

The Interface between Marriage and Adoption Rights for the LGBTQIA+: A Conservative Approach under the Facade of Practicality?

Jhanvi Shah^{1*}, Diya Vaya²

Abstract

The 21st century India stands at the crossroads of proliferating socio-cultural maturation and adherence to dogmatic notions about social institutions. The horizons of love, unity and togetherness in today's global community have grown and expanded. In stark contrast to such expanding horizons, the LGBTQIA+ community though diverse and growing, remains a stigmatised community. India is home to more than 2.5 million individuals belonging to the LGBTQIA+ community, yet the legal scenario and jurisprudence surrounding them is far from developed. The family laws are obsolete, riddled with ambiguity and lack of clarity. Though homosexuality is decriminalised, the community still struggles for rights as basic as marriage and adoption. This paper aims to establish an interface between marriage and adoption laws vis-à-vis the LGBTQIA+ community in India. Part I of the paper provides a comprehensive understanding of the legal status of the LGBTQIA+ community's marriage and adoption laws in India and internationally. Part II of the paper provides a thorough review of existent literature on the marriage and adoption laws for the community. Part III of the paper provides an understanding of the primary research questions and methodology. Part IV of the paper is a discussion of the findings and prevalent trends along with reforms suggested by the authors.

Keywords: Marriage, Adoption, LGBTQIA, Family Law, Same-Sex Marriage.

INTRODUCTION

Marriage and Adoption Laws are two of the most important fields of family law. Traditional notions perceived marriage as an essentially heterosexual union of two individuals. Up until three years ago, sexual union of non-heterosexual individuals itself was criminalized under Section 377 of the Indian Penal Code. Not surprisingly, almost all the laws pertaining to marriage catered to heterosexual individuals. Similarly, the concept of a non-heterosexual couple adopting a child was and still is so unprecedented that there is no framework of laws that allow a non-heterosexual couple to adopt a child.

The LGBTQIA community, including lesbians, gays, trans, queer, intersex and asexual, is not a novel development in India. Several ancient Hindu texts not only mention but encourage homosexuality. King *Bhagiratha* of the *Ikshvaku* dynasty was said to be born post sexual union between King *Dilip's* two Queens [1]. Legends also talk about Hindu gods that were hermaphrodites or changed their gender [2]. Similarly, transgenders were accepted in India as the 'third gender' and were referred to as '*napunsakling*' and '*tritya prakriti*' [3]. Various temples also depict erotic non-heterosexual unions between individuals on their walls and pillars. Therefore, one can safely deduce that the LGBTQIA

*Author for Correspondence

Jhanvi Shah
E-mail: jshah032001@gmail.com

Student, Gujarat National Law University, Gandhinagar,
Gujarat, India

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community was at the very least accepted in the society as natural, if not encouraged. However, post *Manusmriti*, such relationships were viewed with suspicion and suggest various punishments for the same. The same legal position evolved through Mughal Empire, acquired a concrete form in the Colonial India and was carried on the independent India. Naturally, as a marital union between such people was not only prohibited but also criminally punished, there were no laws whatsoever that allowed such people to adopt children. Even with the decriminalization of consensual sex between the LGBTQIA couples, there is much more to be achieved to reach the stage where we duly accept the community in the society. In the words of Justice Chandrachud in *Navtej Singh Johar v. Union of India*, “righting this wrong requires much more than just decriminalization. It is about heeding to their demands of wanting to live with dignity”.

THE LEGAL STATUS OF MARRIAGE IN THE LGBTQIA+ COMMUNITY IN INDIA

Marriage refers to a legally and socially accepted union of two spouses and establishes rights and obligations between the spouses and any child/children they might bear. Sexual union of sexual minorities in Independent India was not only unrecognized but criminalised under Section 377 of the Indian Penal Code. While some portions of it were deemed to be unconstitutional by the judgement of *Naz Foundation v. Govt. of NCT of Delhi* [4], the same was overturned in *Suresh Kumar Koushal v. Naz Foundation* [5]. However, in *Navtej Singh Johar v. Union of India* [6], the Supreme Court authoritatively laid down that Section 377 in so far as it applies to consensual sex between same-sex couples is unconstitutional. However, the struggle for the LGBTQIA community’s rights does not end with the decriminalization of sex between same-sex couples. Equality and liberty include much more than that. It also includes the right to live a life with dignity and with all such privileges that are enjoyed by the rest of the people. One of these is the right to marry a person of their own choice.

The laws regulating marriage among the different communities in India include the *Hindu Marriage Act 1955*, the *Special Marriage Act 1954*, the *Muslim Personal Law (Shariat) Application Act 1937*, the *Indian Christian Marriage Act 1872* and the *Parsi Marriage and Divorce Act, 1936*. Albeit neither of them expressly prohibit marriage among the LGBTQIA community, all the acts by using words such as “Bridegroom” and “Bride” [7], “Husband and Wife” [8], “Male and Female” [9], “Females” and “He” [10], “Man and Woman” [11] and “Parsi husband and Parsi Wife” [12] implicitly intend to regulate only cis heterosexual marriage and do not capture the concept of same-sex marriage or marriage among transgenders and pansexuals. Such notions of marriages are imbued with outmoded values of patriarchy and heterosexuality. This lack of legal recognition of a union of sexual minorities further deprives them of a wide range of legal benefits such as inheritance, maintenance, pensions, adoption, etc. Despite the fact that essential features of marriages entered into by sexual minorities are very similar to heterosexual marriages [13], the State by recognizing only one of them violates the Right to Equality [14] and the Right to equal opportunities to Sexual Minorities [15]. Further, the right to choose one’s own marital partner is an extremely personal decision and protected by the Personal Liberty granted by Article 21 and therefore, the state should not have a say in the same as this would blur the distinction between the personal and public domain in a society.

In conclusion, while the decriminalization of consensual sex between same sex couples is a laudable step, there is much more to be achieved.

THE LEGAL STATUS OF ADOPTION IN THE LGBTQIA+ COMMUNITY IN INDIA

Adoption is essentially the act of a parent/parents legally taking another child and raising it at one of their own. Adoption under the Hindu, Sikh, Jain and Buddhist community is governed by the *Hindu Adoption and Maintenance Act, 1956* [16]. However, Adoption under the Muslim, Parsi, Jew and Christian Law is not recognized in concrete such forms and therefore, such communities are governed under the *Guardianship and Wards Act, 1890* and the provisions of *Juvenile Justice Act* is said to prevail over all laws. However, it is pertinent to note that merely being appointed as guardians is not the same as adopting a child in terms of both parental rights and child rights, inheritance rights, permanency and process.

