



Rainbow Rights Project (R-Rights), Inc. is a unique alternative lawyering non-governmental organization (NGO) catering to the marginalized sector of Sexual Minorities or lesbians, gays, bisexuals, and transgenders (LGBTs). Since its establishment in 2005, it has been conducting innovative Gender Sensitivity and Human Rights Trainings focused on LGBT issues and concerns.

LGBT Issues in Philippine Law

A BASIC Q & A

This is an initiative of Rainbow Rights Project (R-Rights), Inc.
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- Q:** Is having sexual relations with persons of the same sex criminal?
- A:** **NO.** Sex between consenting adults of the same sex is not criminal per se. They are entitled to the privacy of their sexual relations provided they do not violate other provisions of law, i.e., no violence and force tantamount to sexual assault, no sex in public or under scandalous circumstances amounting to grave scandal, or sex with a minor which falls under child abuse.
- Q:** Is Homosexual or Lesbian conduct penalized in the Philippines?
- A:** **NO.** The Philippines, unlike other countries with common law backgrounds, has no Anti-Sodomy Laws which punish buggery or engaging in anal sex. While this penal law applies to gay men, there is nothing similar that applies to lesbian women.
- Q:** Can same-sex couples legally marry in the Philippines?
- A:** **NO.** While same-sex partners can have "gay weddings" termed as Commitment Ceremonies or Holy Unions, these have no legal consequences. These are private rituals, and couples cannot change their marital status or adopt their partner's surnames.
- Q:** Without the benefit of marriage, are same-sex couples protected by law?
- A:** **NO.** Same-sex couples, no matter how long they have been together as committed partners, do not enjoy any of the "automatic" rights and privileges of married couples because they can never be each other's legal spouse.
- Q:** What are the rights and privileges that same-sex couples do not enjoy?
- A:** The rights and privileges same-sex couples do not enjoy are:
- Joint Property Rights
 - Next-of-Kin status
 - Inheritance Rights
 - Social Security/Insurance Benefits
 - Tax Exemptions
 - Marital Privilege of Confidential Info
 - Immigration/Naturalization
- Q:** Can same-sex couples legally adopt?
- A:** Joint adoption in the Philippines is allowed only for husbands and wives or those legally married. Same-sex partners cannot adopt as a couple.
- Q:** Can LGBTs be adoptive parents or foster parents?
- A:** **YES.** Filipino LGBTs can legally adopt children in their "individual" capacity. They may also be a foster parent, although the preference is to put children in "traditional" family set-ups where there are a father and a mother who can presumably serve as good "role models". But there are some open-minded social workers who recommend single LGBTs as a possible foster parent.

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green CARD



WHAT EVERY LGBT PARENT SHOULD KNOW: FAMILY LAW IN THE PHILIPPINES

GREEN CARD is an initiative of the Rainbow Rights Project (R-Rights), Inc.

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FILIAION basically refers to a child's parentage or family lineage. The term may be used in relation to paternity or maternity, and is determined biologically or blood relations, or declared by law and the courts. Thus, filiation may be by nature or by adoption. Natural filiation may either be legitimate or illegitimate. (Article 163, Family Code of 1988)

LEGITIMACY really refers more to the status of the parents' relationship, on whether they are legally married or not, rather than to the status of the children but has special significance in the exercise of parental authority. For LGBTs, this distinction is important in considering children from previous relationships or marriages.

Legitimate children are those conceived or born during the marriage of his/her parents (Article 164, Family Code), while children conceived or born outside a valid marriage are illegitimate. (Article 165, FC).

LEGITIMATE CHILDREN SHALL HAVE THE FOLLOWING RIGHTS:

- 1) To bear the surnames of the father and mother
- 2) To receive support from their parents, ascendants, and in proper cases, from brothers and sisters
- 3) To be entitled to successional or inheritance rights.

They are also subject to the joint parental authority of their married parents. (Article 174, Chapter 2, Title VI, FC)

Illegitimate children, on the other hand, are subject only to their mother's parental authority and shall use the surname of their mother, unless acknowledged by the father and expressly authorized to use his surname under the Revilla law. Illegitimate children are also entitled to support from both parents, and a father's acknowledgement as indicated in a child's birth certificate is useful when claiming support. Nonetheless, an illegitimate child only gets half of what a legitimate child may inherit from his/her parent. (Article 176, FC)

SUPPORT comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. Education refers to schooling or training for some profession, trade, or vocation, even after 18 years of age. Transportation shall include expenses in going to and from school, or to and from place of work. (Article 194, Title VIII, FC)

PARENTAL AUTHORITY is the natural right and duty of parents over the person and property of their minor or unemancipated children. Parental authority and responsibility includes the caring for and rearing of children to civic consciousness and efficiency, and the development of their moral, mental and physical character and well-being. (Article 209 Title IX, FC)

While the State under its power of parens patriae (the Government as the supreme "parent" of all its citizens) may intervene in certain extreme cases, it will first defer to the biological parents because the law puts a premium on a natural parent's rights.

A married couple exercise joint parental authority over their common children, and such parental authority and responsibility may not be renounced or transferred, except in cases authorized by law. Thus, a same-sex partner of a biological parent is a mere stranger to the child unless he/she acquires a legal right to exercise parental authority over the child by law or by order of the courts, as in adoption or guardianship.

