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Queer Parenting: A New Millennium

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ABSTRACT

It is awful for India that we are still don't have any such laws that allow queer parenting, law hasn't allowed transgender community to avail the happiness of being parents. It is not wrong to say that the fight against discriminating against section 377 must not end there. It's just like a battle of half-won. They face so much discrimination in their daily life at home or workplaces. India reflects diversification where everyone has equal rights, and according to article 15, there is no such discrimination. The government is working hard enough for the welfare of the transgender community. They provide different-different forms of programs, schemes and many free operations to ensure that they do not face any social difficulties. We must be aware that in previous times they were not even considered a gender, but now they got recognition as the third gender as per the right to choose your gender. The transgender community have various rights under the constitution of India, but one right for them is still missing, that is 'can they adopt a child or not?'

Keywords: Transgender, Adoption, Constitution, Parenting, Equality.

I. INTRODUCTION

The meaning of transgender:

Transgender are those people whose expressions and sex identity doesn't match with gender assigned by birth. These people have a gender expression or gender identity that is very different from the sex that they were born with and some of these people willingly take medical assistance to transform them from one sex to another which is called transsexual. These people are always a part of society since ancient times and their lives were even more difficult than today because at that time being transgender doesn't mean gender in general. In early times, approximately 3000 years ago in India, the third gender was documented which was linked with Hijras who were categorised as third-gender or trans-feminine people in India since ancient times.

The meaning of Adoption:

Adoption: It is the process in which people adopt another's a biological child in fact as their own legally through their personal laws. It can be also defined as the act of accepting and acquiring someone in the eyes of law.

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II. STRUGGLES OF A TRANSGENDER ON LEGALLY ADOPTION FOR A CHILD

India has the provision for adoption of a child under the Hindu Adoption and Maintenance Act, 1956² which deals with the procedure for an adoption of a child legally in India. The act only talks about the option for males and females to adopt. There is no such option for transgender to adopt under this act similarly to other such acts as an adoption under the juvenile justice act. The question which arises here is why they can't be a parent or why our law still thinks they are incapable to adopt, and why they can't be accepted in society normally like other people living inside the society. I mean why transgender can't get recognition as the third gender because it's not an issue of medical or social but a human right issue. It's in the constitution of India which prohibits gender discrimination under article 15 and also article 14 talks about equality. Similarly, it's violating under article 21 which talks about the right to life and personal liberties. The summary by 'Shruti Venkatesh' says that it is injustice of allowing adoption: It's so sad, unfortunate and sexiest that queer communities don't have legal rights over a child and single parents (women) have right only. There are people who are satisfied with repelling section 377 and think the LGBT community has now complete equality like men and women but it's unfair to say yes, we have reached only half of the equality.

Parenting

The meaning of parenting is the process or activity to raise a child irrespective of any gender there's nothing like a specific gender who can only be a parent. India has seen the perfect mother, the tiger mother, the natural mother now it's high time to see and understand the importance of the other (transgender) mother. The basic meaning of parent is to develop a child with care and responsibility which a queer mother is also eligible to do so. They can raise a child exactly like natural parents.

Injustice

It is an act of injustice on both the part of the child as well as the transgender community, just to maintain some orthodox religiousness no one is coming forward to talk about it. Previously, it has been observed that transgender has illegally adopted children and saved their life. They saved girls from getting sold. The adoption of children for them actually can bring a harmonic environment in society. Eventually, Illegal adoption actually processes in the state of Tamil Nadu where people who are incapable to brought up a child leave their children with the transgender community which somehow shows that they are capable and trustworthy of

²Hindu Adoption and Maintenance Act,1956

adopting a child. The children will get happy family and it's our duty to treat them equally in adoption especially because they can't have this naturally and somehow this brings unbalance in the Indian society. It is observed that the National Transgender Person (Protection of Rights) Act, 2019 has not only failed to protect their rights but also strip them of their existing rights. It is observed that the word mother is not referred to any person but few transgender has proved that it is a feeling and behaviour. The Hon'ble Supreme Court also laid down that this mother is a feeling of care in many cases a father can also be a mother as he will satisfy the need of a mother to his children. According to the survey in the Chamble district, there were 5 doctors were caught while doing a gender election test which is illegal in India. Similarly, there was a case where a man in Zamania village of Khandwa district straight away killed his third newborn baby girl in front of his wife which should be punishable.

Requirements of Valid Adoption as per section 6 of the Hindu Adoption and Maintenance Act 1956

If we read this article thoroughly we will see that the conditions given under this section can also be fulfilled by the Transgender community then why they are not allowed to adopt, it is clearly understood that the one who is compatible with anything will not be stopped from that work.

