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## THE EVOLUTION OF LGBTQ+ RIGHTS IN FAMILY LAW: ADOPTION, MARRIAGE AND PARENTHOOD

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### ABSTRACT

The legal and judicial struggle for LGBTQ rights embodies a relentless struggle against deep-rooted discrimination, social marginalization, and legal restrictions in various jurisdictions. Judgments like *Navtej Singh Johar v. Union of India* and *Obergefell v. Hodges* have undeniably represented crucial turning points in this movement by, respectively, decriminalizing homosexuality and legalizing same-sex marriage. Nevertheless, in spite of these wins, the path to achieving complete legal equality and protection is still victories. LGBTQ individuals persistently confront systemic challenges, such as the refusal of marriage and adoption rights, widespread employment discrimination, and lasting social stigma. The legal recognition to Lesbian, Gay, Bisexual, Transgender Queer and intersex (LGBTQI+) rights in India have been into limelight in the past few years. Nonetheless, the traces can be found in both the Mahabharata and the Bible. According to the writings of the Bible, the entire practice of unnatural sex is viewed as different and acceptable in some respects. The LGBTQI+ community continues to face numerous socio-legal challenges. The courts and the government share a collective responsibility to collaborate and align their efforts to safeguard individuals' rights and uphold their dignity. The Transgender Persons (Protection of Rights) Act, 2019 has also failed to close the gap. This paper deals with the lacuna of the Act, the possible solutions as well as the dire need to change the infrastructure in to make the LGBTQI+ community inclusive.

**KEYWORDS** : LGBTQ rights, homosexuality, employment discrimination, adoption rights, social marginalization, legal equality and protection

### INTRODUCTION

"So long as people face criminalization, bias and violence based on their sexual orientation, gender identity and sex characteristics, we must redouble our efforts to end these violations," [ Antonio Guterr es, UN Secretary General, on 25 September 2018.]The notion of human rights is based on the principle that all people are equal. Each person's dignity and sanctity ought to be respected and honoured. Anything that compromises dignity constitutes a blatant violation, as it undermines the

principle of equality and fosters discrimination. In a society that is already biased against gender, the LGBTQI+ community continually grapples with the intersection of discrimination in its fight for acceptance and equal rights. It is especially difficult for transgender individuals to gain acceptance.

For several years now, the different rights and challenges experienced by the LGBTQI+ (Lesbian, Gay, Bisexual, and Transgender Intersex) community in India have been subjects of activism and discussion. Despite

various progressive rulings in recent years, the LGBTQI+ community continues to encounter significant challenges regarding social inclusiveness, legal recognition at all levels, and access to basic human rights.

A key legal obstacle for the LGBTQI+ community in India was Section 377 of the Indian Penal Code, a law imposed by the British that deemed homosexuality illegal on the grounds that such acts were contrary to the 'order of nature'. This law, which had little significance, infringed upon the fundamental rights of the LGBTQI+ community and exacerbated their social backwardness and discrimination at all societal levels. In 2018, however, the Indian Supreme Court annulled some provisions of section 377, marking a momentous advance in the acknowledgment of LGBTQI+ rights in India. Even with this advancement, the challenges they encounter persist, and the legislation's are not yet fully implemented. While The Transgender Persons (Protection of Rights) Act, 2019 offers fundamental legal protection to the transgender community, significant gaps remain in the law, and discrimination and violence against transgender individuals are still prevalent.

No doubt in the recent times there has been growing recognition of the rights of the LGBTQIA+ For instance, in the year 2018, the Supreme Court of India repealed certain parts of section 377 the Indian Penal Code, which criminalized homosexual acts and declared them as unconstitutional.

### I.I What is LGBTQIA+?

LGBTQIA+ is an umbrella term which is used as an acronym for several gender and sexual identities. Each of the letters used in this acronym stand for one particular identity. The term can be expended as:

•**Lesbian:** This term denotes a woman who experiences romantic and/or sexual attraction to other women. Lesbians can be attracted to individuals who are either born female (cis-women) or those who identify as women

(trans-women). Their attraction does not extend to individuals who are born male or identify as male. Lesbian women experience societal discrimination due to the perception that their relationships are "unnatural" and lack recognition.

