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A Study for the Adoption Provisions and Maintenance under Hindu Law

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ABSTRACT

When a kid is adopted, his or her biological parents legally relinquish all parental rights and responsibilities to the adoptive parents. Multiple conditions and abilities must be met for an adoption to be legal. The process of adoption is governed by a codified set of rules and regulations. Progressive cultures, on the other hand, place a premium on maintenance, whether for the spouse or for children or other dependents. This area of the law is evolving and being updated to meet the changing requirements of the State. The purpose of this article is to describe all such laws in a concise but thorough manner. The Indian legal system has developed a number of important provisions that are discussed in this article. Additionally, an effort has been made to combine the substantive and procedural aspects of the law into a single body, with the hope that this would improve our ability to comprehend how these rules really operate.

Keywords: Hindu Law, Adoption.

I. INTRODUCTION

Datta homa, an ancient Indian adoption ritual, is a precious proof of a child's adoption. The Hindus have always placed a premium on having a son, and if they do not get one, they can not have any more kids. This has led to the development of the practice of adoption. Adoption was seen as more of a sacramental act than a secular one in the Shashtrik Hindu Law. Primarily, adopting a child served the purposes of continuing a family's lineage and ensuring proper burial. When a kid is adopted, his or her legal rights and parental responsibilities are transferred from the birth parents to the adoptive parents. To an orphaned child, this is the key to finding joy in life. By showering a kid with love and attention, the cause illuminates the true essence of mankind.

Adoption creates a new, permanent, and loving relationship between a kid and their adoptive parents, making the adoptive family whole. The two foundational Hindu epics, the Ramayana and the Mahabharata, form the basis for Hinduism's tenets of karma and social structure. Nobody other in the world has a religion with a longer adoption intuition than Hindus. The

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Hindu scriptures, epics, and customs include a wealth of information on the Hindu way of adopting a child, including laws and regulations, rituals, and personal accounts. Adoption is explicitly outlined in Hindu law, however it is not addressed in other major religious traditions' legal codes (such as Islam, Parsi, Christianity, etc.). Accordingly, the Guardians and Wards Act of 1890 governs the adoption processes for these individuals.

The same legislation lays out the steps a foreigner must follow in order to adopt a kid, and if the child is to be brought outside of the nation for the adoption to be finalized, then the adoption must be finalized in accordance with the foreign law. When a kid is adopted, he no longer has any legal ties to his birth parents. Anyone, whether a married couple, single parent, or non-resident alien, may adopt a kid. The Hindu Adoption and Maintenance Act, 1956 regulates modern adoptions under Hindu law. This law applies solely to those who meet the definition of "Hindu" in Section-2 of the Act (which includes Buddhists, Jainas, Sikhs, and anybody else who is not Muslim, Christian, Parsi, or Jewish). Those who are raised in a Hindu, Buddhist, Jaina, or Sikh household are also included, as are children who were abandoned by both biological parents. As per Hindu Law, only male children may be adopted prior to the passing of this legislation.

Allows for the adoption of a female child to be recognized as lawful. Adoption is defined in Manusmriti as "getting someone else's kid and nurturing him as if he were your own." Adoption law has been expanded by the Humanitarian Adoptions and Minors Act of 1956 (HAMA, 1956), and Section 5 of the Act states that any adoptions that fail to comply with this law are null and invalid. First and foremost, there must be evidence that the kid is of legal adoptable age. If the kid is Hindu and single, adoption is possible (subjected). ³**Kumar Sursen v. The State of Bihar**, Having a Hindu adoptee is crucial, according to the Honorable Court. The Hindu Adoption and Maintenance Act contains the comprehensive and specific requirements necessary for a secure and universal adoption.

In accordance with the requirements set down in Section 6 of the Act, an adoption is considered legal if and only if: "The person adopting has the capacity, and also the right, to take in adoption; The person giving in adoption has the capacity to do so; The person adopted is capable of being taken in adoption. The adoption is made in compliance with the other conditions The Honorable Court in the case of **Dhanraj Vs Suraj Bai**"1972 ⁴concluded that failure to comply with even a single requirement renders the adoption null and void. According to Section 7 of the Act, any adult male Hindu may adopt a son or a daughter as long as they are of legal age and of

³ Kumar Sursen Vs The State of Bihar

⁴ Dhanraj Vs Suraj Bai" (1972)

sound mind. Adoption by a Hindu guy requires the approval of his wife if she is still alive at the time of the adoption. “ This has been set in stone by the Honorable Court in the case.

