

Understanding the Need for Change in LGBTQIA+ and Unmarried Couple's Rights in India by Observing their Legal Limitations and Rights: A Comparative Study.

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Abstract: This article compares the legal protections and rights now in place for LGBTQ(QUEER) and unmarried couples to those of the straight couples. They are prevented from taking use of several legal benefits like compensatory rights, educational and insurance welfare programs, etc. for the offspring due to the misidentification of Queer couples and the unmarried pair within the definition of a legally married couple. This illegal prejudice is shown in order to reconsider and provide them equal legal protections under the protection of the right to life guaranteed by Article 21 of the Indian Constitution. The researcher conducted a comparative analysis of the laws of several nations. The article also emphasizes the necessity of enhancing the current legal and legislative framework in our nation. By analyzing many situations and reviewing current literature to identify the gaps, the researcher chose qualitative and doctrinal research methodologies.

Keywords: LGBT, Queer, Same-Sex Rights, Third Gender, Unmarried Couple

1. INTRODUCTION

One of Hinduism's four canonical sacred texts, the Rigveda, declares that "what appears unnatural is also natural," or *Vikriti Evam Prakriti* (Sanskrit:), which some scholars believe acknowledges the homosexual/transgender dimensions of human life as well as all other types of universal diversities¹.

1.1. Concept of LGBT(QUEER) and The Unmarried Couples in India:

What is LGBTQ and who are the people coming under them?

The term LGBT (Lesbian, Gay, Bisexual, and Transgender) refers to "a diverse collection of people who are different in terms of gender, sexual orientation, race/ethnicity, and socioeconomic level"². They are identified as the Third gender category. Among them a lesbian is a woman who is sexually attracted to another woman, while a gay is a male who is sexually attracted to another man. But a Bisexual person is sexually attracted not exclusively to people of one particular gender, but attracted to both men and women. A transgender person, on the other hand, is someone whose sense of personal identity and gender differs from their biological sex. A transsexual is a term used to describe or refer to a transgender person whose bodily traits have been changed by surgery or hormone treatment to bring them into harmony with their gender identification³. The **THIRD GENDER** or the **QUEER** is the umbrella term that is used to represent all these communities together. Apart from LGBT, many traits are being added on with them like

¹ Vikriti Evam Prakriti: What seems Unnatural, is Natural. (2021, October 5). Honi Soit. Retrieved November 10, 2022, from <https://honisoit.com/2021/10/vikriti-evam-prakriti-what-seems-unnatural-is-natural/>.

² General definitions. (n.d.). LGBT Resource Center. Retrieved November 11, 2022, from <https://lgbt.ucsf.edu/glossary-terms>.

³ What is Trans? (n.d.). Trans* Awareness Project. Retrieved November 11, 2022, from <http://www.transawareness.org/what-is-trans.html>

Questioning, Intersex, Pansexual, Asexual, Cisgender, Plus, etc. And there are numerous traits still to be named and recognized.

Who are Unmarried couples?

An unmarried couple means a man and woman who, though not legally married to each other, are living together as if in a domestic relationship. Live-In together is such a kind of relationship. A live-in relationship, also known as cohabitation in some countries, is one in which two individuals who have been romantically and sexually connected as partners for a significant amount of time or permanently choose to live together without getting married. The right to freedom, privacy, professionalism, globalization, and education has all contributed to this over time. Additionally, it is not an attempt to avoid your obligations; rather, it is an effort to get to know your partner better and determine compatibility to avoid complicated divorce formalities. Another is the Common Law couple. A conjugal relation between two people who choose to live together and present themselves as a married couple without the benefit of a formal ceremony and marriage certificate is referred to as a "common-law marriage." Evidence of cohabitation is required for the common-law partnership. Unlike marriage, which is considered a 'de jure relationship', a common-law partnership is a 'de facto relationship'. A pair in a Common law relationship is more often accepted in western nations. Their civil and union agreements, legal recognition, and prenuptial agreements between couples can all be used to understand this. In India, it's not the same, though.

India has seen a significant shift in how the current generation views partnerships. The taboo that used to surround live-in relationships has started to disappear as society becomes more accepting of them. Live-in-together relationships initially received legal recognition with the Domestic Violence Act of 2005. The DV Act granted rights and protections to women who are not legally married but who live in a relationship that is similar to marriage with an unmarried man.

1.2. Historical aspect:

Historical evolution of the legal provisions related to LGBTQ(QUEER) and Unmarried couples in India has analyzed and found that since the dawn of time, transgender persons have existed throughout all societies, including non-binary and third gender people. As per ancient times belief, hijras in the India and kathoeyes in Thailand have created trans-feminine third-gender social and spiritual societies. Their existence has been recorded for thousands of years in the literature that also reference trans-male people. Hijras are now legally acknowledged as a third-gender and number at least 500,000 in India and another 500,000 in Bangladesh. Many trans individuals are also welcomed in Thailand. There are social and ceremonial roles for transgender or third- gender persons, such as the Navajo nádleehi and Zuni Ihamana, in the Americas before European colonization as well as in several contemporary North American Indigenous communities⁴.

Many religious and spiritual systems hold views on gender change. Some societies' shamanic practices may involve shamans assuming other-gendered personas during rituals or being possessed by the spirit of a differently gendered deity or force; other times, shamans may adopt specific gender roles in daily life. According to certain faiths, gender incongruity in the present is the result of past-life experiences. The existence of seven separate genders with various religious, social, and legal obligations is evidenced by early rabbinical literature. According to Muslim Law, the only mention of non-normative gender in Islam's holy book, the Qur'an, which may be found in verse 24:3 that, when the Muslim women are with male attendants who behave and appear like women and do not have sexual desires for them, they are not required to observe the customary rules of modesty. Even though the 'Hadith'⁵ contains explicitly transphobic content, many feminists, queer, and trans-interpreters of the Islamic tradition contend that the Hadith incorporates patriarchal and heterosexist social views that are absent from the Qur'an, which is thought to be divinely inspired and to be more tolerant⁶.

