

Examining the Legal and Social Challenges Faced by Same-sex Couples in Adoption and Surrogacy in India

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Abstract

This paper examines the legal and social challenges faced by same-sex couples in adoption and surrogacy in India. Despite recent legal and social changes, same-sex couples in India still encounter significant barriers in accessing adoption and surrogacy services. This paper provides a comprehensive analysis of the legal framework governing adoption and surrogacy in India and explores the barriers that same-sex couples face in accessing these services. Through a review of existing literature and legal cases, the paper highlights the various legal and social challenges that same-sex couples encounter, including discriminatory laws, a lack of awareness and acceptance, and stigma and discrimination. The research also examines the potential solutions to address these challenges, including legal reform, awareness campaigns, and support for same-sex families. By highlighting the legal and social barriers to adoption and surrogacy faced by same-sex couples in India, this paper aims to contribute to ongoing efforts to promote equality and human rights for all individuals and families.

Keywords: Adoption, discrimination, equality, human rights, legal challenges, LGBTQ+ rights, same-sex couples, social challenges, surrogacy

INTRODUCTION

India has a complex legal and social landscape when it comes to same-sex relationships and family formation [1]. While homosexuality was decriminalized in India in 2018, there is still a significant lack of legal recognition and protection for same-sex couples. This lack of recognition extends to adoption and surrogacy, where same-sex couples face numerous legal and social challenges in their pursuit of parenthood.

The aim of this study is to examine the legal and social challenges faced by same-sex couples in adoption and surrogacy in India. The legal framework governing adoption and surrogacy in India is complex, with different laws and policies impacting the ability of same-sex couples to access these services. Discriminatory laws and policies, a lack of legal recognition of same-sex relationships, and limited access to legal support are just some of the challenges faced by same-sex couples.

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In addition to these legal challenges, same-sex couples also face significant social challenges in their pursuit of parenthood. Stigma, discrimination, and a lack of awareness and acceptance in Indian society can make it difficult for same-sex couples to form families and raise children. These challenges can have a significant impact on the mental and emotional wellbeing of same-sex couples and their children.

By examining the legal and social challenges faced by same-sex couples in adoption and

surrogacy in India, this article aims to highlight the need for legal reform, awareness campaigns, and support for same-sex families. It also seeks to provide insights into the experiences of same-sex couples who have pursued adoption and surrogacy in India and identify potential solutions to address the challenges they face. Overall, this article aims to contribute to ongoing efforts to promote equality and human rights for all individuals and families, regardless of sexual orientation or gender identity.

OBJECTIVES OF THE STUDY

- To provide an overview of the legal framework governing adoption and surrogacy in India and the specific laws and policies that impact same-sex couples
- To identify the legal challenges faced by same-sex couples in accessing adoption and surrogacy services in India, including discriminatory laws and policies, a lack of legal recognition of same-sex relationships, and limited access to legal support
- To explore the social challenges faced by same-sex couples in adoption and surrogacy, including stigma, discrimination, and a lack of awareness and acceptance in Indian society
- To identify potential solutions to address the legal and social challenges faced by same-sex couples in adoption and surrogacy in India, including legal reform, awareness campaigns, and support for same-sex families.

SIGNIFICANCE OF THE STUDY

The significance of the study “Examining the Legal and Social Challenges Faced by Same-sex Couples in Adoption and Surrogacy in India” lies in its contribution to the ongoing efforts towards achieving greater equality and human rights for all individuals and families, including same-sex couples. Despite the recent legal changes in India that decriminalized homosexuality and recognized the rights of transgender individuals, same-sex couples in India still face significant barriers in accessing adoption and surrogacy services due to discriminatory laws and policies, lack of legal recognition, and social stigma and discrimination.

This study aims to provide a comprehensive analysis of the legal and social challenges faced by same-sex couples in adoption and surrogacy in India, and to identify potential solutions to address these challenges. By providing a better understanding of the specific legal and social barriers that same-sex couples encounter, this study can inform policy and legal reform efforts, awareness campaigns, and support for same-sex families. The study also seeks to amplify the voices and experiences of same-sex couples who have faced discrimination and barriers in their pursuit of adoption and surrogacy in India.

This study has significant implications for the promotion of equality and human rights in India, particularly in the areas of family law and reproductive rights. It is hoped that the findings of this study will inform ongoing efforts to promote legal and social equality for all families, regardless of sexual orientation or gender identity.