•**Gay:** This term refers to a man who has romantic and/or sexual interests in other men. Like lesbianism, the gay community in India continues to face numerous challenges today. Gay men are often surrounded by stereotypes, such as the notion that they exhibit less masculinity.

•**Bisexual:** This term denotes an individual, regardless of gender, who has attractions to both men and women. In India, bisexual people face unique challenges both within the LGBT community and beyond. Numerous stereotypes are associated with bisexuality, including the perceptions that bisexual individuals are more promiscuous and indecisive regarding partner selection.

•**Transgender:** This term is characterized as denoting an individual of any gender, whose biological sex does not correspond to their gender identity. The term 'sex' refers to the biological aspects of a person's gender, which can be either male or female and is determined at birth based on factors such as genitalia and chromosome count. Gender, however, is a distinct term that pertains to a social context. A person's identification can serve as the basis for determining gender.

•**Queer/Questioning:** This term is used more widely and can encompass several identities. It refers to those individuals who either choose not to use the traditional categories of lesbian, gay, bisexual, or pansexual to describe themselves or those who cannot select one of these categories for self-description. They may still be uncertain about their romantic and sexual attraction. In India, "queer" is also applied to individuals who may possess a fluid or non-binary gender identity.

•**Intersex:** This term denotes an individual whose biological traits, including genitalia, do not conform to the conventional definitions of male or female. They could belong to the categories of both genders, or to neither.

•**Asexual/Aromantic:** This addition to the LGBTQIA+ community is relatively new, and the term refers to those who cannot experience sexual or romantic attraction to others. This too is a spectrum, encompassing various other identities including demisexual. In addition to these, numerous other identities fit this category, including pansexual, two-spirit, and others. Nonetheless, due to the comprehensive and diverse nature of this category, it is challenging to cover all these aspects.

## I. Lack of Marriage and Adoption Rights

In many regions globally, a major obstacle encountered by LGBTQ individuals is the absence of legal acknowledgment for same-sex marriages and the refusal to grant adoption rights. Due to these limitations, there are considerable differences in the legal treatment of LGBTQ individuals versus heterosexual couples. This impacts their capacity to obtain fundamental rights and protections that married couples and parents receive.

### II.I Marriage Rights

Marriage equality is still one of the most controversial and divisive topics in the worldwide LGBTQ rights movement. In numerous nations, same-sex couples are either completely prohibited from marrying or encounter legal barriers that hinder their access to the same rights and privileges as heterosexual couples. For LGBTQ individuals, the denial of marriage rights leads to serious repercussions, such as the inability to share legal responsibilities, inherit assets, access spousal benefits, and make medical or financial decisions for their partner during critical moments.

Legal marriage recognition involves more than personal dignity; it also pertains to access to an array of social, economic, and legal benefits. In the absence of marriage rights, same-sex couples frequently find themselves vulnerable in scenarios like healthcare emergencies, property disputes, and financial planning. Moreover, the lack of acknowledgment of legal marriages creates an exclusionary atmosphere, as same-sex couples are regarded as second-class citizens by the law.

Notable victories in the fight for marriage equality have occurred in countries like the United States, where the landmark case *Obergefell v. Hodges* (2015)[ *Obergefell v. Hodges*, 576 U.S. 644 (2015).] led to the nationwide legalization of same-sex marriage. In a similar vein, countries such as Canada and Spain, among others, have acknowledged same-sex marriage as a fundamental right by legalizing it. Nevertheless, a large number of countries—especially those in the Middle East, Africa, and certain areas of Asia—still refuse to grant same-sex couples the right to marry, frequently invoking religious, cultural, or political justifications for their position.

### Adoption Rights

Alongside marriage rights, adoption is another domain where LGBTQ individuals and couples face legal discrimination. In many jurisdictions, even where same-sex marriage is legal, LGBTQ couples are denied the right to adopt children. This limitation implies that same-sex couples are either barred from adopting or must confront extra obstacles and legal difficulties that heterosexual couples do not face.

In many countries, adoption laws continue to operate on the premise that children ought to be brought up in a “traditional” family structure, usually defined as a heterosexual couple comprising one mother and one father. This leads to the perception of same-sex couples as unsuitable or unable to offer a stable environment for children, even though

there is considerable evidence indicating that children raised by LGBTQ parents do just as well as those raised by heterosexual parents.