While the *HAMA* does not expressly prohibit adoption of children by the LGBTQIA community, it uses palpably heterosexual and cis terms such as Hindu Male and Hindu Female with respect to parents and therefore construes marriage as essentially a heterosexual union and does not include any provision allowing a transgender to adopt children. Further, as marriage between the LGBTQIA community is prohibited, the only way in which members of the LGBTQIA community can adopt children under the *HAMA* is if they are unmarried.

It is also pertinent to note that the *Adoption Regulations Rules, 2017* also prohibit the adoption of children by a couple that has not had two years of stable marital relationship [17]. However, since their community is not vested with marital rights, the concept of an LGBTQIA couple adopting a child is not captured by the Regulations. Further, the guidelines laid out by the *Central Adoption Resource Authority* [18] explicitly prevent couples in live-in relationships to adopt a child. Therefore, the only resort left for the LGBTQIA community to adopt children is adopting as an officially single man or woman. However, here too, by allowing only single unmarried males and females to adopt [19], transgenders are deprived of their right to adopt a child of their own. Furthermore, the CARA pursuant to an application filed by the parents to the Specialized Adoption Agencies sends a social worker under the Agency to prepare a Home Study Report of the Prospective Parent/Parents [20] which shall serve as the basis of their eligibility to adopt a child all over the country. However, the LGBTQIA is often forced to hide their sexuality and sexual identity in front of these workers as such social workers are often reluctant to give such out and proud members an adequate report.

Lastly, the *Juvenile Justice (Care and Protection of Children) Act, 2015* while providing guidelines for the general principles of care and protection of children states that the “Principle of best interest” [21] shall be followed in order to help the child develop a full potential. However, such principles of “best interest” are subject to individual discretion and hence vulnerable to arbitrariness.

INTERNATIONAL PERSPECTIVE ON MARRIAGE AND ADOPTION RIGHTS FOR THE LGBTQIA+ COMMUNITY IN INDIA

The progress of marriage rights for the individuals belonging to the LGBTQIA+ community in the international legal sphere, is the greatest testimony to the global consensus that each individual should have the right to choose his partner. There are currently thirty countries wherein LGBTQIA+ marriage is legally recognised [22]. Interestingly, *Costa Rica* [23] and *Switzerland* [24] recognised same-sex marriages in 2020, while the pandemic was in full motion. An important trend that has been noticed in this arena, is the focus on non-discrimination and non-violence before punishing for marriage equality. A gradual building of consensus is the need of the hour [25]. A comparative analysis of the status of same-sex marriage in the country indicates the progress of traditionally conservative nations such as Israel as well, wherein there is 49% support for same-sex marriages [26]. Various international agencies, including the UNHCR, European Court of Justice, Inter-American Court of Human Rights have passed landmark judgements and called upon nation states to recognise marriages, irrespective of the sexual orientation of the parties [27]. Universal Declaration on Human Rights also provides for a gender-neutral right to marriage [28]. In light of these developments, India has to allow gradual progression since its historical decision of decriminalisation of homosexuality. For a country who prides itself on being the biggest democracy in the world, it is only natural to allow individuals the freedom to choose how to live their lives. It is pertinent to ensure that the momentum is not lost.

Furthermore, the dynamic and inherent interdependence between marriage and adoption rights is clear. It is clear that if Governments across the world recognise same sex marriages, the lives of abandoned, orphaned and destitute children will improve significantly [29]. Although forty countries recognise same sex adoptions [30], there is not much international discourse of legal jurisprudence on this issue. Same-sex adoptions have the capability of changing the lives of millions of children. India, being a nation of a huge population, this can be a pragmatic solution to the plight of children who may have destitute lives ahead of them.

RECENT DEVELOPMENTS IN INDIAN FAMILY LAW JURISPRUDENCE

With the increasing normalisation of the LGBTQIA+ community in the recent era, demands for recognition and liberty are accompanied by a growing support for them across the nation. It is now more pronounced than ever that the right to marriage and adoption are basic rights and liberties that must be available to every citizen notwithstanding their sexuality and gender. In response to this consensus, it is imperative for the present government to take appropriate actions and legislations to grant the community what should rightfully be enjoyed by all citizens of India. However, the current attitude of the Centre is far from what one would expect out of an ideal government.

Recently in 2021, the Delhi High Court was presented with three different petitions for the recognition of same-sex marriages [31] to which the Court issued a notice to the Central Government and sought replies from the Ministry of Home Affairs. The Centre in its reply opposed the same by stating that ‘personal liberty’ under Article 21 is subject to the procedure established by law. It further stated that the concept of individuals of the same sex residing together is incomparable with the Indian concept of a family. It is opposed to the sanctity of Indian Marriages that depend upon age old customs and societal values. What the government failed to note here was that homosexuality was a phenomenon that was very well prevalent in the ancient times as well. With respect to the erosion of ‘public private distinction’ that is a prerequisite to any civil society, the Centre opined that there existed a ‘legitimate state interest’ in limiting the recognition of marriages to heterosexual marriages. The centre also boldly made an attempt to ascertain the ‘intent’ of the Court that went into the decriminalisation of Section 377 by stating that in *Navtej Singh Johar* [6], the court had merely decriminalized a particular act by homosexuals and in doing so it neither intended to nor in fact legitimised that particular conduct.

Recently, the Lok Sabha also passed The Surrogacy (Regulation) Bill, 2019 that allows only infertile couples married for at the very least more than five years to perform surrogacy [32] and does so by using wordings that are explicitly heterosexual. This impliedly prevents same sex couples, transgenders as well as single parents to perform surrogacy and provides a complex set of government certifications to finalize the process. However, this bill too has received widespread criticisms not only for depriving the LGBTQ community of their right to bear a child of their own but also for not respecting a woman’s basic rights over her own body.

REVIEW OF LITERATURE

A comprehensive review of the existing literature on the LGBTQIA community indicates certain pre-dominant trends and major factors regarding legal rights for the LGBTQIA.

First, that there exists a correlative relationship between Positive Laws for sexual minorities, their health and well-being and social stigma. Restrictions on same-sex marriages not only reflect but reinforce the social stigma at personal, interpersonal, and community levels [33] and equal marriage rights for same-sex couples under national laws or regulations reflect a sign of reductions in institutional stigma [34]. Hence, marriage equality is linked to a variety of positive effects on the social and psychological well-being of the LGBTQIA. The prevalence or absence of prejudice in interpersonal relationships as well as in the wider political and social context boosts or hinders these rights.