⁴ Janssen, D. F. (2020). Transgenderism before gender: Nosology from the sixteenth through mid-twentieth century. Archives of Sexual Behavior, 49(5), 1415–1425. Retrieved November 10, 2022, from <https://doi.org/10.1007/s10508-020-01715-w>

⁵ The *Hadith* is the collected traditions of the Prophet Muhammad, based on his sayings and actions

⁶ Stryker, Susan. Transgender History: The Roots of Today's Revolution. Second edition, Seal Press, 2017

In India, The Mahabhasya, Patanjali's foundational book, refers to transgender people as one of the three "natural genders,"⁷ while the Manu smriti provides a detailed definition of the third sex. Three categories of supernatural beings or devas linked to music and dancing are mentioned in the Puranas as well, they are apsaras (female), Gandharvas (male), and kinnars (third gender)⁸. There has always been transgender community's presence prevailed in our country, but even in the twenty-first century, they have relatively only a few rights exist. As a result, the transgender minority in India is among the most vulnerable in the nation. The transgender community has been the target of several humanitarian organizations' efforts to emancipate and empower it throughout the years, but these efforts have mainly fallen without the desired results. 2014 saw a significant ruling by the Supreme Court in the case of NALSA v. Union of India⁹. The apex court of India declared that the transgender population, regardless of gender identification, enjoys the same fundamental rights under the Indian Constitution as everyone else for the first time. Three drafts of the Transgender Persons (Protection of Rights) Act were made in 2014, 2016, and 2018, but none of them saw the light of day because of regressive provisions that could be exploited to harm the community rather than support it. The creation of a screening committee to determine whether an applicant qualified as transgender was one of these regressive provisions.

In 2018, Justice Deepak Mizra, the Chief Justice of the Supreme Court of India, issued a landmark decision in "Navtej Singh Johar v. U.O."¹⁰ that decriminalized consensual homosexual intercourse by striking down Section 377 of the Indian Penal Code, 1860, which exempted consensual homosexual sex between adults from its scope¹¹. The government has repealed colonial-era legislation that discriminated directly against homosexual and transgender identities, as well as specifically interpreting Article 15 of the Indian Constitution to outlaw discrimination based on sexual orientation and gender identity. Later the Transgender Persons (Protection of Rights) Act, which was passed the year 2019 received a lot of criticism as well, due to the obvious violation of a person's right to privacy and their right to bodily autonomy that the required medical examination constituted. To close the gap between the Supreme Court's 2014 directives and the 2019 Act, the Union Ministry of Social Justice and Empowerment notified the Transgender Persons (Protection of Rights) Rules, 2020 in 2020.

Notwithstanding the existing Rights, these people as well as the unmarried couple find it difficult with regard to various provisions of Law and various Governmental schemes like Pension, insurance, compensation, educational benefits, maintenance, etc.

This Article reflects some of the failures that arise in this regard along with the development of statutory rights and the social acceptance toward the LGBTQ (Third Gender/QUEER) couple and unmarried couple.

2. RESEARCH OBJECTIVES:

The objectives of the work are:

- To analyze the current Legal provisions related to the Rights of QUEER and an unmarried couple in India.
- To study the extent to which these Legal provisions are being implemented and enforced in practice in the Indian context.
- To identify the challenges being faced by Queer and unmarried couple in exercising their Rights and accessing the Legal remedy available to them.
- To compare and analyze the legal framework related to the Rights of Queer and unmarried couples in India concerning other countries.

⁷ महाभाष्यम्: Mahabhashya with explanation in Hindi (Set of 9 Volumes) | exotic India art. (n.d.). Retrieved November 15, 2022, from <https://www.exoticindiaart.com/book/details/mahabhashya-with-explanation-in-hindi-set-of-9-volumes-nzf007/>

⁸ Voruganti, S. V. and H. (n.d.). A Hindu approach to LGBT rights. Swarajyamag. Retrieved November 10, 2022, from <https://swarajyamag.com/culture/a-hindu-approach-to-lgbt-rights>

⁹ National Legal Services Authority V. Union Of India & Others, AIR 2014 SC 1863.

¹⁰ Navtej Singh Johar V. Union Of India Ministry of Law and Justice Secretary, AIR 2018 SC 4321

¹¹ Constitutionality of Section 377 IPC. (n.d.). Supreme Court Observer. Retrieved November 10, 2022, from <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>.

2.1. Research methodology:

This Article comprises of Doctrinal Analysis through which the Researcher tried to analyze the concepts and principles underlying the legal provisions related to QUEER and Unmarried couples in India. The researcher has analyzed the relevant Laws, Statutes, and Judicial Decisions to examine the legal framework available in India to protect the Rights of QUEER and Unmarried couples within India. For that, a comparison is made between the legal provisions related to the Rights of those unmarried couples with that of other Developed Countries.

2.2. Review of Literature.

Gino Pauselli in his Article named “Look Who Is Talking: Direct and Indirect Effects of Criticism on LGBT Rights”¹² said about the effects of criticism on LGBT rights. The major finding is that this Article adds to the body of knowledge on socialization, persuasion, and the part played by states in these processes. It is generally acknowledged that domestic civil society, international organizations, and transnational activists all contribute significantly to the advancement of human rights. But the Research gap that arises is the findings support certain alternate hypotheses on the importance of domestic activity, economic growth, and the effect of religion on governments. However, there is no proof that international advocacy has advanced LGBT rights. This should encourage more studies to determine whether or whether the mobilization of governments to exert pressure on repressive regimes affects the influence of INGOs.

“Gender Biasness in Participation in Indian Politics: A Theoretical Understanding of Transgender Community”¹³, Gayadhar Malik’s Article, focuses on gender discrimination in the Indian political system and offers a theoretical understanding of gender biases in Indian politics, particularly those related to the transgender community. The study’s goal is to comprehend gender prejudices in Indian politics, especially those that are related to the transgender population. There are some research gaps, including very little research on the political participation of transgender people in the democratic process, particularly in the Indian setting, despite thorough reading of various publications that are referenced in the paper. The recent political ambivalence about gender biases in the Indian democratic system would increase the keen interest of academics, researchers, and policymakers to highlight the issues and problems of transgender people, even though several types of research covered political representation or political involvement of transgender in a democratic process outside of India.

Akhil Sankhyan and Syed Suboor Hussain depicted in particular, in the Article “Rights of LGBTQ In India and The Struggle for Societal Acceptance”¹⁴ the transgender people and judicial pronouncements as it examines the lengthy battle of the LGBTQ Community for basic Fundamental Rights and the Discrimination they encounter in various aspects of life. But The Article only examines the challenges that the LGBT Community face as well as the remaining legal and social reforms that will be necessary for LGBT people to achieve complete acceptance and equality in the traditionally conservative Indian society.

Another Article that the researcher finds relatable is by Syiem, Angel H.Kumar and Priya Ranjan, in which the authors aim to address some of the restrictions and legal loopholes. In doing so, it also seeks to comprehend the idea of transgender people, India’s historical context, the types of discrimination this community has experienced, the provisions of international human rights legislation about their rights, and the role of the judiciary in advancing these rights. But this Article named “Trans- Rights Are Human Rights: An Evaluation of Law on the Protection of Transgender Rights in India”¹⁵ highlights the Act’s flaws, which harm the third-gender population. The Act will ensure that the holes in the protection of civil and political rights that are left unaddressed by the legislation will be addressed, but it failed to propose the essential adjustments to be enacted.