Some nations have adoption laws that clearly forbid same-sex couples from adopting children. In some cases, same-sex couples are not granted joint adoption rights. This implies that while one partner can adopt a child, the other does not have legal parental rights. Due to this legal ambiguity, children and families may experience instability; for example, in cases of separation, illness, or death, non-biological parents might lack a legal claim to custody or guardianship.

In some countries, there have been encouraging legal advancements, including the allowance of second-parent adoption, whereby the non-biological partner can adopt their partner's child. As an example, the 2015 Obergefell v. Hodges ruling in the United States had an indirect effect on adoption laws by promoting increased acknowledgment of LGBTQ families. Yet, the complete equalization of adoption rights for LGBTQ couples is not universally acknowledged. Countries such as the UK, Argentina, and Canada have made significant progress by allowing same-sex couples to adopt, while many others still fall behind.

### Global Efforts and Challenges

In numerous areas, the battle for equal rights in marriage and adoption continues to persist. LGBTQ rights activists and civil society organizations continue to strive for legislative reforms that would allow same-sex couples to marry and adopt children. In many countries, however, the speed of change has been gradual, and deeply rooted cultural, religious, and political resistance persists in posing considerable obstacles to advancement.

While some international legal frameworks, like the European Convention on Human Rights, have advocated for the legal acknowledgment of same-sex relationships and families, their impact is confined in

certain areas. On the other hand, international human rights organizations such as the United Nations have ramped up their advocacy for decriminalizing homosexuality and acknowledging LGBTQ rights, including marriage and adoption rights. Although these endeavors have attracted worldwide notice, translating these principles into practice poses a considerable challenge, as numerous countries uphold laws that explicitly or implicitly deny LGBTQ individuals the right to marry or adopt.

The continuous struggle for marriage and adoption rights for LGBTQ individuals highlights the larger challenge of attaining complete equality for sexual and gender minorities. As long as these rights are not universally acknowledged and provided, LGBTQ individuals and families will keep encountering legal and societal challenges that impede their ability to live with dignity, security, and equality.

### II.II Discriminatory Laws and Social Stigma

Some of the most enduring obstacles encountered by LGBTQ individuals globally are discriminatory laws and social stigma. These two factors impact not just the personal lives of individuals, but also shape societal attitudes and affect LGBTQ people's access to the same rights and opportunities as their heterosexual and cisgender counterparts. When discriminatory laws and social stigma converge, they foster a climate that marginalizes LGBTQ individuals, leading to serious social, psychological, and economic repercussions. This part investigates the societal and legal dimensions of discrimination against LGBTQ individuals, highlighting the necessity for thoroughgoing reforms.

#### Discriminatory Laws

Discriminatory laws refer to legal frameworks that result in unfair or unequal treatment of LGBTQ individuals due to their sexual orientation or gender identity. These laws are widespread across numerous nations, especially in areas

where LGBTQ rights are lacking development or are directly limited. The importance of law in maintaining discrimination is significant, as laws frequently act as indicators of societal values, shaping public views and affecting how marginalized groups are treated. Below are crucial domains in which laws that discriminate affect LGBTQ people:

### 1. Criminalization of Homosexuality :

The criminalization of homosexual acts is one of the most obvious instances of legal discrimination. Countries across the globe have implemented laws that explicitly criminalize same-sex relationships for many years. These laws were based on cultural, religious, and colonial-era traditions that viewed same-sex relations as immoral, unnatural, or sinful. In certain countries, people who are discovered to participate in consensual same-sex sexual acts can still face imprisonment, corporal punishment, or even the death penalty in extreme cases.

As an example, consensual same-sex relations were criminalized under Section 377 of the Indian Penal Code, but this was reversed only in 2018 due to a landmark ruling in *Navtej Singh Johar v. Union of India*. This decision was viewed as an important advance for LGBTQ rights in India; however, many nations across Asia, Africa, and the Middle East continue to uphold similar laws, frequently imposing harsh punishments on individuals involved in same-sex relationships. These laws force LGBTQ individuals into hiding, fostering a climate of fear and repression that has direct consequences for their mental health and overall well-being.