According to Section 8 of the Act, a Hindu woman who is at least 18 years old and who is either single or separated and whose spouse is dead or who has totally and finally denied the world or who has renounced her Hindu faith or who has been declared by a court of able ward to be of unstable mental capacity may legally adopt a child. The Honorable Court has observed in the case. when a kid is given in adoption by his or her original parents with their knowledge and permission, and when the child is then accepted in adoption by the adoptive mother, the adoption is considered to be legal. To adopt a boy, the prospective parents must not already have a son, either biological or via a relationship, and vice versa for a girl adoption, as stipulated by the legislation.

In addition, a male adoptive father must be at least twenty-one years old to adopt a girl, and a female adoptive mother must be at least twenty-one years old to adopt a boy. ⁵**Narinderjit Kaur Vs. Union of India** According to Section 17 of the Act, it is unlawful to provide or accept any kind of cash or incentive in exchange for an adoption. A fine of up to two thousand dollars or imprisonment for a period not to exceed six months, or both, shall be imposed. The act lays out the repercussions of the adoption on the child and the adoptive parents, in addition to the procedure and circumstances of the adoption. After an adoption is finalized, the child will be given the same care and attention as if he or she were the biological child of the adoptive parents. **“Sarabjeet Kabir v. GurumalKaur.”**

The kid also cannot remarry someone to whom he or she would have been legally forbidden to wed had he or she remained with his or her biological family. In accordance with the laws, the kid is entitled to the property in which he had a legal interest prior to his adoption (subjected). The statute prevents the kid from disinherit anybody from any estate in which they had any interest prior to their adoption. When an adoption is finalized in accordance with the statute, neither the child nor the parents may revoke their parental rights under Section 15 of the act. Everything that is legally needed for the adoption to take place in India is included in the legislation. However, inter-jurisdictional adoption is not permitted by law. With the goal of preventing the unlawful use of children via adoption, the Adoption of Children, 2015 guidelines govern the adoption of a child by a foreigner or NRI. If there is no applicable law in the other nation, the Guardian and Wards Act of 1890 will be used.

⁵ Narinderjit Kaur Vs. Union of India

⁶ Sarabjeet Kabir v. GurumalKaur.”

Furthermore, the Juvenile Justice Act of 2015 is crucial in international adoptions. “Guardians and Wards Act, 1890 lays the conditions of adoption of a child that a child should be-

- 1) Minor
- 2) An orphan or abandoned or surrendered child
- 3) Non-Hindu”

An application for adoption must be submitted to the Child Welfare Agency in accordance with HAMA, 1956. Central Adoption Resource Authority, Delhi attests to the validity of the registration performed by the agency. Once the petition has been filed with the court, the adoptive parents will be interviewed. When the hearing is over, the judge will issue a decree making the adoption official. Adoptive parents have the legal right to make choices about the adopted child's race, ethnicity, and sexual orientation. Additionally, the statute does not prohibit adoptions if the prospective parents already have a child of the same gender. Newly developed is CARINGS, the Child Adoption Resource Information and Guidance System, which allows for online registration of adoption of a child.

The Central Adoption Resource Agency is responsible for its administration. Within one month of submitting an application, adoptive parents must use this system to provide all necessary paperwork, after which a social worker will make a study report analyzing the parents' fitness to adopt. Once a parent's eligibility has been confirmed, their name will be added to a waiting list or seniority list. On the spot, parents are given information on six kids and given 48 hours to reserve one of them. The meeting between the kid and the adoptive parents will be finalized within the following 15 days. The adoption agency will begin the required legal proceedings after they have made the decision to adopt the kid. An act as selfless as adopting a child cannot be overstated. However, several gaps remain in the methods.

HAMA states that only a guy or female may legally adopt a kid. Consequently, the statute fails to address adoption by persons with non-binary gender identities. The third gender community is now fully accepted in the United States. The case of ⁷**Shabnam Hashmi v. Union of India**, has encouraged people of all faiths to adopt, but resources remain inadequate. Upon passage, the Transgender Bill must ensure that all adoptable children, regardless of their gender, have access to the same protections as biological children. There is a significant time commitment involved in adoption, often ranging from several months to many years, before final approval is received. Adoption is a difficult process because of the stringent requirements placed on

⁷ Shabnam Hashmi v. Union of India

prospective adoptive parents. Adoption is fraught with problems, including sexism. Justice P.N. Bhagwati in a case stated, “no child can grow his full stature, outside the framework of a family”. “

As per the directions of Honorable Supreme Court, Central Adoption Resource Authority (CARA), the apex controlling body in a matter relating to adoption in India under the Ministry of Women and Child Development (MWCD) for legal adoption has laid down guidelines based on the judgement of Honorable Court in⁸ **Lakshmi Kant Pandey v. Union of India** and Section 41(3) of the JJ Act.” Legally, a child may be adopted into the care of an individual or couple. This method has been used for decades, and it is now standard procedure in many countries. It is a good thing to do, as it helps orphans and also makes those who want to be parents happy. As society develops, orphans will have more opportunities to find permanent homes via adoption.