¹² Pauselli, G. (2023). Look who is talking: Direct and indirect effects of criticism on lgbt rights. SSRN Electronic Journal. Retrieved November 10, 2022, from <https://doi.org/10.2139/ssrn.4317082>.

¹³ Malik, G. (2023). Gender biasness in participation in indian politics: A theoretical understanding of transgender community. *Journal of Advances in Humanities Research*, 2(1), 46–61. Retrieved November 10, 2022, from <https://doi.org/10.56868/jadhur.v2i1.112>.

¹⁴ Sankhyan, A., & Hussain, S. S. (2022). Rights of lgbtq in india and the struggle for societal acceptance. *Journal of Positive School Psychology*, 6(3), 9903–9915. Retrieved November 10, 2022, from <https://www.journalppw.com/index.php/jpsp/article/view/5528>.

¹⁵ Syiem, A. H., & Kumar, P. R. (2022). Trans - rights are human rights: An evaluation of law on the protection of transgender rights in india. Retrieved November 10, 2022, from <http://ir.nbu.ac.in/handle/123456789/4606>.

Katyayani Sinha in her article "The Regulation, Reclamation, and Resistance of Queer Kinship in Contemporary India"¹⁶ critically examines several legal rulings for their stress on conjugal coupledom as the foundation of family bonds and, conversely, their capacity to safeguard numerous LGBT kinship relationships. But it was noted that while constitutional law protecting sexual self-determination, privacy, and dignity grants LGBTQ people liberties, the liberal rights-based language has its limits in terms of really preserving LGBTQ kinship. However, it is not yet clear how to resolve or recover from this situation.

Consequently, all authors are aware of the common difficulties the LGBT population experiences. However, there are significant barriers to eliminating gender inequalities, therefore securing equal rights is an impossibility.

3. STATUTORY CHALLENGES FACED BY LGBTQ AND UNMARRIED COUPLES; AND ITS REMEDY SOUGHT FOR:

In India, the long-running controversy surrounds the LGBTQ community and ensuring their rights. The main tenet of government has been the idea that justice, equity, and unity will secure this community. The rights of this community have recently come to light, and the judiciary has stepped in to safeguard them. Transgender people are the worst exploitation victims; as a result of their poor economic standing, they engage in prostitution and other immoral acts and are frequently stigmatized by society.

For the first time in India's history, "Third Genders" received formal recognition as a different gender from male and female on 15th April 2014. In its historic decision, the Hon'ble Supreme Court of India established the "third gender" status for hijras or transgender people. According to the Court, "dignity" as defined by Article 21 of the Constitution includes diversity in self-expression, which enables a person to live in dignity. It included one's gender identity in the framework of Article 21's fundamental right to dignity. Additionally, it was mentioned that gender-neutral language ("all persons") was used to define the rights to equality (Article 14 of the Constitution) and freedom of expression (Article 19(1)(a)). Consequently, transgender people would have the same rights to equality and freedom of speech¹⁷. It brought to light how transgender people faced "severe discrimination in all aspects of society," which violated their right to equality. Also included in the scope of freedom of expression was the ability to express one's gender "by attire, words, conduct, or behavior." The Court concluded that transgender people had a right to fundamental protection under Articles 14, 15, 16, 19(1)(a), and 21 of the Constitution. To recognize the human rights of transgender people, the Court also cited important international human rights treaties as well as the Yogyakarta Principles¹⁸.

Thereafter in 2019, the Koushal ruling was overturned by the Supreme Court's five-judge panel, and Section 377 was unanimously repealed, and same-sex relationships between consenting people are hence made legal. It applies to everyone, not only members of the LGBTQ community. This ruling has tremendous persuasive power for those countries that still consider homosexuality a crime. The Indian LGBTQ community's claim to equal citizenship was maintained by the court. As a result, it interpreted Section 377 to preclude adult consensual sexual relationships, whether they involve same-sex partners or not. Non-consensual sexual behavior with adults, sexual conduct with children, and bestiality will still be covered by Section 377¹⁹. Justice Radhakrishnan expressed Gender Identity's meaning in his judgment as "Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and, mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category"²⁰ Thus, by these landmark Judgements by the court of last resort, the LGBTQ community received wide statutory acceptance from the part of the judiciary which enlightened the path towards a free and fair enjoyment of life as equal to that of normal gender citizens in the country. The community seeks the generality of living their life as simply and smoothly just like that of

¹⁶ Sinha, K. (2022). The regulation, reclamation, and resistance of queer kinship in contemporary india. *Feminist Legal Studies*, 30(3), 281–307. Retrieved November 10, 2022, from <https://doi.org/10.1007/s10691-022-09489-3>.

¹⁷ National legal Services Authority (NALSA) vs. Union of India—South Asian Translaw Database—Third gender. (n.d.). South Asian Translaw Database. Retrieved November 12, 2022, from <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

¹⁸ Ibid

¹⁹ Navtej Singh Johar vs. Union of India—South asian translaw database—Section 377. (n.d.). South Asian Translaw Database. Retrieved November 12, 2022, from <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

²⁰ Ibid

other genders was ensured by this Judgement from the Supreme court of India. But the general query which everyone who supports the LGBTQ community put forward was whether the Judgement and the following Act introduced for ensuring the Rights of LGBTQ was effective in its whole sense. Whether it gained the fruitfulness as desired by the executives of our country. The answer may be not as desirable as the legislative thought of. Because even after implementing a separate Act²¹ for the protection of the rights of the third genders, there are still many legal provisions that shows its inefficacious outcome. Simply allowing sexual activity between same-sex partners won't put them in danger on par with other citizens because the future of same-sex marriage, the legality of same-sex adoption, the right against oppression, and other issues are still up in the air, and the community is still fighting for them.

In 2018, The Supreme Court ruled that the Fundamental Right of an adult to marry the person of their choice exists²². "A person's choice is an inextricable aspect of dignity, for dignity cannot be thought of where there is the erosion of choice," the court ruled. True, the same is constrained by the constitutional limitation principle, but in the absence of such a restriction, nobody must be allowed to interfere with the fulfillment of the said choice. Articles 14, 15, 19, 21, and 29 are all infringed when same-sex unions are not recognized, guardianship, adoption, surrogacy, and IVF are not permitted, and LGBTQ people are not given access to safe schools, colleges, and workplaces. It is past time for the government to create new laws or amend existing ones governing marriage, adoption, guardianship, inheritance, educational institutions, employment, healthcare services, etc. for the benefit of LGBTQ people's education, social security, and health, with a particular focus on Transgender People.