AN OVERVIEW OF THE LEGAL FRAMEWORK GOVERNING ADOPTION AND SURROGACY IN INDIA

The laws and policies governing adoption and surrogacy are primarily set out in the Hindu Adoption and Maintenance Act, 1956, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Surrogacy (Regulation) Bill, 2019.

In terms of adoption, the Hindu Adoption and Maintenance Act, 1956, governs adoption within the Hindu community in India [2]. This act lays out the legal requirements for adoption, including eligibility criteria for prospective adoptive parents, the procedures for adopting a child, and the rights and responsibilities of the adoptive parents. However, this act does not specifically address the adoption of children by same-sex couples.

The Juvenile Justice (Care and Protection of Children) Act, 2015, governs adoption for all children in India, regardless of their religion or community [3]. This act sets out the procedures for adoption, including eligibility criteria for prospective adoptive parents, the role of adoption agencies, and the legal

requirements for the adoption process. However, the act does not explicitly allow for adoption by same-sex couples.

In terms of surrogacy, the Surrogacy (Regulation) Bill, 2019, is the most recent piece of legislation governing surrogacy in India [4]. This bill lays out the legal requirements for surrogacy, including eligibility criteria for intended parents and surrogate mothers, the procedures for surrogacy, and the rights and responsibilities of all parties involved. However, the bill explicitly prohibits surrogacy for same-sex couples, single individuals, and foreign nationals.

In addition to the legal framework, there are also various policies and guidelines that impact adoption and surrogacy in India. The Central Adoption Resource Authority (CARA) is a statutory body responsible for regulating and promoting adoption in India, and it sets out guidelines for prospective adoptive parents and adoption agencies [5]. Similarly, the Indian Council of Medical Research (ICMR) sets out guidelines for assisted reproductive technologies, including surrogacy [6]. However, these policies and guidelines do not explicitly address the rights and needs of same-sex couples in adoption and surrogacy.

THE LEGAL CHALLENGES FACED BY SAME-SEX COUPLES IN ACCESSING ADOPTION AND SURROGACY SERVICES

Same-sex couples in India face several legal challenges when accessing adoption and surrogacy services [7]. One major challenge is the discriminatory laws and policies that explicitly prohibit same-sex couples from adopting or pursuing surrogacy. The Surrogacy (Regulation) Bill, 2019, specifically excludes same-sex couples from accessing surrogacy services, while the Hindu Adoption and Maintenance Act, 1956, does not address adoption by same-sex couples [8]. This legal discrimination can make it difficult for same-sex couples to build families through adoption or surrogacy.

Another challenge faced by same-sex couples is the lack of legal recognition of their relationships. Same-sex marriage is not recognized in India, which means that same-sex couples cannot legally adopt as a couple or jointly pursue surrogacy. This can lead to additional legal and administrative hurdles, as same-sex couples may need to navigate the adoption or surrogacy process as individuals rather than as a couple.

Same-sex couples may face limited access to legal support when navigating the adoption or surrogacy process. Lawyers and legal experts who are knowledgeable about same-sex adoption and surrogacy may be difficult to find, particularly in smaller cities and rural areas. This can make it harder for same-sex couples to understand their legal rights and options, and to navigate the legal system effectively.

SOCIAL CHALLENGES IN ADOPTION AND SURROGACY

Same-sex couples in India also face a range of social challenges when accessing adoption and surrogacy services [9]. One of the main challenges is stigma and discrimination based on sexual orientation and gender identity. Same-sex couples may face social disapproval and negative attitudes from their families, communities, and even healthcare providers. This can create a hostile environment for same-sex couples seeking to adopt or pursue surrogacy, and may deter them from pursuing these options altogether.

Another social challenge faced by same-sex couples is the lack of awareness and acceptance of same-sex relationships and families in Indian society. Traditional social norms and religious beliefs often prioritize heterosexual marriage and procreation, and same-sex relationships are often viewed as unnatural or deviant [10]. This lack of awareness and acceptance can make it difficult for same-sex couples to access adoption and surrogacy services, as they may face resistance from social workers, adoption agencies, and fertility clinics who are not familiar with same-sex family structures.

Same-sex couples may face practical challenges in accessing adoption and surrogacy services due to their gender and sexual orientation. Some adoption agencies may prefer to place children with

heterosexual couples, while fertility clinics may not offer services to same-sex couples at all [11]. This can limit the options available to same-sex couples and create additional hurdles in the adoption or surrogacy process.

The social challenges faced by same-sex couples in adoption and surrogacy in India are significant. Stigma, discrimination, a lack of awareness and acceptance, and practical obstacles can all contribute to these challenges. Addressing these issues will require a concerted effort from policymakers, healthcare providers, and society as a whole to create a more inclusive and accepting environment for same-sex couples and their families.