Second, that there is a nationwide need for equal marriage. There is a strong need to establish equality in same-sex marriages in order to uplift sexual minorities. The human rights of the LGBTQIA community have come into closer emphasis in recent decades, and various journals, pieces, studies, and books have been published that deal with the LGBTQIA community's rights and issues. In a study conducted in the year 2018 by Revathi and Pandiraj [35], it was observed that the Government should pass a legislation for the marriage of the LGBTQIA people.

Third, that the legal rights of LGBTQIA are inherently connected to social attitudes and prejudices. Research also indicates that right legal rights of sexual minorities are undoubtedly connected to the

attitudes of the people. Without an attitudinal change of people, demands for social equality are far from over, regardless of their constitutional status citizens of India [36].

Fourthly, the social media community in India is staunchly in support of LGBTQIA rights. According to a Research study conducted by Aparup Khatua [37], most Indian twitter users were in support of the LGBT community and stand for their equality, justice and human rights. Immediately after Joseph Shine judgement, social media platforms were flooded with multiple hashtags including #Section377, #377verdict, #LoveIsLove, #LoveWins, #LGBT, #IndiaRejects377, #377Scrapped, #IndiaForGayRights and so on. Only a small number posts oppose their recognition on the grounds of Indian Culture, Rites and Traditions. Further, most of these are the younger generation opening up and are talking about such issues.

Fifthly, a major consequence of not extending adoption right to these members and thereby depriving them of child bearing is the uncertainty of their future in the old age. Older people from the LGBT community mostly live alone and experience physical health problems, which ultimately make them vulnerable to the severe complications from deadly COVID-19 [38]. Apart from the absence of healthcare, employment, housing and other such domains, discrimination by healthcare providers and caregivers eventually put them at greater risk.

Sixth, a study conducted by Deni Mazrekaj et. al [39] also shows that Children raised by same-sex couples are likely to outperform the children raised by heterosexual couples at the academic level. Therefore, the sexuality and gender of the parents have no bearing whatsoever on the academic development of the child.

Seventh, while the LGBTQIA community is not allowed to adopt, the number of orphans in India are increasing day by day. Though the number of orphans in India are more than 20 million [40] the community are still not given the rights to adopt.

Gaps in Research: An analysis of the research papers, articles and studies on the LGBTQIA community and their rights reveals some gaps in research. First, while there seem to be studies on the opinions of LGBTQIA community and social media platforms, there does not seem to be any recent survey (including aspects such as the language of Indian legislations and the attitude of the centre) conducted on the perspective of the Indian Demographic in general. Second, there lacks adequate research on the prudent way to tackle the problem of the absence of laws regulation marriage and adoption laws of the LGBTQIA community. In other words, there is an ambiguity on whether the words in Legislations should be interpreted gender neutrally or whether there should be a separate legislation for the LGBTQIA Community. As researchers, we hope that we can justify our aims, objectives, hypothesis, review and research and add on the existing pool of academic literature.

STATEMENT OF PROBLEM

The contemporary world is witnessing a culmination of social, cultural, familial and political maturation. In such a scenario, the LGBTQIA+ community is still denied the freedom of choice, expression and the basic recognition that every individual is worthy of. The statement of problem of this paper is to, **First**, establish the status of existing and interlinked laws of marriage and adoption vis-à-vis the LGBTQIA+ community in Indian family law. **Second**, to trace the ambiguities in the laws and to suggest well-researched and pragmatic reforms for the same. **Third**, to examine the existent trends and perspectives of the Indian demographic on LGBTQIA+ marriage and adoption laws.

AIMS AND OBJECTIVES

The primary aim of the paper is to examine the existent marriage and adoption laws for the LGBTQIA+ community in India and suggest reforms to the same. The aims and objectives of this paper can be further divided into **five prongs**:

1. To examine the existent marriage and adoption laws vis-à-vis the LGBTQIA community in India.

2. To present a comparative analysis of the Indian laws with the laws existent internationally.
3. To map the ambiguities in the existent laws and present pragmatic reforms for the same.
4. To analyse and perspective of the Indian demographic comprised of all age groups and establish trends.
5. To provide a comprehensive analysis of the trends and link the findings with the existent literature, to arrive at a conclusive perspective.

RESEARCH QUESTIONS

The research questions of this paper are:

- Is the LGBTQIA+ community a new phenomenon in Indian jurisprudence?
- What are the laws regulating marriage and adoption vis-à-vis the LGBTQIA+ community in India and internationally?
- What are the ambiguities in the laws that require immediate attention and reformation?
- What are the practical reforms that can address the existent ambiguities in the laws?
- Does the Indian treatment of the LGBTQIA+ community a dogmatic approach?
- What is the perspective of the Indian demographic and the emerging trends in the marriage and adoption laws of the LGBTQIA+ community?
- Is there a link between the existing literature and the findings established in the paper?

HYPOTHESIS

The hypothesis of this paper is- *The contemporary laws regulating marriage and adoption vis-à-vis the LGBTQIA+ community are backward and ambiguous and need immediate reformation.*

RESEARCH METHODOLOGY

Research Design with Justifications

Research design is a blue print or an outline of the entire research study. The present study is a combination of **descriptive**, **exploratory**, **qualitative** and **quantitative** methods of data collection.

Descriptive research describes the characteristics of the population that it studies. In the present research, authors have aimed to understand the various characteristics associated with the Indian demographic spread over different genders and age groups and drawn the conclusion based by observing the trends from pre-existing research. Further, the main aim is to identify characteristics, frequencies, trends, correlations, and categories for which descriptive method is the most suitable. **Exploratory research** is a preliminary study of an unfamiliar problem with little data available. Here, the same is used as there is no clear-cut research done on the subject matter of the interlink between marriage and adoption laws for the LGBTQIA+ community in the Indian family law jurisprudence and the current perspective of the Indian demographic on the same. **Cross-Sectional research design** has also been adopted, because the study comprises of participants from diverse age groups and genders studied at a single point of time. Furthermore, it is an attempt to comprehend and provide a thorough purview of the participants views on the subject and a number of comprehensive outcomes will be researched all at once. This study can be used as a starting ground for further research. **Qualitative research method** is also used as data from information from journals, newspaper articles, websites will be analysed. **Quantitative research method** has been employed through surveys. In the present research, data is collected and analysed through a survey of 70 individuals, belonging to diverse backgrounds, age groups, genders and sexualities.

Sources, Methods and Tools of Data Collection

This research paper involves a combination of **primary and secondary data**. Primary data collected from structured questionnaire and other secondary data from sources such as books, journal articles, newspaper articles, websites and reports. Further, as mentioned above, the paper consists of a mix of data collected from **qualitative and quantitative** methods to provide a comprehensive analysis of laws regulating familial matters of the LGBTQIA+ community.