The legal differences that the third-gender community and unmarried couples face are significant in several areas, including marriage laws, surrogacy and adoption rights, maintenance rights, service welfare rights, pension plans, and family benefits. A straight couple who have married legally by performing all formalities as prescribed by the law, is free to access the provisions when it comes to divorce-related liabilities like alimony or maintenance for the spouse and descendants, custody rights, property partition, etc. And also, for the such couple, when either of them loses one's life, the law is there to protect their rights in terms of different aspects like Dying harness, compensation and insurance schemes, property inheritance rule, pension schemes for the surviving spouse, educational benefits for the surviving children, etc. But none of these provisions are ensured for a spouse or children out of that nuptial family. This is because marriage plays the base for all these clauses to be valid. Unless and until a marriage has been registered legally, that marriage cannot be regarded as a legal one according to the Indian legal system. Thus, the unmarried couples as well as the LGBTQ couple are not legally married couple in terms of law and are ineligible to avail the legal benefits available for a legally married couple.

3.1 Rights enjoyed by LGBTQ and Unmarried couple.

The goal of the Bill of 2019²³, was to safeguard the rights of the transgender community by outlawing discrimination against them in the workplace and schools, access to government or private institutions and healthcare. Hence the Act was passed with the objective of "An Act to provide for protection of rights of transgender persons and their welfare and matters connected therewith and incidental thereto"²⁴. But this Act has only had the provisions relating to the prohibition against discrimination, recognition of the identity of transgender persons, welfare measures by the government, education, social security and health of transgender persons, offenses and penalties, etc. this Act was a complete failure to comment about the Family rights of Transgenders. Queer and unmarried couple have different rights ensured by the common Acts, but they lack Marriage laws and other matrimonial laws. Due to that they failed to get the benefits and justice as enjoyed by any normal married couple.

3.2 Rights they seek for:

That's obviously the above said Family rights at its priority list that the Queer couple, as well as the unmarried couple sought for. Because it is of great importance in their life as they really wanted to have for. In some places, the LGBTQ couples or an unmarried couple are being denied shelter on saying that they are not legally married or that they don't

²¹Transgender Persons (Protection of Rights) Act, 2019. Jan,2020. www.indiacode.nic.in, <http://indiacode.nic.in/handle/123456789/13091>. Accessed on 12 Nov.2022

²² Shakti Vahini V. Union Of India, AIR 2018 SC 160.

²³ Transgender Persons (Protection of Rights) Bill, 2019

²⁴ The Transgender Persons (Protection Of Rights) Act, 2019

have a marriage certificate. Also, some provisions like Adoption, Surrogacy, Insurance benefits, Family benefit schemes, etc will be possible only after the marriage is identified. Hence the importance of identifying these couple equally within the preview of a normal married couple also need to be thought of and there must be a law drafted for it.

3.2.1. Right for Adoption and Surrogacy.

About adoption or surrogacy rights in India, the law restricts the unmarried couple from adopting or moving ahead with surrogacy methods within the purview of the law. These people are legally restricted from availing of those rights. Only the couple with legal marriage history can avail those methods of adoption rights as well as legal surrogacy measures in India. This is an infringement of personal Rights. The Hindu Adoption and Maintenance Act, 1956 and the Juvenile Justice Act, 2015 govern adoption in India. While the JJ²⁵ Act grants the right to adoption regardless of religion, the HAMA²⁶ only permits adoption by Hindus, Jains, Sikhs, and other faiths that follow Hindu law.

Sections 7 and 8 of the HAMA refer to parents as "husband" and "wife," which automatically disqualifies same-sex couples from being recognized as parents. As per the Hindu Law of adoption Sections 7 and 8 specify a Hindu man's and Hindu woman's ability to adopt²⁷. Thus, it is clear that only a Hindu male or female can proceed for adoption, not a Third gender couple. Articles 14, 15, and 21 of the Indian Constitution are violated by the above-mentioned actions, which can be contested in court. Discrimination based on sexual orientation violates the rights to equality, the prohibition of discrimination-based race, religion, caste, sex, or place of birth, as well as the rights to life and personal liberty. Although the legalization of same-sex unions will allow LGBTQ people to adopt together since live-in couples are not yet allowed to do so in India, the law does not specifically forbid adoption based on sexual orientation. Even though one of the partners can adopt a child as a single parent, the other parent's legal rights to the child will be entirely overridden. Many LGBTQ couples in India have migrated to nations with greater legal freedom because of the absence of legislation on adoption for LGBTQ people and the horrendous obstacles to adoption. Countries like Spain, Belgium, etc. already permit adoption by same-sex couples.

Regarding Surrogacy rights, the inclusion of protections for cohabitating couples, divorced women, and widows is a positive move, however, the LGBTQ group and single fathers have been purposefully excluded. This bill's definition of surrogacy restricts participation to cis-heterosexual couples, which is problematic because it excludes single persons and members of the LGBTQ community²⁸.

3.2.2. Right to get maintenance from the partner:

Regarding maintenance rights, the provisions of The Code of Criminal Procedure, 1973, discuss the legal benefits available for the wife who has been legally divorced. Section 125(1) (a) of Code²⁹ says "If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, upon proof of such neglect or refusal a Magistrate of the first class may order such person to make a monthly allowance for the maintenance of his wife. And here " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried"³⁰. But when considering this with that of LGBTQ couples, this provision cannot apply to them. Thus, it is another provision that the Queer couple or the unmarried couple cannot seek for. Because the law specifically defines the wife here means legally married to or legally divorced. As a result, the possibility of receiving maintenance from the spouse is not constrained by their current legal rights. Because they are not legally married, a partner cannot be sued even if they are unable to support themselves. Additionally, this is a violation of human rights. Additionally, it will be simpler for someone to simply leave their relationship without any obligation to them.

²⁵ The Juvenile Justice (Care And Protection Of Children) Act, 2015

²⁶ Hindu Adoptions and Maintenance Act, 1956

²⁷ Child adoption law in India—A step by step guide. (n.d.). Retrieved November 12, 2022, from <https://www.vidhikarya.com/legal-blog/child-adoption-law-in-india-a-step-by-step-guide>.

²⁸ Surrogacy (Regulation) Bill, 2019

²⁹ The Code of Criminal Procedure, 1973

³⁰ Ibid

The Protection of Women from Domestic Violence Act, 2005 granted rights and protections to woman who are not legally married but who live in a relationship that is similar to marriage with an unmarried man³¹. Thus, the women from an unmarried couple within the purview of Live-in-relationship can seek Maintenance Rights from her partner.