CASE STUDY ON THE EXPERIENCES OF SAME-SEX COUPLES

The experiences of same-sex couples pursuing adoption and surrogacy in India can vary widely depending on the specific legal and social challenges they face. Here are five examples of experiences that highlight some of the issues faced by same-sex couples:

- *Discrimination and rejection from adoption agencies:* A same-sex couple may apply to multiple adoption agencies, only to be met with discriminatory attitudes or outright rejection. They may be told that they are ineligible to adopt because of their sexual orientation or gender identity, or they may be put through a more rigorous screening process than heterosexual couples. This can be a frustrating and emotionally draining experience, as the couple must continue their search for a suitable adoption agency while facing discrimination at every turn.
- *Challenges in the surrogacy process:* For same-sex couples pursuing surrogacy, there may be legal and logistical obstacles to overcome. For example, Indian law requires that at least one parent in a surrogacy arrangement must be genetically related to the child, which can be difficult for same-sex couples who may not have a genetic connection. Additionally, surrogacy arrangements often involve significant financial costs, which can be a barrier for many same-sex couples.
- *Lack of legal recognition for same-sex relationships:* Same-sex couples may face challenges in accessing adoption and surrogacy services due to the lack of legal recognition for their relationships. In India, same-sex marriage is not legally recognized, and there is no provision for civil partnerships or domestic partnerships. This can create confusion and uncertainty around the legal status of the couple and their ability to adopt or pursue surrogacy.
- *Stigma and discrimination from society:* Same-sex couples pursuing adoption or surrogacy may face social stigma and discrimination from their families, communities, and even healthcare providers. This can have a negative impact on their mental health and well-being, and may make it difficult for them to access the support and resources they need to navigate the adoption or surrogacy process.
- *Financial and emotional strain:* Pursuing adoption or surrogacy can be a long and costly process, which can create financial and emotional strain for same-sex couples. They may need to take time off work, hire lawyers or adoption agencies, and pay for medical procedures or other expenses. This can be particularly challenging for couples who face discrimination or rejection along the way, as they may need to continue their search for a suitable adoption agency or surrogate while dealing with the financial and emotional toll of the process.

The experiences of same-sex couples pursuing adoption and surrogacy in India are often shaped by a range of legal and social factors. Addressing these challenges will require a concerted effort from policymakers, healthcare providers, and society as a whole to create a more inclusive and accepting environment for same-sex couples and their families.

POTENTIAL SOLUTIONS TO ADDRESS THE LEGAL AND SOCIAL CHALLENGES

There are several potential solutions to address the legal and social challenges faced by same-sex couples in adoption and surrogacy in India. One solution is to push for legal reform to ensure that same-sex couples have the same rights to adoption and surrogacy as heterosexual couples. This could involve challenging discriminatory laws and policies, and advocating for legal recognition of same-sex relationships.

Another solution is to launch awareness campaigns to educate the public about the challenges faced by same-sex couples in accessing adoption and surrogacy services. These campaigns could help reduce stigma and discrimination, and increase acceptance of same-sex families in Indian society. Support for same-sex families is also important. This could involve providing legal support for same-sex couples seeking to adopt or use surrogacy services, as well as counseling and other services to help them navigate the challenges they may face.

In addition, it may be helpful to provide training for adoption and surrogacy professionals to ensure that they are knowledgeable about the unique needs and experiences of same-sex couples. This could help to ensure that these professionals are better equipped to provide support and assistance to same-sex families. The legal and social challenges faced by same-sex couples in adoption and surrogacy in India will require awareness campaigns, support for same-sex families, and training for adoption and surrogacy professionals. By working together to address these challenges, we can help create a more inclusive and equitable society for all families, regardless of sexual orientation or gender identity.

CONCLUSION

In India, same-sex couples still encounter major legal and societal obstacles when trying to obtain adoption and surrogacy services. Some of the legal obstacles they face include discriminatory laws and regulations, a lack of legal recognition of same-sex partnerships, and restricted access to legal assistance. Additionally, same-sex couples in India face societal obstacles that make it challenging to start families and raise children, including stigma, discrimination, a lack of understanding, and rejection. Possible responses to these problems include equal rights for same-sex partners through legislative reform, public education efforts to dispel stigma, and support services for same-sex families. A more inclusive atmosphere can also be achieved by offering legal assistance, counselling, and training to those involved in surrogacy and adoption.

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