relationships and often times complete separation takes place. Here, it is important to understand that this, family for the transgender community, goes beyond the blood relations as they are trying to successfully nurture together a community in which they are accepted for their true selves. The other two options for the LGBTQ+ for a family of their own are marriage or adoption which is not legally permitted to the aforementioned community.

### **Marriage**

The LGBTQ+ couples who are willing to get married are asking only for a regular life, along the same lines as the heterosexual couples in the country. Why is the idea of providing them with such a simple basic equality difficult for the society and the government, is hard to understand. The people opposing caught up in their so-called traditions, argue that such an act is immoral and will result in promotion of lust. They believe that it will disrupt the order of nature, they need to understand that sexual orientation or identity is not something a person introduces to himself whenever he wants instead it is how the nature made them to be.

After the decriminalization of homosexuality, being able to be openly gay or lesbian will be not very promising for the people who want to have a family. Marriage should be a symbol of love and such restrictions thus should not be put on them.

The trans genders in our country do not have it easy. In order to get married, the trans men or transwomen have to procure the identity cards of cis-male or cis-female. Such requirements make it difficult for them to feel socially accepted. Trans community has thus been very vocal about the need to have the law accept them just as they are.

### **The Hindu Marriage Act, 1955**

Section 5 of this family law states that the parties of the marriage shall be bridegroom and bride and any other kind of relationship is prohibited.

Marriage holds importance legally because of the rights tagged along with it. The right to maintenance, right to inheritance, right to own joint bank accounts, to nominate each other as nominee in insurance, pension and even for hospital visitation rights. The LGBT+ couples who have a religious ceremony and consider themselves married cannot register their marriage legally which deprives them of all the basic rights a married couple holds as mentioned above.

### **Special Marriage Act, 1955**

In our secular country, Special Marriage Act was brought about to make marriage a state affair but the purpose remains incomplete if the laws are not inclusive of everyone who falls in the required age range. In Section 4 of the act, parties are referred to be opposite sex couples as male and female. Further sections, are in accordance with that. Such laws prevents the sexual minorities to be catered and prevents them from using the law.

During the formation of this act, Rajya Sabha Congress MP from Bihar, Tajmul Hussain raised the topic regarding sex change in marriages. At that time, the issue was not considered relevant and left aside but today, it is of importance and thus is the demand of many who face the problem.

### **Adoption**

Same sex marriages are not legal in India, therefore homosexual couples are not allowed to adopt a child together. The form for adoption contains only male or female and the third option remains missing, thus preventing the intersex people to adopt.

### **The Hindu Adoption and Maintenance Act, 1956**

Section 7 and 8 of the act deals with the capacity of a male Hindu and female Hindu to take in adoption. The conditions for valid adoption in section 14 (3) and (4) for bachelor or unmarried woman that adopt a child states that any wife or husband whom they marry shall be deemed to be the stepmother or stepfather of the adopted child, respectively. However, the same sex couples remain unconsidered here too as the rules do not allow them to do so. The LGBT+ persons who adopt a child are compelled to hide their sexual identity as the existing laws have no provisions whatsoever for them. The same sex couples are not both granted legal rights over the child and the legal parent is considered only the one who adopted. Thus, barring out these couples here too from living normal lives which everyone should have a right to.

The right to legally adopt a child should be made available to serve the purpose of completing a family in true sense, and to provide a better home to the orphans in our country whose number is increasing every year.

### **Surrogacy Regulation Bill 2019**

As the marriages of the LGBT+ couples are not given a legal status, surrogacy is also not made available to them. According to the section 2 (g), couple means legally married Indian man and woman above the age of 21 years and 18 years respectively. The bill provides to allow ethical altruistic surrogacy to the intending infertile Indian married couple between the age of 23 to 50 years and 26 to 55 years for female and male respectively. Thus, excluding people genuinely willing to have a family just because they do not fit in the societal moulds.

### **Right to Equality, Right to Life and Personal Liberty**

Marriage, and being able to become parents and have a family of their own are still a huge issue for the LGBT community. Until and unless, laws regarding marriage and adoption for them come into existence, equality will remain a battle for them. In *Nalsa v. Union of India 2014*, the Supreme Court ruled that the rights and freedoms of transgender people in India we're protected under the Constitution.

The Kerala HC in *Philips Alfred Malvin v. Y. J. Gonsalvis* had held that the right to life included the right of the couple to adopt a child, to make their life meaningful. Then why have we deprived the LGBT+ people from it.

### **Conclusion**

Modern laws need to be put into use which are more inclusive and susceptible to the people and their needs. Overshadowing the needs of minority is not going to take our nation ahead. Hopefully, the lack of LGBT considerate laws will be soon realized and the amended or new ones will treat them as regular people.