3.2.3. Rights including Property Rights, Succession Rights or the Law of Inheritance etc:

Couple from the LGBTQ community and unmarried couples are both negatively impacted by this legal issue that the Legislators failed to be explicit about inheritance or succession rights, which is a failing on their side. But for that, they have made the Right of heirs in terms of Male and female only, that too from a married couple. This affects the Queer community since they have been identified as a third gender, and they have no Rules of devolution of property as being an heir. Also, the property belonging to them devolves upon which rule is still a question before legislatures. And concerning an unmarried couple, as per the existing laws of intestate succession, the legal heirs are identified from a legally married wedlock only, otherwise, the family from which they have been raised will be included as the heirs having the right. Thus, this is a very important question before the Justice that, a property earned by either of them does not devolve upon to their partner or children born out of that relation, and it goes to the family from which he/she descended is justifiable? To address this, there should be legislation that eliminates all ambiguity and resolves all conflicts, making the situation as straightforward as that of a typical married pair.

3.2.4. Domestic Violence Act with respect to unmarried and Queer couple:

Another important aspect of law in which the community faces discrimination is about the enjoyment of Domestic rights as well as the reservation under the Domestic Violence Act. The definition of aggrieved person as per the Act is as follows: "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent"³². And the "domestic relationship" means a relationship between two persons who live or have, at any point in time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family"³³. Here, women in unmarried relationships can apply for domestic rights, but an LGBTQ couple is not recognized and are ineligible.

3.2.5. Other statutory benefits for a family from which Queer couple and unmarried couple are restricted with:

There are many kinds of legal as well as Government schemes and provisions for which the members of the family including the spouse and the children have benefited with. That includes service benefits, insurance, healthcare, compensation, education, welfare, etc. National Family Benefit Scheme by the India government is a perfect example for this. The programme intends to give bereaved households a lump sum family benefit of Rs 10,000 regardless of the cause of death in the event that the principal earner passes away. The program is available to anybody between the ages of 18 and 64. Under this program, a family's homemaker woman is also regarded as the "breadwinner." But the family of the dead must meet the criteria for a family below the poverty line³⁴.

The department of Ex-Serviceman Welfare, financial aid is being offered at a rate of Rs. 1000 per month per qualifying ESM and their widows, payable in one installment each financial year. This applies to undergraduate classes at degree-granting colleges as well as school grades 1 through 12. The widows who want to take a 2-year postgraduate degree are also eligible for this scholarship. Assistance is only available to the widows of ESM and their two dependent children who are ESM members up to the level of Havildar in the Army or equivalent in the Navy and Air Force³⁵. Here also it is specific about the Rights of children and the widow of an Ex-serviceman. The family here means a legally married couple and their children. There is another scheme, this program offers financial aid to Ex-Servicemen (ESM) who are Pensioners/Non-Pensioners who have reached the level of Havildar or an equivalent rank in the Navy

³¹The Protection of Women from Domestic Violence Act, 2005.

³² Section 2(a), The Protection of Women from Domestic Violence Act, 2005

³³ Section 2(f), The Protection of Women from Domestic Violence Act, 2005

³⁴National family income benefit-transforming india. (n.d.). Retrieved November 14, 2022, from <https://transformingindia.mygov.in/scheme/national-family-benefit-scheme/>

³⁵ RMEF-Financial Assistance for Education of Children/Widows of ESM | Department of Ex-Servicemen Welfare | Ministry of Defence | GOI. (n.d.). Retrieved November 14, 2022, from <https://www.desw.gov.in/welfareschemes/rmef-financial-assistance-education-childrenwidows-esm>.

or Air Force. The Marriage Grant is Rs 50,000 per daughter for marriages, with a maximum of two daughters. The same Rs 50,000 fee also applies to widows getting remarried³⁶.

Discrimination based purely on sexual orientation is against Articles 14, 15, and 21 of the Army, Navy, and Air Force Act. LGBT people are not permitted to serve openly in the Indian Armed Forces. Late in December 2018, BJP member Jagdambika Pal introduced a bill to the Indian Parliament to change the Army Act of 1950, the Navy Act of 1957, and the Air Force Act of 1950 to allow LGBT individuals to serve in the armed forces. The bill wasn't put to a vote in the Lok Sabha³⁷. Thus, this itself shows how discrimination is faced by the people belonging to the LGBT community in serving the Nation. It's up to the physical constraint the limitation to join the Armed forces has been decided by the panel. But the efficiency or the talent is not been assessed. The major reason not to admit the LGBT community into the Armed force is said to be against the Morality of the country, said by General Rawat "The deterioration of morality is the main justification for General Rawat's opposition to the inclusion of gays in the military"³⁸.

The Life insurance corporation of India provides insurance for the family, including children, a spouse, and parents, and is covered by the LIC Jeevan Arogya health plan for specific illnesses. In the event of medical demands, it provides the insured with prompt cash assistance³⁹.

Similarly, the Government of India offers several programs for the welfare of family members from many sectors, but the lawfully married couple and their offspring are the only ones who are initially eligible. The Queer or the unmarried couple had not been given any instructions. And as a result, these folks are also ignored by government policies. This in and of itself demonstrates that the government has not fully embraced these individuals.

These are the major problems faced by the LGBTQ community and the unmarried couple concerning to family law. There are still many other issues that they intended to cure and need to be eliminated. Unquestionably, the decision of gender identity is a matter of human rights. The problem extends beyond the right to choose one's gender or sex. Since the community of transgender people would be denied many of the valuable rights and privileges that other people enjoy as citizens of this country if they were not given the status of a third gender, many other rights that stem from this choice would also come into play. Also, the choice of proceeding for a legal marriage lies with the individual only. Any distinction upon this choice is to be considered Unconstitutional.

4. COMPARATIVE ANALYSIS:

Sl No:	Name of the Country:	Name of the Legislation:	Rights ensured for Third genders couple or an Unmarried couple.
1.	Netherlands	Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage).	The first country in the world to legally recognize same-sex marriage in 2000 ⁴⁰ .
2.	United Kingdom	Britain's Adoption and Children Act, 2002.	Allows unmarried people and same-sex couples in England and Wales to adopt children from 2002 ⁴¹ .

³⁶ RMEWF-Financial Assistance for Marriage of Daughters of ESM/Remarriage of Widows | Department of Ex-Servicemen Welfare | Ministry of Defence | Gol. <https://www.desw.gov.in/Welfareschemes/rmewf-financial-assistance-marriage-esm-daughters>. Accessed 14 Nov. 2022

³⁷ Rights of LGBT Community in India. (n.d.). Retrieved November 14, 2022, from <https://legalserviceindia.com/legal/article-9321-rights-of-lgbt-community-in-india.html>

³⁸ Verma, A. (2021, March 9). Status of Homosexuals in the Indian Army. IPleaders. Retrieved November 14, 2022, from <https://blog.ipleaders.in/status-homosexuals-indian-army/>

³⁹ Life insurance corporation of india—Lic's jeevan arogya(Plan No. 904, UIN: 512N266V02). (n.d.). Retrieved November 14, 2022, from <https://licindia.in/Products/Withdrawn-Plans/Plan-parameter>.