Tools of Data Collection

Survey

Survey research tool is used “*to answer questions that have been raised, to solve problems that have been posed or observed, to assess needs and set goals, to analyse trends across time* [41]. The aim of the survey method in this research paper is to gain an overview of the perspective of Indians of diverse backgrounds and age groups, to examine their prevalent opinion on the marriage and adoption laws of the LGBTQIA+ community and the overall treatment of the community in India. This data will be analysed and interpreted in light of the existing research to draw conclusive trends. The sample size of **Seventy (70)** individuals have participated in the study and sampling method is convenient and snow-ball sampling.

Secondary data

In this study secondary data is collected through the archival method is used to analyse pre-existing research on the topic in journals. We have used this method to analyse existent research articles in journals, websites, reports by the government, white papers, commentaries by established authors, books and newspaper articles. Through a comprehensive evaluation of the existing research, we present a comparative analysis and establish existent trends and perspectives.

Scope and Significance of Study

The scope of this study can be divided into two aspects:

1. This study aims to analyze the status of the LGBTQIA+ community in India, the dynamic that exists between the community and marriage and adoption laws, the international standing and the existing trends.
2. The study further aims to circumference the notions and opinions on various aspects of marriage and adoption laws vis-à-vis the community. Hence, the scope of this study involves understanding and analyzing the opinions of a random sample of 70 participants belonging to varied age groups and genders.

The significance of the study is vast and of a contemporary nature. India is a fast-paced nation, with changes in our outlook and laws occurring continually. In such a scenario, our treatment of the LGBTQIA+ community and subsequent regulation through laws is still in an unfortunate situation. The decriminalization of homosexuality was a laudable step, but if further development does not take place then the progression is of no fundamental nature. In this study, we aim to examine the actual perspective of Indians, from various age groups on how to regulate marriage and adoption of the community. There are millions of destitute children in India, if there is a possibility of a child getting a happy home, should the sexual orientation of the parent be a primary obstacle? Is sexual identity a consideration in giving individuals basic human rights and recognition? Are Indians still against homosexuality? Through an examination of the international laws, we aim to provide a roadmap and a possible solution to balance interests. The existing literature is used to compare and establish trends, thereby allowing the law makers to move in line with the actual perspective of Indians on the topic. Hence, the contemporary significance of the subject is apparent and real.

DISCUSSION

The following analysis and interpretation of the responses received in the survey presents a very interesting picture of the perspective of the Indian demographic in relation to the marriage and adoption laws vis-à-vis the LGBTQIA+ community in India.

Figures 1, 2 and 3 present the diverse backgrounds of the respondents. Majority of the respondents belong to the 20-30 age group, female and heterosexual category. However, a significant percentage of respondents are male and belong to the below 20 age group. Many of the are unsure of their sexuality or prefer not to divulge details. This aspect is interesting as even today individuals are exploring their identities and establishing their sexualities.

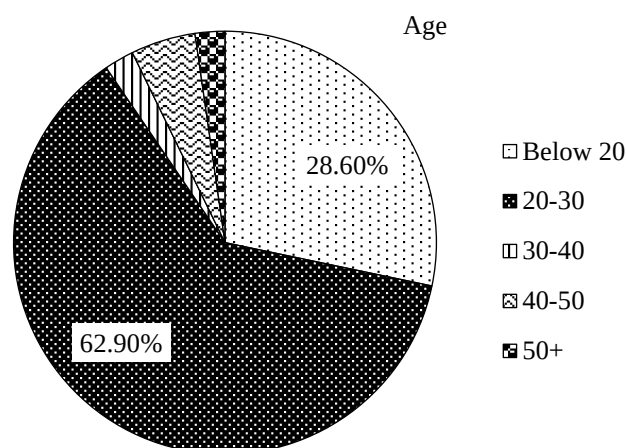


Figure 1. Depicting the age group of the survey sample.

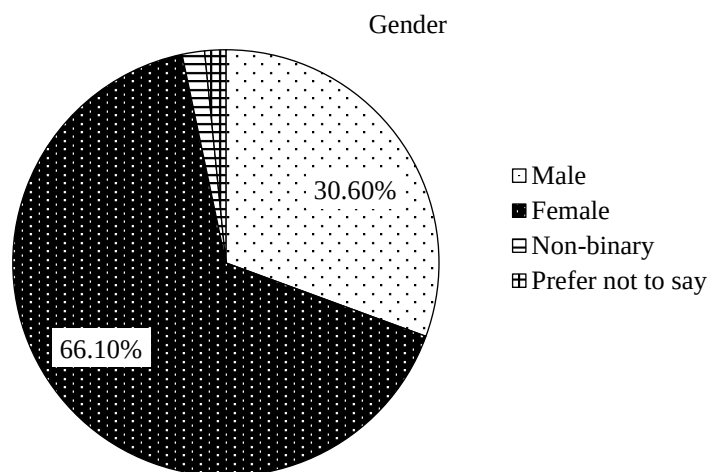


Figure 2. Depicting the gender of the survey sample.

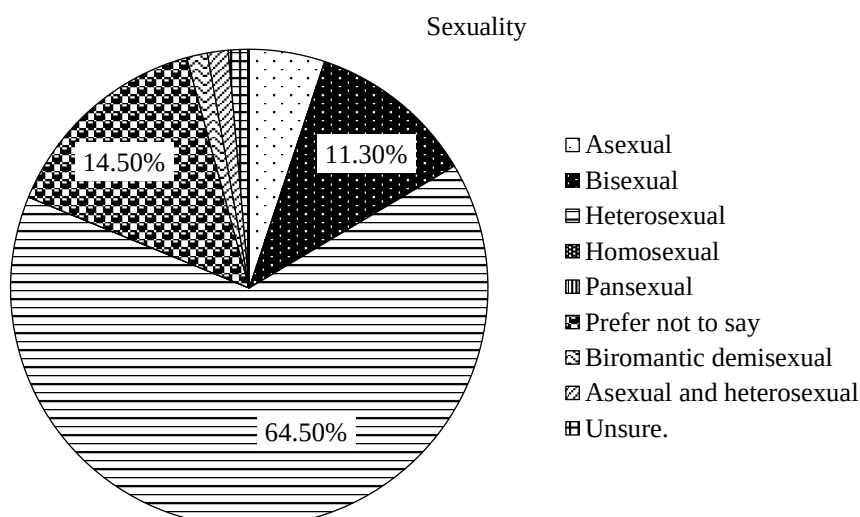


Figure 3. Representing the sexuality of the survey sample.