### 2. Limitations on Marriage and Family Rights

In addition to criminalizing sexual acts, numerous countries have legislation that prohibits same-sex couples from establishing legally recognized relationships. LGBTQ individuals in countries that do not allow same-sex marriage are deprived of essential legal rights, including inheritance rights, tax benefits,

access to healthcare, and parental rights. Due to their equal emotional and social contributions to society, the legal inability to marry or form families often relegates same-sex couples to second-class citizen status.

The inability of LGBTQ individuals to marry results in the denial of joint property rights, which can cause significant financial instability for couples, especially when one partner dies or becomes incapacitated. In addition, numerous jurisdictions fail to acknowledge the adoption rights of same-sex couples. This lack of recognition prevents these couples from legally becoming parents and safeguarding the welfare of children raised in same-sex households. These limitations bolster the notion that same-sex relationships are lesser than heterosexual ones, while also adding to the social and legal invisibility of LGBTQ families.

### 3. Employment and Anti-Discrimination

Laws Although numerous countries have established anti-discrimination laws aimed at safeguarding individuals against biases related to race, gender, and disability, protections for sexual orientation and gender identity are frequently absent. Lacking targeted legislation that shields LGBTQ individuals from employment discrimination leads to a prevalence of job dismissals, promotion refusals, and harassment in the workplace. In certain nations, it remains legal to terminate the employment of LGBTQ individuals on the grounds of their sexual orientation or gender identity. This practice contributes to their economic vulnerability and marginalization.

This absence of employment safeguards also applies to the wider public sector, encompassing healthcare, education, and housing. Due to their gender identity or sexual orientation, individuals who identify as LGBTQ frequently experience rejection or exclusion from these vital services. In countries where some protections are in place, enforcement is still inadequate, and many LGBTQ individuals experience discrimination with limited options for justice.

## Social Stigma

Alongside legal discrimination, the social stigma faced by LGBTQ individuals greatly contributes to the continuation of inequality and the formation of hostile environments. Social stigma encompasses the negative attitudes, stereotypes, and prejudices that society directs toward individuals who do not adhere to traditional norms of sexuality and gender. This stigma appears in multiple ways, ranging from blatant discriminatory actions like violence or exclusion to more nuanced behaviors such as marginalization and microaggressions. Social stigma is often bolstered by cultural, religious, and political institutions, resulting in a deeply rooted and widespread problem.

### 1. Influence on Mental and Physical Health

The psychological impact of social stigma on LGBTQ individuals is deep and extensive. Continuous exposure to discrimination and marginalization can result in various mental health issues, such as anxiety, depression, post-traumatic stress disorder (PTSD), and suicidal thoughts. Research indicates that LGBTQ individuals face mental health challenges at disproportionately high rates, especially those who endure significant social stigma or reside in environments that reject their gender identity or sexual orientation.

Living in a society that stigmatizes can cause stress, which may contribute to various physical health problems, such as substance abuse, eating disorders, and chronic illnesses that are worsened by anxiety and depression. The pressure to conform to heteronormative expectations or to conceal one's true identity can have lasting effects on the well-being of many LGBTQ individuals.

### 2. Rejection by the Family and Exclusion from Society

The rejection of family members is among the most destructive consequences of social stigma. When their sexual orientation or gender identity is revealed, many individuals from the LGBTQ community experience emotional and physical mistreatment from their families.

Family rejection often brings about social exclusion, which can result in homelessness or dependence on unsafe living situations. Studies indicate that LGBTQ youth are especially susceptible to rejection and are more prone to homelessness compared to their heterosexual peers. This endangers LGBTQ individuals' long-term prospects for education, employment, and emotional support while also exposing them to the risk of violence and exploitation.

In certain cultures, LGBTQ individuals are viewed as a source of shame for their families or communities, leading to isolation that can severely impact their psychological well-being and personal growth. LGBTQ individuals often feel compelled to hide their identities or even try to "cure" themselves through dangerous methods, like conversion therapy, due to the fear of being ostracized. This practice has been widely denounced by medical professionals and human rights organizations.