⁴⁰ Netherlands law on same sex marriage | pdf | civil union | marriage. (n.d.). Scribd. Retrieved November 14, 2022, from <https://www.scribd.com/document/4664612/Netherlands-Law-on-Same-Sex-Marriage>

⁴¹ 2002: Same-sex couples free to adopt with the Adoption and Children Act. (2019, May 22). Stonewall. Retrieved November 14, 2022, from <https://www.stonewall.org.uk/our-work/campaigns/2002-same-sex-couples-free-adopt-adoption-and-children-ac>

3.	South Africa	The Civil Union Act 17 of 2007.	Legalized same-sex marriage in November 2006 ⁴² .
4.	Norway	Norway Marriage Act of 2009.	Since January 2009, gay couples in Norway legally have been able to marry, adopt children, and undergo artificial insemination ⁴³ .
5.	Scotland	Adoption and Children (Scotland) Act, 2007.	Same-sex couples can adopt jointly from 2009 ⁴⁴ .
6.	United Kingdom	Marriage (Same-Sex Couples) Act, 2013.	Britain began recognising same-sex couples for legal marriage from 2013 ⁴⁵ .
7.	France	French Code of Civil Procedure (FCCP), 1804.	Adoption by Same sex couple is permitted from 2013 onwards ⁴⁶ .
8.	Ireland	The Marriage Act, 1972.	which provides for same-sex marriage in Ireland from 2015 ⁴⁷ .
9.	U.S.A	The Defence of Marriage Act (DOMA), 1996.	Supreme Court Declares Same-Sex Marriage Legal in All 50 States from 2015 ⁴⁸ .
10.	Taiwan	Taiwan Civil Code, 1896.	First Asian country to legalise Same sex marriage in 2019 ⁴⁹ .
11.	Israel	Israeli Surrogacy Law, 2018.	First, in Asia, Israeli male homosexual couples, single Israeli men and transgender individuals will be permitted to arrange surrogate pregnancies in the country from 2022 ⁵⁰ .
12.	Taiwan	"The court made an exception for the couple."	Two men became the first same-sex couple in Taiwan (Asia) to legally adopt a child neither of them is related to ⁵¹ .

LGBTQ+ rights resolutions are currently being pushed for by human rights groups including the United Nations. However, several nations also forbid same-sex marriage, adoption, and surrogacy, further complicating matters. Unfortunately, India still does not permit same-sex unions or same-sex couples to adopt children. Adoption rights for same-sex couples are a utopia among the many other barriers to same-sex relationships in India. Even though marriage is tarnished by societal patriarchal ideals, it is vital to obtain some rights. Adoption has been a contentious topic about protecting children's rights and LGBT people's rights, particularly the adoption by LGBT persons. In the Council of Europe member nations, many LGBT people may have children of their own or with their partners. They may bring children into a union from previous relationships, adopt children, or get legal custody of a child. It's possible that LGBT people have used services for assisted reproduction. In the best interests of the child, custody, inheritance, and next-of-kin status must all be guaranteed, regardless of the specific form. Parents who identify as trans confront unique challenges. To have their gender recognized legally, they might have to get a divorce and forfeit any parental

⁴² Masci, D., Sciupac, E. P., & Lipka, M. (n.d.). Same-sex marriage around the world. Pew Research Center's Religion & Public Life Project. Retrieved November 14, 2022, from <https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>

⁴³ Norway marriage act. (2019, March 29). Retrieved November 14, 2022, from <https://resourceequity.org/record/1133-norway-marriage-act/>

⁴⁴ New legislation sees gay Scottish couples win right to adopt children. (n.d.). HeraldScotland. Retrieved November 14, 2022, from https://www.heraldscotland.com/default_content/12613347.new-legislation-sees-gay-scottish-couples-win-right-adopt-children/

⁴⁵ Same sex marriage becomes law. (n.d.). GOV.UK. Retrieved November 14, 2022, from <https://www.gov.uk/government/news/same-sex-marriage-becomes-law>

⁴⁶ European court of human rights; france: Adoption for same sex couples. (n.d.). [Web page]. Library of Congress, Washington, D.C. 20540 USA. Retrieved November 14, 2022, from <https://www.loc.gov/item/global-legal-monitor/2012-03-30/european-court-of-human-rights-france-adoption-for-same-sex-couples/>

⁴⁷ Citizensinformation.ie. (n.d.). Rights of same-sex couples. Retrieved November 14, 2022, from https://www.citizensinformation.ie/en/birth_family_relationships/cohabiting_couples/rights_of_same_sex_couples.html

⁴⁸ Defense of marriage act | united states [1996] | britannica. (n.d.). Retrieved November 14, 2022, from <https://www.britannica.com/topic/Defense-of-Marriage-Act>.

⁴⁹ Taiwan: Same-sex marriage law enters into effect. (n.d.). [Web page]. Library of Congress, Washington, D.C. 20540 USA. Retrieved November 14, 2022, from <https://www.loc.gov/item/global-legal-monitor/2019-06-18/taiwan-same-sex-marriage-law-enters-into-effect/>

⁵⁰ "Countries Where Same-Sex Couples Can Jointly Adopt Children 2020." Statista, <https://www.statista.com/statistics/1269946/countries-where-same-sex-couples-can-jointly-adopt-children/>. Accessed 14 Nov. 2022.

⁵¹ Cheung, E. (2022, July 2). Taiwan accepts same-sex marriage, so why not adoption? CNN. Retrieved November 14, 2022, from <https://www.cnn.com/2022/07/01/asia/taiwan-lgbtq-adoption-gay-marriage-intl-hnk/index.html>

rights they had due to their marital status⁵². By 2020, the adoption of LGBT people was permitted in 28 nations and regions. The two continents with the lowest acceptability rates for LGBT adoption are Asia and Africa. Few nations, including those with gay couples, have surrogacy laws that are tolerant too. But India has gotten more conservative in recent years. The nation established regulations that prohibit same-sex couples and unmarried couples from carrying out surrogacy in India⁵³. A new bill makes surrogacy illegal for single parents, homosexuals, and live-in couples⁵⁴. Therefore, it is evident from this comparative analysis that India lags behind other developing nations by a wide margin. It is past time for us to enact legislation that supports gay couples and unmarried couples. Only then can we guarantee that all of our country's inhabitants have access to these basic human rights.