Figure 4 represents the awareness prevalent among Indian citizens as to the rich history of the LGBTQIA+ community in India. As emphasized in the beginning, the historical evolution of the community had been cut short due to colonial attitudes and the stigmatization created thereby. What is

interesting to note is that 90% of the respondents believed that simply decriminalising homosexuality is not enough, the community deserves legal recognition.

The Department for Law and Justice seeking for a dismissal of three petitions praying for legally recognizing same sex marriages opined that there existed a “*legitimate State interest*” in limiting the recognition of marriage to persons of opposite sex, as discussed above. It is interesting to see that as many as 90% of the respondents across all age groups believe that there is no legitimate state interest in regulating the personal lives of LGBTQIA+ individuals, vis-à-vis their freedom to choose who they love and want to marry, as seen in Figure 5.

On 6th September 2018, the Supreme Court in the case of Navtej Singh Johar v. Union of India (AIR 2018 SC 4321) amended Section 377 and decriminalized sex between persons of the same gender. Do you think this decision is enough for the time being in India

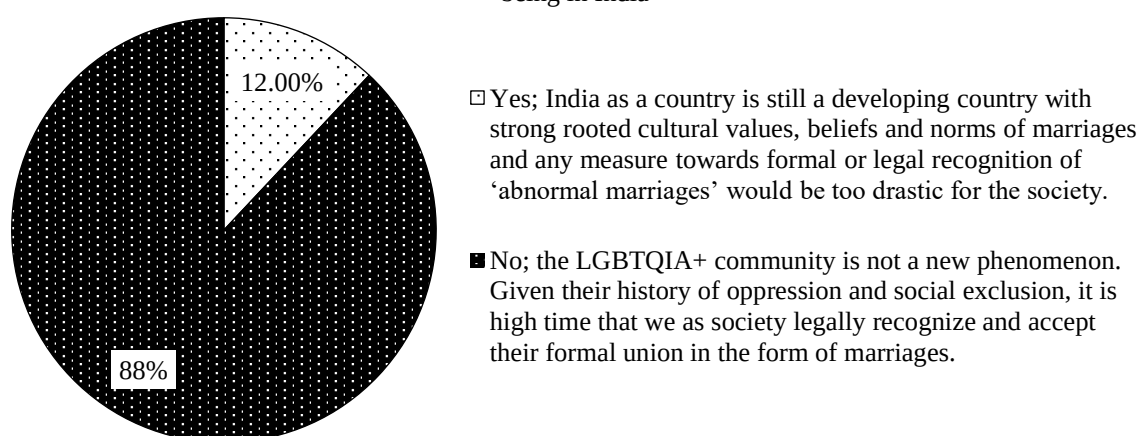


Figure 4. Representing the response of the survey sample with regard to the need to recognize marriage and adoption rights for the LGBTQIA+ community.

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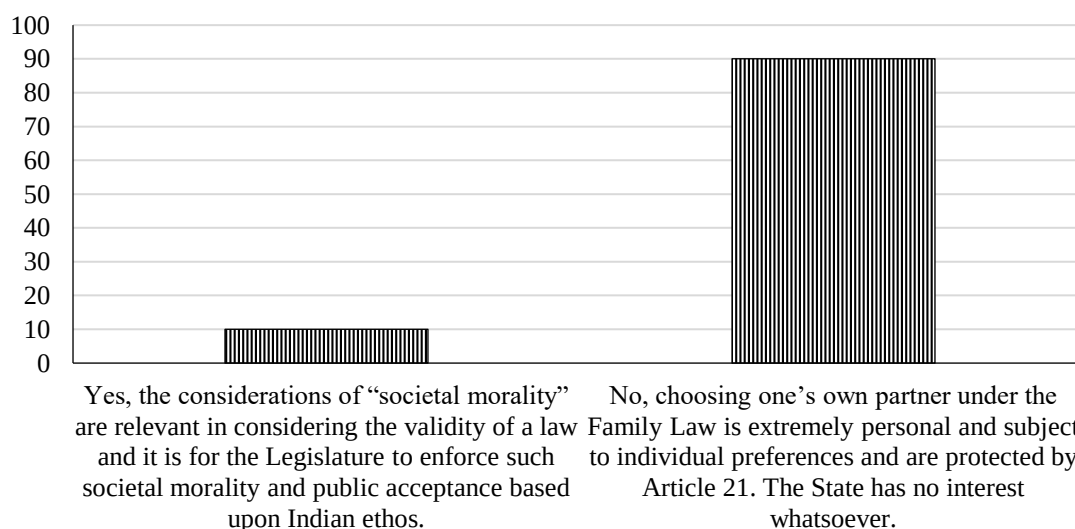


Figure 5. Representing the response of the survey sample with regard to the existence of a “*legitimate state interest*” in choosing one’s own partner.

Figure 6 presents an interesting comparative analysis with the international status of same-sex marriages. A number of countries, as many as 30, have legally recognised same-sex marriages. 90% of the respondents believe that as these developments reflect global consensus and reflect the need to separate private from public/State. As a result, India must use these as a guiding factor and work towards the recognition of same sex marriages.