### 3. Violence and Hate Crimes

The stigma experienced by LGBTQ individuals is also reflected in acts of violence and hate crimes. LGBTQ individuals face a higher risk of being targeted for physical and sexual violence, often perpetrated by strangers, relatives, or members of law enforcement. In certain nations, laws against hate crimes do not cover sexual orientation and gender identity, which results in a lack of legal protection and recourse for LGBTQ individuals who are victims of violence. In areas that have laws against hate crimes, the social stigma surrounding LGBTQ individuals can still make it challenging for victims to report offenses or pursue justice.

Many LGBTQ individuals avoid public spaces, social gatherings, and even seeking medical care due to the fear of being victimized because of their sexual orientation or gender identity. LGBTQ individuals' ability to engage fully in society is hindered by this unremitting threat of violence or discrimination, which intensifies their feelings of insecurity.

4. Intersectionality and Discriminatory Laws For LGBTQ individuals, the effects of discrimination are frequently exacerbated by intersectional factors such as race, gender, class, and disability. Individuals who identify as LGBTQ and also belong to marginalized racial, ethnic, or religious groups frequently encounter heightened levels of discrimination and bias. As an illustration, individuals from the LGBTQ community who are also people of color may face discrimination based on both their race and sexual orientation. This dual vulnerability can heighten their risk of violence, harassment, and social exclusion. For transgender individuals, the overlap between their gender identity and societal expectations of masculinity and femininity often leads to increased stigma and discrimination. Transgender individuals, particularly those of color, are more likely to encounter violence—ranging from physical attacks to homicide—and they frequently confront major obstacles in obtaining healthcare, finding work, and accessing legal safeguards. It is crucial to consider intersectionality in the struggle for LGBTQ rights so that all people, irrespective of their various identities, receive equal treatment and respect.

### III.III Violence, Hate Crimes, and Police Brutality

Violence, hate crimes, and police brutality are significant problems impacting LGBTQ individuals globally. Such abuses are frequently committed by individuals or collectives who aim at LGBTQ individuals due to their gender identity or sexual orientation. In many instances, the legal framework does not safeguard LGBTQ individuals from this kind of violence, resulting in many offenders evading punishment. Moreover, law enforcement agencies that do not address these abuses or even contribute to them can cause additional harm to LGBTQ individuals. This section explores the legislative shortcomings in hate crime protection for LGBTQ individuals and the role of law enforcement in safeguarding LGBTQ safety.

#### Legislative Shortcomings in Safeguarding Against Hate Crimes:

Although numerous nations have enacted laws aimed at safeguarding their citizens from violence and discrimination, individuals in the LGBTQ community frequently lack sufficient protection against hate crimes. A hate crime refers to a criminal act driven by bias against an individual's identity or social group, which encompasses sexual orientation and gender identity. In numerous jurisdictions, hate crime laws either do not explicitly include LGBTQ individuals or lack the enforcement mechanisms needed to effectively address these crimes.

#### Inadequate Legal Frameworks:

A significant legislative void is the lack of laws that specifically target crimes driven by hatred toward LGBTQ individuals. Some nations have made considerable progress in revising their criminal codes to incorporate sexual orientation and gender identity as protected categories in hate crime laws. However, other countries still do not possess comprehensive legislation that addresses the specific vulnerabilities of LGBTQ individuals. As an illustration, in numerous regions globally, hate crimes are frequently classified under broader laws without taking into account the particular motivations for these acts. This lack of specificity can weaken initiatives aimed at ensuring that LGBTQ victims receive suitable legal protection and justice.

#### Gaps in Data Collection and Reporting :

The absence of thorough data on hate crimes aimed at LGBTQ individuals is another factor that contributes to legislative gaps. In numerous jurisdictions, law enforcement agencies either do not collect data on hate crimes or do so inconsistently, which complicates the assessment of the problem's extent. This absence of data hampers the ability of legislators and human rights groups to discern abuse patterns and devise effective plans for combating hate crimes.

#### Discriminatory Legal Practices:

In certain nations, the legal framework itself maintains violence and discrimination against LGBTQ individuals. When handling cases with LGBTQ victims, courts might show bias due to

an insufficient awareness of the specific difficulties encountered by LGBTQ individuals or because of explicit bias. Legal practices of this kind contribute to the phenomenon of hate crimes being underreported and to the fact that offenders are not prosecuted. Moreover, many LGBTQ victims may hesitate to report hate crimes due to the fear that the legal system will not take their claims seriously or that they will face discrimination from law enforcement and the judiciary.