5. JUDICIAL APPROACH:

In this Article, the Researcher has analyzed several Judicial Pronouncements by Indian courts and the Interpretations of different legal provisions protecting the Rights of Queer and unmarried couples, and concluded with recommendations based on Legal analysis and synthesis of Judgements. In a developing country like India, it is high time to admire the third gender in the aspect of Constitutional rights. This is very important for the Gender-inclusive future of our country. But regarding the statutory or judicial developments that recognizing the rights of third-gender community, there exist only a few notable precedents. Here are the most important judgments which lead to the discussion of Queer Rights in India:

Case Name.	Citation.	Major Issue raised.	Reasoning.	Decision.
Naz Foundation V. Government Of NCT of Delhi & Others.	160 (2009) DLT 277	A public interest litigation challenging the constitutionality of Section 377 of the Indian Penal Code, 1860 (IPC).	The constitutional guarantees included in Articles 14, 19, and 21 are violated by Section 377 IPC. Additionally, it violates their rights to privacy and their freedom to live in dignity.	It is a violation of basic rights guaranteed by the Indian Constitution to consider consenting homosexual sex between adults as a crime.
Suresh Kumar Koushal & Another V. Naz Foundation & Others.	AIR 2014 SC 563	Appeal against the order of the Delhi High Court allowed the writ petition filed by NAZ Foundation challenging the constitutional validity of Section 377 of the Indian Penal Code, 1860 (IPC)	The presumption of constitutionality cannot be stretched so far as to suggest that there must always be some secret justification for subjecting particular people or businesses to unfriendly or discriminatory laws.	The appeal was allowed and the order in Naz Foundation V. Government of NCT of Delhi & Others was SET ASIDE.

⁵². "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation." European Union Agency for Fundamental Rights, 4 Aug. 2011. Retrieved November 14, 2022, from <https://fra.europa.eu/en/publication/2011/homophobia-and-discrimination-grounds-sexual-orientation-and-gender-identity-eu>.

⁵³. The Surrogacy (Regulation) Bill, 2019.

⁵⁴. Chaitanya Mallapur, IndiaSpend.com. "A New Bill Makes Surrogacy Illegal for Single Parents, Homosexuals and Live-in Couples." Scroll.In, <https://scroll.in/article/935438/a-new-bill-makes-surrogacy-illegal-for-single-parents-homosexuals-and-live-in-couples>. Accessed 14 Nov. 2022.

National Legal Services Authority V. Union Of India & Others.	AIR 2014 SC 1863	Whether a person who is born a man but has a predominately feminine orientation (or vice versa) has the right to have oneself acknowledged as a female. Whether those who identify as transgender (TG) have a right to be recognized as such.	Discrimination based on gender identification is covered by Articles 15 and 16's prohibitions against sex-based discrimination.	The NALSA case verdict resulted in the Supreme Court of India recognizing transgender people as the "third gender," maintaining that the fundamental rights guaranteed by the Indian Constitution will apply to them equally, and giving them the ability to self-identify as male, female, or third gender.
Justice K.S. Puttaswamy (retd.), & Another V. Union Of India & Others	AIR 2017 SC 4161	According to the Court, the right to privacy is a fundamental libertarian right that is protected by Article 21, which states that "No one shall be deprived of his life or personal liberty except the procedure established by law."	Should a fundamental right be denied because of the law protecting privacy? Regardless of a person's gender or sex, the right to privacy was likewise granted to all.	The right to privacy was reiterated by the nine-judge panel in this case as a basic one guaranteed by the Indian Constitution. Members of the LGBTQIA community have autonomy and are shielded from government interference when exercising their inalienable right to privacy, which allows them to select their partners.
Navtej Singh Johar V. Union Of India Ministry of Law and Justice Secretary.	AIR 2018 SC 4321	A Writ petition was filed to declare Section 377 of the Indian Penal Code to be unconstitutional and to include the right to sexuality, sexual autonomy, and the choice of a sexual partner as parts of the right to life provided by Article 21 of the Indian Constitution.	The court argued that criminalizing consensual sex between adults in private was an infringement on the right to privacy, that sexual orientation is an essential component of self-identity and that to deny it would be an infringement on the right to life, and that fundamental rights cannot be denied because they only apply to a tiny portion of the population.	The Supreme Court of India made a historic judgment that decriminalized all adult consensual sex, including homosexual intercourse. Article 14 of the Constitution is violated by Section 377 of the IPC, so it may be partially overturned.

S. Sreeja V. The Commissioner Of Police, Thiruvananthapuram & Others.	2018 (4) KLT 644	The issue of whether people of the same gender are allowed to live together naturally arises in the context of this writ petition for a writ of habeas corpus.	Social norms and morals have a place, but they should not supersede the freedom that the constitution guarantees. The aforementioned freedom is a constitutional as well as a human right.	The court argued that regardless of the women's relationships, they are both adults who are free to choose where and with whom to reside.
Arunkumar & Other V. The Inspector General of Registration & Others	WP(MD)No.4125 of 2019	If transgender people were included in the definition of "bride" as stated in Section 5 of the Hindu Marriage Act (HMA).	The Court ruled that a marriage between a male and a transwoman, who both identified as Hindus, was legitimate. As maintained by the Supreme Court in NALSA v. Union of India, which was reiterated in Justice K. Puttaswamy v. Union of India and again in Navtej Singh Johar v. Union of India, the Court declared that transgender people have the freedom to choose their self-identified gender.	According to the Indian Constitution's Articles 14, 19(1)(a), 21, and 25, the court determined that failing to register the marriage based on the prohibition of gender would constitute a breach of those individuals' basic rights.
S. Sushma, D/o. Mr. V. Senthil Kumar And Another V. Commissioner Of Police, Chennai And Others	(2021) 5 MLJ 9	Does or is sexual orientation subject to the scope of Article 15(1)? Does Article 21 cover the freedom of expression and the right to sexual autonomy?	The phrase "sex," which is referenced in Article 15(1), was also found to include a person's sexual identity, character, and orientation in addition to their biological characteristics.	The honorable judge gave several directives to enhance this community's general status, foster their acceptance, and stop crimes against them.