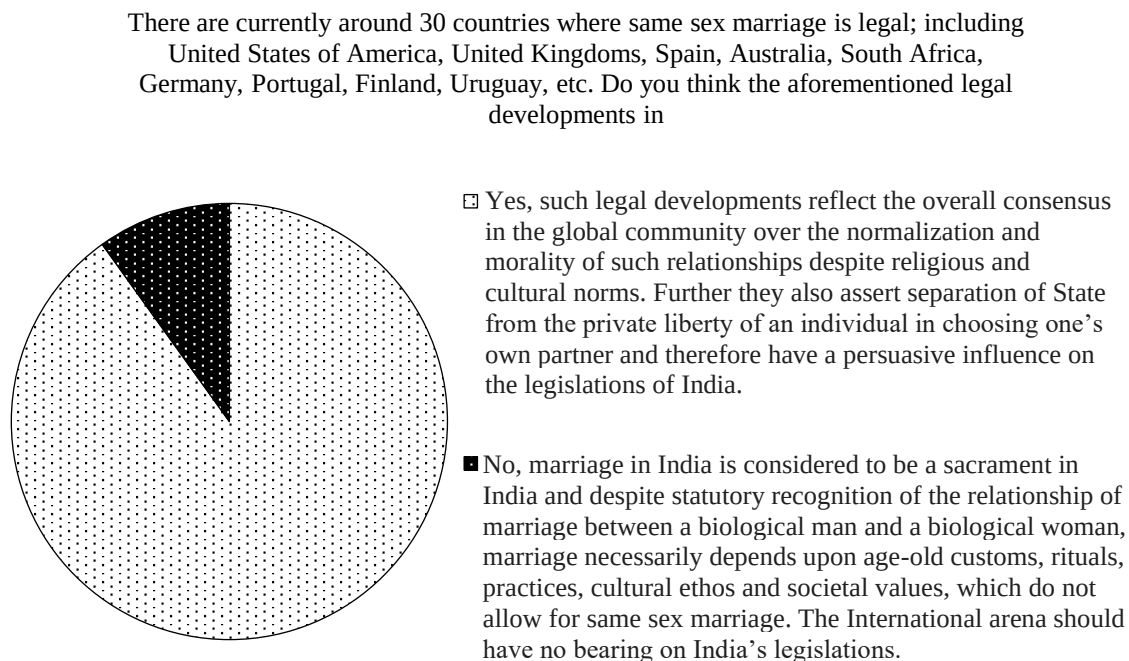


Figure 6. Representing the response of the survey sample with regard to the degree of influence legalization of same sex marriages in other countries should have on Indian Family Law Legislations.

On 24th May, 2021, the Centre while seeking adjournment of the plea to recognize same-sex marriages stated that “*No one is dying due to the lack of recognition of same-sex marriages; the State is dealing with a pandemic and therefore, there are other serious issues that need consideration*”. In the study by **Vinay Arote**, [38] it was established that the need for recognition of same-sex marriages is more pertinent in light of the pandemic. It is argued that if the judiciary can deal with issues revolving around farmer laws, love jihad, etc. same-sex marriages are not any less important. Majority of 78.6% of the respondents reflect this opinion. However, 17.1% of the respondents in Figure 7 feel due to the pandemic, such petitions can wait.

The study by **Revathi and Pandiraj** [35] discussed in the review of existent literature expressly indicated the immediate need to pass an express legislation on marriage laws for the LGBTQIA+ community. The majority opinion (47.3% respondents) favours an express legislation over amendments to pre-existing acts. However, a significant proportion of the participants also believe that amendments may suffice. A trend that is prominent in this case, is the need to clarify and remove ambiguities on the laws for the LGBTQIA+ community (Figure 8).

The CARA, India's primary adoption regulation agency in the Adoption Regulations, does not make any mention of gay, transgender or any of the members of the LGBTQIA+ community in its guidelines. This implicitly prevents not just recognition, but the LGBTQIA+ from legally adopting. In various studies it has been established that upon knowledge of the couple/individual's sexual orientation, adoption is denied to them [42]. This is violative of their basic civil rights and the same opinion is reflected by 90.1% respondents (Figure 9).

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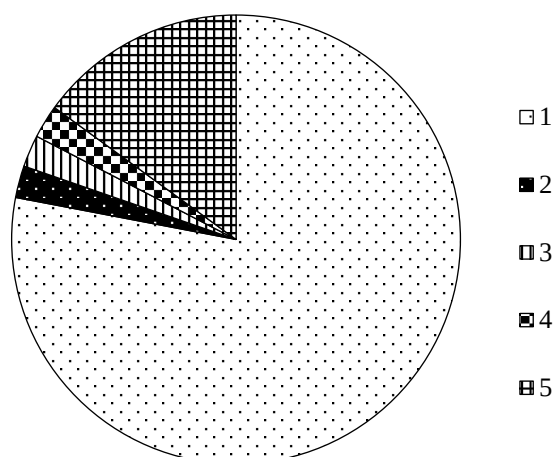


Figure 7. Representing the response of the survey sample with regard to the urgency of the issue of lack of marriage and adoption rights for the LGBTQIA+ community. Note: 1—Yes, ‘the pandemic and other serious issues’ did not stop the Centre from dealing with issues such as Farmer’s Laws, Love Jihad laws, etc. even when Covid cases were at their peak. Such a legislation reflects emerging consensus in public interest and therefore should be taken up urgently. 2—No; it doesn’t need to be dealt with at all in the coming 10-15 years. 3—Other: The matter of urgency is subjective. We can’t say that this is less important even though we have certain urgent issues such as COVID to deal with. But the government can surely give some time and attention to it and can’t excuse themselves of it. 4—Other: I do not have an informed opinion on this. 5—Yes; but given the situation of the country, the focus should be on other serious and pressing issues.

Though various laws on marriage in India (Hindu Marriage Act 1955, Special marriage Act 1954, Muslim Personal Law (Shariat) 1937, etc.) by including words such as ‘man’, ‘woman’, ‘bride-groom’ and ‘bride’ intend on regulating heterosexual marriage, they d

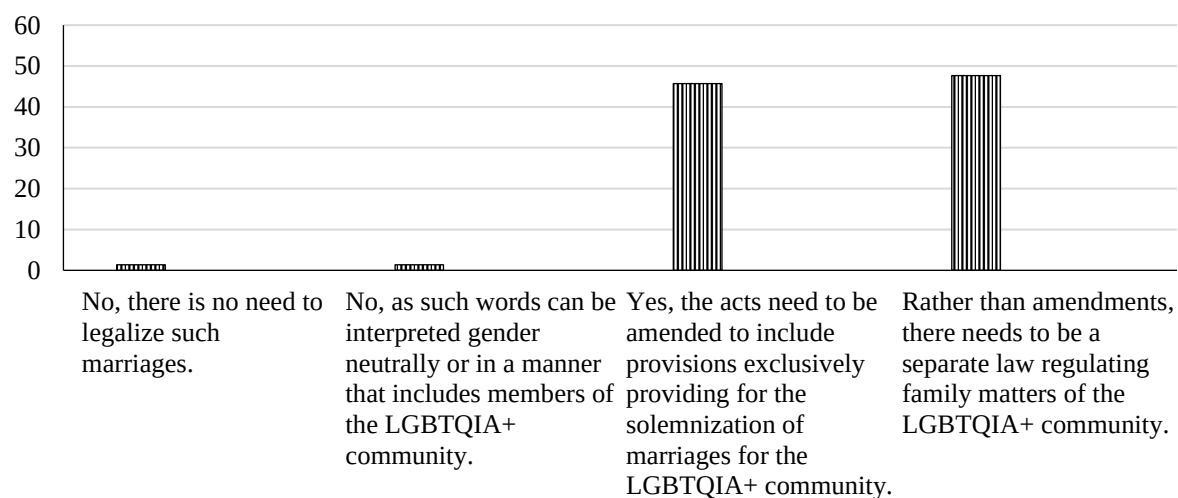


Figure 8. Representing the response of the survey sample with respect to the need to expressly include provisions on Homosexual marriage.