Section 11(iii) of Hindu adoption and maintenance act 1956

This provision is made to stop step father from committing any illegal act like molestation and rape over their daughter but this cannot be in the case of transgender community.

Article 15 of the Indian Constitution

In this article it is clearly given that state should not discriminate on the basis of sex so why till now there is none provision regarding the adoption of children in favour of transgender community in Hindu adoption and maintenance act 1956. Along with this it is clearly mentioned in article 15(3) that state can do so as this community is also considered as weaker section.

Ignorance of transgender community in Indian Constitution

As per article 15(3) it is clearly said that nothing can stop state to make any provision regarding women and children and this provision is added because our society including drafting committee thinks that they are weaker section as compared to male society but why the word transgender is not mentioned their because it is clearly visible that this community has faced more exploitation as compared to women. For example- they got themselves recognised as third gender in 2014, now onwards we can see that our society start accepting them slowly that can

also get education with them in the same environment because previously their were some orthodox thinking in society which treat transgender community as untouchable.

III. SOCIETY PERSPECTIVE

According to many philanthropist, Businessman and scientists 21st century will bring evolutionary changes in society but on other hand if we notice the behaviour of people where they believe that being transgender in itself is a heinous crime.

The word evolutionary will not give its true essence until and unless it cover from all the sides like technology, customs, laws and belief because evolution is not the property of any single individual under its ambit whole society is covered and transgender community is also part of the society so their evolution is also necessary we all have to take an evolutionary steps with precautionary measures to give a respect to their life and if we observe like rights and duties everything is two-fold in nature so from this decision we will not only value the feelings of transgender but we are also taking an evolutionary step for those orphan childrens whose future can be secured through this decision.

Due to lack of education in our society many people raise their voice against this decision because they think that if children will live with transgender then they will also become like them, so enlightening people regarding this is also a crucial aspect of this evolutionary step.

Another inherent black side of society is that if baby transgender is born they neglect that baby or they handover to transgender community because a part of society thinks that they are of no use for them so why should we raise them it is somehow equivalent to treating them like garbage, even in the scenario of N.G.O who works for orphans they do the same but when it comes to adopt any male or female child then they argue or oppose them and start talking about laws, rules and regulation which is not quite fair. They also have emotions, potential, brain and heart just like us.

IV. COMPARABLE CRITICISM

Conditions of a valid adoption:	Criticism
1. Any male/female who i in the age of majority and of sound mind can take a son or a daughter in adoption according to their personal laws.	1. Why law can't say that any person who is major and of sound mind can take a son or a daughter in adoption according to their personal laws instead of male and female.

<p>2. In India, here law does not permit single man to adopt a girl child as in our society it is pre-assumed that single man can rape, molest, harass and torture the girl as many cases has been registered already where some father do things like that with their real daughters. But on the other hand females are eligible for an adoption of a boy child if they are single only condition exists there is that there must be at least age gap of twenty-one years between them.</p> <p>3. Mutual consent is also a condition to adopt the child that means both husband and wife should mutually agree for an adoption through their personal laws.</p>	<p>2. But in case of transgender community it is well understood that such tortures are biologically impossible. In the same case where transgender wants to be a mother the same condition can satisfy that there must be twenty-one years of age gap between them.</p> <p>3. The landmark decision of Navtej Singh Johar vs Union of India, the hon'ble Supreme Court of India allowed same sex marriage in the year 2018 under which transgender community has right to marry. Similarly, the condition of mutual consent of husband and wife can be fulfilled. Overall, if we see they can fulfil all the conditions technically.</p>
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V. CONCLUSION

Under this article the author has tried to cover almost all the loopholes and ignorance in the eyes of law for this community and what kind of development does transgender community demands in the present scenario. We have to revise the laws whether that is the grundnorm or personal laws. As we highlighted above, the loops in the Constitution of India that is in article 15 so the parliament must add clauses regarding the welfare of transgender and sections related to valid adoption also demand reforms. This 21st century must bring evolution for everyone living in a society, not for any particular section. It is the responsibility of every citizen along with the government to promote and work for the welfare of each one as this is what jurisprudence (eye of law) talks about an example- social contract theory and social engineering. If we look closely at the Roscoe Pound social engineering theory we will observe that lawyers have to work like engineers in building society in fulfilling the maximum wants of people with minimum resources and when we look at social contract theory we will find that it talks about the general will of people means every section of society must come under welfare scheme of state and if

not its responsibility of government to take their of that section and make special provisions to upgrade them.