#### IV. Comparative Analysis of LGBTQ Rights in Different Jurisdictions

##### India vs. United States, United Kingdom, and European:

Nations In this section, the legal status and treatment of LGBTQ individuals are compared across various jurisdictions, with a focus on India, the United States, the United Kingdom, and several European countries. The contrast emphasizes the advancement of LGBTQ rights and the ongoing disparities across various regions globally.

##### Marriage Equality and Family Rights

India: In India, same-sex marriage remains legally unrecognized, even after the landmark 2018 Supreme Court ruling in *Navtej Singh Johar v. Union of India* that decriminalized homosexuality. There is still considerable debate about same-sex marriage in India, and the government has yet to pass legislation recognizing such unions. While the judiciary has indicated a willingness to revisit the issue, no definitive actions have been undertaken to legalize same-sex marriage. Family rights, such as adoption, inheritance, and healthcare benefits, are impacted by the absence of legal recognition.

United States: Conversely, after the Supreme Court's 2015 decision in *Obergefell v. Hodges*, the United States established nationwide marriage equality. This groundbreaking ruling permitted same-sex marriage in all 50 states, guaranteeing that same-sex couples enjoy the same legal rights as heterosexual couples

regarding marriage, adoption, inheritance, and healthcare. The rights of families have been broadened to encompass the rights of same-sex parents and their children, covering aspects such as legal parentage, child custody, and benefits like tax deductions and social security.

United Kingdom: Same-sex marriage was legalized in England and Wales in 2014, Scotland followed suit in 2014, and Northern Ireland did so in 2020. In the UK, same-sex couples have the same rights as heterosexual couples, which encompass adoption, joint parenting, and inheritance rights. Nevertheless, despite the acknowledgment of marriage equality, challenges persist concerning LGBTQ family rights, particularly in areas like surrogacy and assisted reproduction, where legal gaps affect same-sex couples.

European Nations: The acknowledgment of same-sex marriage varies greatly across Europe. In the early 2000s, nations such as the Netherlands, Spain, and Sweden were pioneers in legalizing same-sex marriage, thereby granting LGBTQ couples comprehensive family rights. Numerous other European countries, including France, Germany, and Finland, legally recognize same-sex marriages or civil unions, thereby offering comparable family rights. Nonetheless, certain European nations, such as Poland and Hungary, do not recognize same-sex marriage, and LGBTQ rights encounter considerable difficulties.

#### V. CONCLUSION

In 21st century India, while homosexuality is undoubtedly more accepted than in the past, with representations in films, web series, and various other venues, the acceptance of this orientation within families, schools, and educational institutions remains a persistent struggle. Individuals still face challenges regarding their sexual choices and the freedom to express their gender identity without resistance.

while the contribution of social media platforms to awareness-raising has been lauded globally, the situation appears more advantageous for

gay men than for transgender individuals or lesbian women. Here, too, gender inequality can be observed.

Due to the growing prevalence of Pride parades—backed by numerous celebrities nationwide—the government’s embrace of these events, and the emergence of related Twitter hashtags, families residing in rural areas have developed their own strategies for engaging with the LGBTQI+ community. In cases where a trans person reveals his identity or a man declines to marry a woman, there have been instances of covert honor killings. Furthermore, it can be classified as a disease or deformity in severe cases.

In fact, it is not easy to break the chains of patriarchy and uphold the foundational principle of equality that the constitution has sought to establish since its inception. These inflexible societal and cultural standards determine the terms of education, career choices, and marriage preferences. In a country where normal heterosexual acts are not accepted and marriage is dictated by caste structure, same-sex marriage has a long way to go. Even when families embrace their identities, acceptance is not absolute; instead, there are countless restrictions. They are compelled to hide their identity, conform to specific dress standards, and in extreme cases, marry within a conventional structure without revealing their true identity. When family support is lacking, platforms such as Gaysi, Gaylaxy, and Queer Ink have played a vital role by establishing spaces for LGBTQI+ communities to connect, express their vulnerabilities, and work together to raise awareness and educate the public.

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