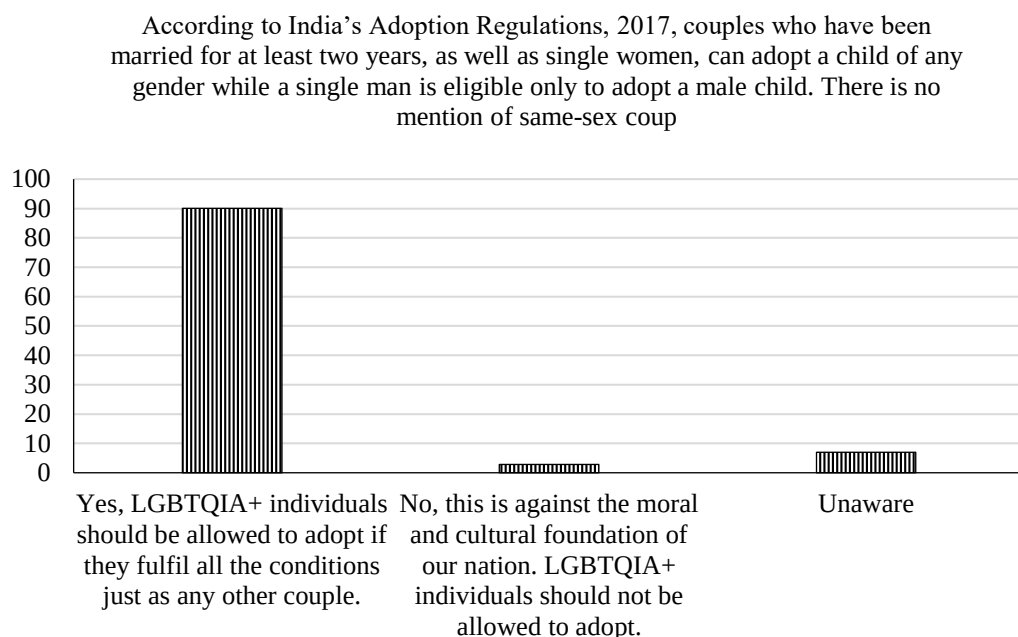


Figure 9. Representing the response of the survey sample with regard to violation of civil rights in the LGBTQIA+ community.

This chart represents 100% consensus on the fact that there is need for clarity on the legal scenario surrounding adoption rules for the LGBTQIA+ community. Even though there is no explicit prohibition on LGBTQIA+ couples from adopting, there is no express legislation allowing the same. This has led to arbitrary selection procedures. In such a scenario, it becomes pertinent that the confusion is done away with (Figure 10).

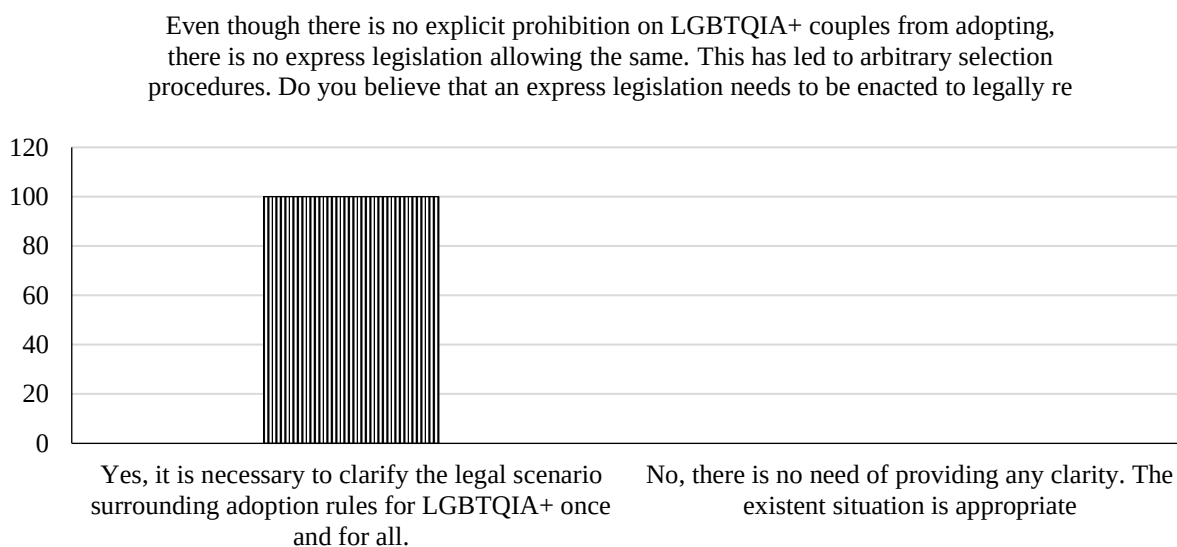


Figure 10. Representing the response of the survey sample with regard to adoption regulations for the LGBTQIA+ community.

This graph represents the perspective of the respondents on the need for India to use the international progression and development on recognising LGBTQIA+ adoption, as an example and follow suit. Especially for a country such as India, wherein there are more than 30 million and counting abandoned children [43], allowing LGBTQIA+ couples and individuals who fulfil the

criteria and provide safe and happy homes can be a turning point for these children. 95.8% respondents reflect the view that India should use these developments as a guiding point and adopt progressive laws (Figure 11).

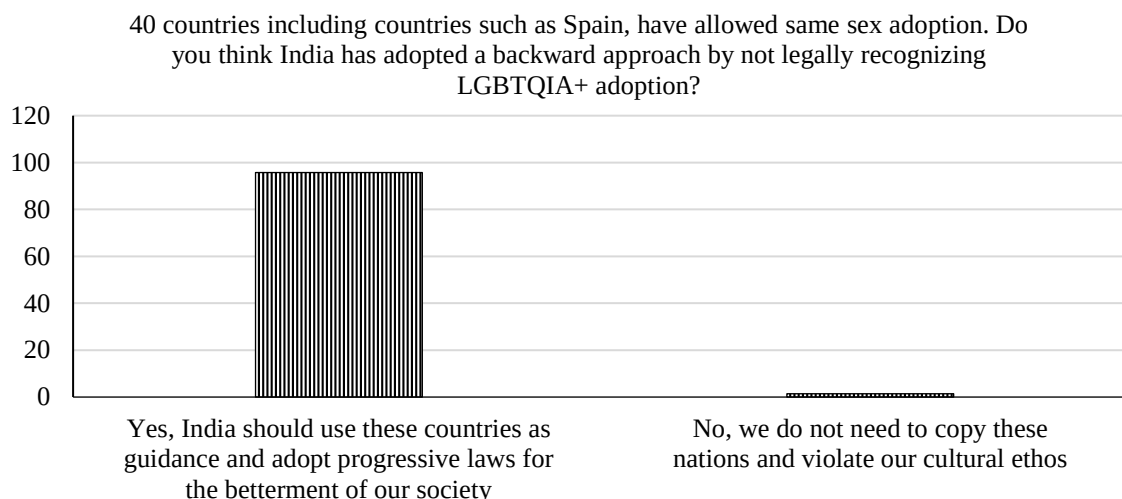


Figure 11. Representing the response of the survey sample with regard to progression of the country vis-à-vis adhering to cultural ethos.