Matam Gangabhavani V. State Of Andhra Pradesh And Ors	2022 (3) ALT 32	Does omitting transgender people from a public appointment violate the constitution and go against NALSA's reservation policy?	The Honourable Supreme Court's directive only applies to the extent of adopting actions to consider transgender people as socially and educationally backward classes of citizens, not to create or reserve a specific percentage of positions for transgender people.	The State Government is instructed to carry out the study on the issues faced by transgender people as instructed by the Apex Court in National Legal Services Authority v. Union of India, and to immediately and strictly follow the directive.
Deepika Singh V. Central Administrative Tribunal and Others	AIR 2022 SC 4108	Because her husband has two children from a previous marriage, a lady cannot be denied maternity leave under the Central Services (Leave Rules) of 1972 for her biological kid.	"Most people's idea of the term "family," both in the legal system and society, is that it refers to a single, stable unit made up of a mother, a father (who stays the same over time), and their offspring. This presumption ignores the fact that many families do not initially correspond to this expectation as well as the numerous factors that may cause a person's familial structure to shift. Queer relationships, domestic partnerships, and unmarried partnerships are all examples of familial ties.	The Supreme Court of India has ordered that the legal protections for families must be expanded to include blended families, same-sex couples, and other households it deems to be "atypical." The court ruled that blended families, single parents, and parents of the same sex should all be treated equally.

6. CONCLUSION AND RECOMMENDATIONS:

As a step towards accepting the family rights of Queer couple or an unmarried couple, The Supreme Court of India has stated that "family relationships may take the form of domestic, unmarried partnerships, or LGBT relationships," adding that an "atypical" representation of a family unit is just as genuine as its conventional counterpart and merits legal protection⁵⁵. This is yet another historical judgment after that happened in 2018 regarding the decriminalizing of Section 377 of the Indian Penal Code, 1860. "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries."⁵⁶

⁵⁵. Deepika Singh V. Central Administrative Tribunal and Others, AIR 2022 SC 4108

⁵⁶. Justice Indu Malhotra." The New Indian Express, <https://www.newindianexpress.com/nation/2018/sep/06/history-owes-apology-to-lgbt-community-justice-indu-malhotra-1868480.html>. Accessed 16 Nov. 2022.

As a developing nation, India is required to implement several laws that assure justice, equity, and good conscience for its citizens. However, to truly achieve equality, LGBT people must have explicit and unrestricted access to marriage and divorce rights. The laws have also been changed to ensure that they apply to LGBT people and unmarried couples alike.

The International aspect of accepting the Queer community has the 29 principles that make up the Yogyakarta Principles place a high value on the equality and inalienability of all human rights, regardless of sexual orientation or gender identity. The arrangement of these principles indicates the type and degree of prejudice experienced by the LGBT community, which is ingrained in society and upheld by its legal framework. These guidelines are founded on the philosophy of rights-based approaches, which gives the State Parties the responsibility of carrying out the laws. Another crucial clause emphasizes protection from all types of trafficking, sale, and exploitation⁵⁷. This clause recognizes and considers the vulnerability of people with different sexual orientations due to prejudice and social isolation, which may make them vulnerable to trafficking and exploitation.

Everybody has a basic right as a human being to live with dignity in our society, whether they are men, women, or transgender without any limits, as stated in the slogan "My life, my choice, my partner with consent."⁵⁸ Human rights should include recognition of LGBTQ rights. Articles 14, 15, 19, 21, and 29 are all infringed by not recognizing same-sex unions, not allowing adoption, guardianship, surrogacy, or IVF, and not having access to secure and LGBT+ inclusive workplaces. Additionally, discrimination based purely on sexual orientation is against Army, Navy, and Air Force Act Articles 14, 15, and 21⁵⁹. The fundamental tenet of human rights is that all people are created equally. It follows that all people should be treated equally and with decency. Anything that lessens its dignity is wrong because it breaches the equality principle and opens the door for discrimination⁶⁰.

Considering the rights of an unmarried couple, in nations like the USA, China, India, and France, live-in relationships are becoming more and more common. People are starting to see disenchantment or marriage breakup in the aforementioned countries, especially in their urban centers, or when a couple is still reluctant to move forward. This is also a significant step toward future marriage because it allows partners to get to know and understand one another. Due to several factors, including cultural and religious taboos, the fact that a live-in relationship does not require married status, and the conservative nature of some nations, marriage is often regarded as having greater value than a live-in relationship. Lack of laws and legal identity for their cohabitation are the biggest barriers facing unmarried couples when it comes to adoption and surrogacy rights. This is a violation of the Fundamental Right to Life for the unmarried couple as well.

Recommendation:

The first same-sex marriage in the world was officially recognized in the Netherlands more than 2 decades ago in 2000. Additionally, since 2002, the United Kingdom has prioritized same-sex and unmarried couples' adoption rights. In 2022, Israel will be the first Asian nation to welcome gay couples, single men, and transgender people for surrogate pregnancy. These were the significant developments regarding the recognition of the rights of third genders and the provision of justice for the LGBTQ community and unmarried couples. There are about 2.5 million persons who identify as third gender in a developing nation like India, which has 1.4 billion residents. Consequently, the rights guaranteed by the Constitution as fundamental rights must be improved to take into account the rights of Third genders and unmarried couples. The Indian government must take action to make the necessary adjustments to the third genders' legislation to guarantee these rights, i.e., The Transgender Persons (Protection of Rights) Act, 2019 needs to be modified including the family rights, right to adoption, surrogacy and such other family benefits.

Regarding the acceptance of the rights of an unmarried couple, India shall look into the policy of common law marriages which prevails in some Western countries. Common-law marriage, often referred to as non-ceremonial

⁵⁷ Yogyakarta Principles. <http://arc-international.net/yogyakarta-principles/>. Accessed 16 Nov. 2022.

⁵⁸ LGBT Rights In India. <https://legalserviceindia.com/legal/article-7932-lgbt-rights-in-india.html>. Accessed 16 Nov. 2022

⁵⁹ Rai, Diva. "Evolution of LGBT Rights in India and Taking the Narrative Forward." IPleaders, 21 June 2020, <https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>. Accessed 16 Nov. 2022.

⁶⁰ "The Long Road to LGBT Equality in India | United Nations Development Programme." UNDP, <https://www.undp.org/india/blog/long-road-lgbt-equality-india>. Accessed 16 Nov. 2022

marriage, informal marriage, or marriage by habit and repute, refers to a legal framework in which a couple may be regarded as married even though their union has not been formally recorded as a civil or religious marriage. There are ways to make the legal rights and obligations of both parties in a common-law marriage simpler. A cohabitation agreement specifies how the partners will split financial obligations while cohabitating as well as what will happen if one of them becomes ill, passes away, or the relationship ends for any other reason. They can also be utilized to cover specific arrangements for any children that may be born from the relationship to provide certainty and prevent exorbitantly expensive legal battles in the future. So, in a sense, the unmarried couple benefits legally from a nuptial agreement that is analogous to a common law marriage contract. India can also adopt these measures to ensure the legal identity of unmarried couples. As a result, everyone's rights will be protected equally following with the Fundamental Rights mentioned in The Indian Constitution.

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