In case of the absence or death of a parent, the parent present shall exercise parental authority. (Article 212, FC) In case of separation, parental authority shall be exercise by the one designated by the courts. No child under seven years old shall be separated from his/her mother unless the court finds compelling reasons to order otherwise. The court shall take into account all relevant considerations, especially the choice of the child if over 10 years of age, unless the parent chosen is unfit. (Article 213, FC)

Parental authority terminates upon the death of either parents or the child, or upon emancipation or reaching the age of majority which is 18 years of age. Parental authority also terminates upon legal adoption of a child, the appointment of a guardian, a court order or a final judgment of a competent court, or a medical declaration of abandonment in a case filed for that purpose. (Articles 228 and 229, Chapter 5, Title IX, FC)

Q: Can LGBTs be legal guardians of children?

A: YES. If the court finds it in the best interest of the child to place him or her under the parental authority and custody of an LGBT member, then one can be a legal guardian.

Q: What other penal laws apply to LGBTs?

A: Anti-Violence against Women and their Children Act (VAWC) of 2004 or Republic Act No. 9262
This law addresses gender-based violence and seeks to protect adult women victims and children, whether boys or girls. It defines perpetrators or offenders as not being limited to males, since "intimate relations" includes same-sex partners or lesbian lovers.

Q: Can an LGBT teacher having relations with a student be criminally liable?

A: YES. If the student is a minor, an LGBT teacher may be charged with child abuse under RA 7610. And even if the student is 18 years of age, it may still render the LGBT teacher vulnerable to allegations of sexual harassment.

Q: Are LGBTs protected under the Philippine Constitution?

A: YES. Under the general protection extended by the Equal Protection Clause of the Bill of Rights, Filipino LGBTs are constitutionally guaranteed the Right to Equal Treatment before the law and should not be subjected to any discrimination.

Q: Is there a law which specifically applies to LGBTs and particularly protects their rights?

A: NO. There is none. Unfortunately, there is no specific law which applies to LGBTs and protects their rights given their unique situation and the nuances of their problems. It is for this reason that various LGBT advocates have proposed and pushed for the passage of the Anti-Discrimination Bill in Congress.

Q: Have LGBT issues been addressed by the courts to become part of jurisprudence?

A: YES. LGBT issues in the form of petitions for change of entry in birth certificates by transgenders, as well as VAWC and child custody cases by lesbian mothers have been taken cognizance of by the courts. Recently, there have been at least three (3) Supreme Court decisions that directly tackled LGBT issues – Gulaberto vs. Gualberto, the Mely Silverio case and the Jennifer-Jeffrey Cagandahan case.

Q: Are the rights of LGBTs being violated in the Philippines?

A: YES. Despite the relative "freedom" and "tolerance" Filipino LGBTs enjoy, many LGBTs still experience homophobia and violence. LGBT youth are subjected to extreme corporal punishment and child abuse for their perceived "tendencies". They may even be taken out of school by their parent or worse, be expelled by their Catholic schools. Adult LGBTs encounter problems getting employment and are subjected to discrimination and oppression in the workplace. Filipino transgenders are known to be barred entry to certain bars and restaurants allegedly for not following "proper dress codes".

Q: Is it legal to form LGBT organizations in the Philippines?

A: YES. The Philippine Constitution guarantees the right to association and this includes the right to form organizations. Unlike in other Asian countries, Filipino LGBT advocates can form Non-Governmental Organizations (NGOs) which they can register with the Securities and Exchange Commission (SEC).

Q: Do Filipino LGBTs have the right to political participation?

A: YES. LGBTs have the right to participate in politics, whether as individuals with voting rights, or be elective officials. As a marginalized sector, LGBTs may even seek sectoral representation in Congress under the Partylist Law scheme

In case of FOUNDLING, ABANDONED, NEGLECTED or ABUSED children, and other children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children's homes, orphanages, and similar institutions duly accredited by the Department of Social Welfare and Development (DSWD). (Article 217, FC)

ADOPTION is defined as a socio-legal process of providing a permanent family to a child whose parents have voluntarily or involuntarily relinquished parental authority over the child. Adoption is for children who cannot be reared by their biological parents and who need and can benefit from new and permanent family ties. Adoption provides for the same mutual rights and obligations that exist between legitimate children and their parents in terms of parental authority, inheritance rights, and the legal use of the surname.

Any person of age, in full possession of civil capacity and legal rights, in a position to support and care for a child may adopt. In addition, an adopter must be at least 16 years older than the adoptee, unless the adopter is a parent by nature of the adoptee, or is the spouse of the legitimate parent of the adoptee. (Article 183, FC) These being the only requirements, a single LGBT may become an adoptive parent as an individual.

Only husbands and wives are allowed joint adoption, so same-sex partners cannot jointly adopt. For married couples, one spouse may adopt his own illegitimate child, or a spouse may adopt the legitimate child of the other, and both may still exercise parental authority.

In case of same-sex couples, when a partner adopts the child of a biological parent, that parent may lose parental authority because Philippine law does not allow second-parent adoptions.

Generally, only minors or those below 18 years of age may be adopted.
CHILDREN MAY BE ADOPTED BY 3 WAYS:

- 1) Family or relative adoption where biological parents relinquish their child and directly place the child for adoption by a relative or a member of their extended family
- 2) Private or independent adoptions involve direct placement of the child to a family known to the biological parents, or through an intermediary or a go-between. But this practice could be abused by individuals who just want to make a profit, while
- 3) Agency adoptions through licensed adoption agencies which finds and develops adoptive families for voluntarily or involuntarily committed children.

SIMULATED BIRTH is an offense committed by a person who causes the registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent, and shall be penalized imprisonment and a fine of up to P50,000.

(Republic Act No. 8552, Domestic Adoption Law of 1998)