CONCLUSION

The Indian progression on the outlook of homosexuality is clear, loud and proud. By decriminalising homosexuality, the Court took a stand against the violence and discrimination that was inflicted on these individuals on considerations of their sexual identity. However, this is only half the battle won. If we stop at this juncture, the potential ability to legally recognise and humanise individuals who deserve the right to marry, have children and basic recognition as a human. The final analysis and findings of the paper can be categorised in the following aspects:

- There is a growing knowledge and awareness among the Indian demographic on our rich history as a civilisation and a nation supportive of the LGBTQIA+ community. Even today, we consider the blessings of transgender individuals equivalent to divine power. However, due to colonialism and other developments, homosexuality was viewed as a sin and criminalised. In light of this, although homosexuality, rightly, has been decriminalised in India, it is not enough.
- The predominant opinion of the Indian demographic is that marriage and personal lives of individuals, do not fall within the ambit of “*legitimate State interest*” The freedom to choose, express and live according to one’s will, as long as it does not constitute any crime or treason, is every individual’s natural right. This right must be protected from arbitrary and unequal legislation and regulation.
- An interesting aspect in the progression of LGBTQIA+ personal and legal rights is the development of international law in this sphere. Even traditionally conservative countries are marching forward towards legal recognition of homosexuality and same-sex marriages. In light of this and analysis of the responses, it is clear that we must use these nations as an example and afford all the protections and rights that every citizen of India deserves to the community.
- Currently, we are in an unprecedented situation, wherein the pandemic has created unforeseen challenges. In light of this, Switzerland and Costa Rica have recognised the legality of same sex marriages in the midst of the pandemic, recognising the importance of the issue. The persistent stand is that the Indian judiciary must not cite the pandemic as a reason to not rule on same-sex marriages. It has been long since we decriminalised homosexuality, and the next logical step should be recognition of the basic human rights of these individuals.
- Another finding of this paper, is that the current laws regulating marriage and adoption, personal and secular, are highly ambiguous when it comes to the LGBTQIA+ community.

There is no express prohibition, yet in practice, single parents, homosexuals, etc. are denied adoption because of their sexual orientation. The passing of a secular legislation dealing with the aspect of marriage and adoption of LGBTQIA+ community is the immediate need of the hour. The current situation has led to immense confusion, arduous litigation and emotional and financial pain for the individuals.

- Another interesting finding of the paper is that across all demographics, age groups, sexuality and genders, the opinion of providing basic human rights and freedom of choice to the members of the LGBTQIA+ community is consensual. The survey conducted by us was anonymous, which ensures lack of bias. Hence, it is clear that the verdict is in favour of legalising same-sex marriages and adoptions.
- Further, another aspect wherein there is great consensus is that our current treatment of the community and absolute lack of regard of their legal rights is in violation of the fundamental rights that our Constitution guarantees to each and every citizen of our country. Even conservative considerations of the fact that LGBTQIA+ community will stop progress of the civilisation, is against our religion, etc. found no reference in our survey or in any other surveys that we reviewed. Our ways of thinking are maturing and so should our laws, in line with current realities.

Hence, in light of the primary and secondary research conducted the hypothesis, ***the contemporary laws regulating marriage and adoption vis-à-vis the LGBTQIA+ community are backward and ambiguous and need immediate reformation*** is proven **True**.

REFORMS

Clearly, there is an immediate need to address the current status of laws vis-à-vis the LGBTQIA+ community. While many studies suggest a number of changes and reforms that can be made, few seem pragmatic and practical options that can actually be implemented. The following are the recommendations that the authors believe can be effected, keeping in mind the particular Indian scenario:

- **Introduction of a Legislation:** Switzerland is one of the most recent and exemplary example of a nation that underwent a truly democratic procedure and introduced a legislation recognising the legal rights of individuals belonging to the LGBTQIA+ community [44]. India prides itself on its democracy and diversity. By following the law of the land, India needs to introduce a clear, unambiguous and conclusive legislation to regulate marriage and adoption rights of members of this community. This will solve issues of expensive and time-consuming litigation, emotional and mental costs involved, etc.
- **Spreading Awareness:** To deny individuals basic legal recognition of their identities and their right to choose, express themselves and to love is a violation of the basic rights that we are entitled to as citizens. One of the root causes of the negative perception is the lack of awareness among citizens. By spreading awareness on the historical origin, sensitivity of the issue, needs of the community, our road towards strengthening legal rights for the community will become easier.
- **Equality:** This equality should be much more than decriminalization of 377. While India has managed to cast off one of the most prejudicial criminal pieces of Victorian-era legislations, same-sex marriage is still not legalized. It is the marriage that bestows rights and responsibilities on two people such as Adoption, inheritance, tax planning life insurance policies and other such rights. Marriage is a basic right for every citizen in a country like India where so much importance is attached to the marriage, but the LGBT community is still devoid of it. What would be the point of decriminalizing homosexuality in a country like India where LGBTQ people are still unable to get married to the partner of their choice? It is a need of the hour to legalise same-sex marriage and relieve Indian history from this dark spot. Homosexuality will remain a stigma as long as people are willing to shove under the carpet of oblivion. The Government should make efforts to educate the public and raise public awareness about sexual minorities.

- In Republic of India, such relationships have been criminalized as in our country it has been termed as unnatural. In Republic of India the problem of homosexuals has been a controversial topic that has been heatedly debated and has attracted the eye of general public likewise as our judiciary. Although Republic of India is a lively member of UNHR and has signed most of the resolutions, however homosexuality topic is yet not within the books. India, which is termed to be as the world largest democratic country is a developing country that incorporates a minority of homosexuals. Indian constitution provides fundamental rights to its voters that embody right to life, equality, equity etc. However, the rights of LGBT particularly the Human Rights are violated in Republic of India [45].

Conflict of Interest

The authors state no conflict of interest.

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