Adopted children in Hindu mythology get the authority to conduct rituals specified in the Shastras after they become the "aurasa." In the case of ⁹**Amarena Man Singh vs Sanatan Singh**, The Respected Court acknowledged the value of spiritual and ceremonial practices in finalizing adoptions. Article 21 of the Indian Constitution protects the individual's right to life and liberty. A child's right to life ensures that he or she will be treated with dignity. Maintenance is dealt with under Chapter 3 of the Hindu Adoption and Maintenance Act of 1956. Provision of money for necessities such as food, clothing, shelter, education, and medical care is what is meant by "maintenance" according to Section 3(b) of the Hindu Adoption and Maintenance Act, 1956. According to Section 24, only Hindus may receive support payments under this law. The statute grants spousal support to a former wife depending on her former husband's earning potential in the event of a divorce. Up to her second marriage, the woman will have a comfortable quantity of support. In such cases, as specified in Section 18(2) of the Hindu Adoption and Maintenance Act of 1956, the following apply:

- 1) The husband has abandoned his wife without a good cause and against her will.
- 2) If, while married, her spouse poses a threat to her safety.
- 3) In the case that the spouse has contracted an infectious and incurable sickness.
- 4) To what extent the spouse has other wives.
- 5) In the event that the spouse undergoes a religious conversion or for any other

⁸ Lakshmi Kant Pandey v. Union of India

⁹ Amarena Man Singh vs Sanatan Singh

justifiable cause, the wife may file for divorce.

You may choose to have this money dripped into your bank account every month, or all at once. If the woman is unable to pay for her own medical care, as was found in the case of ¹⁰**Smt. Anita Thakral Vs Shri Satbir Singh Thakral**. Among the exceptions to having to pay maintenance that are listed in Section 18(3) are: “If the wife if in sexual relation or adultery. If the wife changes her religion” The support for a widowed daughter-in-law is provided under the Hindu Adoption and Maintenance Act of 1956. When the spouse dies, the responsibility for paying maintenance falls on the in-laws' shoulders. Daughter-in-laws are eligible for compensation under Section 19 of the Hindu Adoption and Maintenance Act, 1956 if they meet the following criteria:“ No income from any source No property Insufficient property to cater her basic requirements”

If the father-in-law loses property or the daughter-in-law remarries and he is unable to support his family, he is protected by Section 19 of the Hindu Adoption and Maintenance Act, 1956. In the case of ¹¹**Raj Kishore Mishra Vs Meena Mishra**, If the daughter-in-law is competent to provide for herself, the court said, she is not entitled to support. Children and elderly parents are also entitled to support payments under the Hindu Adoption and Maintenance Act of 1956. According to Section 20 of the Act, both biological and adoptive parents have a legal responsibility to support their minor children. Until she gets married, a woman is eligible for maintenance payments. The provision also mandates taking care of elderly or infirm parents who can not do it for themselves. A stepmother is treated as a parent if the stepson or daughter lives with her. The same has been held in the case of ¹²**Mst. Samu Bai &anr v. ShahjiMagan Lal**.

Dependents are likewise protected under the Hindu Adoption and Maintenance Act of 1956. The statute defines a dependent as a relative of the dead under Section 21. According to Section 22 of the Act, the surviving spouse and dependent children are entitled to receive support from the heirs of the estate. If there are many heirs, the maintenance payments will be split proportionally based on each heir's part of the estate. If the dependents have received a portion of the inheritance, they are not entitled to maintenance. The requirements for determining the amount of compensation may be found in Section 23 of the Hindu Adoption and Maintenance Act, 1956.

Given that the legislation does not mandate a minimum or maximum amount of maintenance

¹⁰ Smt. Anita Thakral Vs Shri Satbir Singh Thakral

¹¹ Raj Kishore Mishra Vs Meena Mishra

¹² Mst. Samu Bai &anr v. ShahjiMagan Lal

payments, the court is left to decide what is fair. Alterations to maintenance may be ordered by the court or agreed upon by the parties in accordance with Section 25 of the Act. In the case of ¹³**Purus tam Mahakud Vs Smt. Annapurna Mahakud**, it was decided by the Honorable Court that the civil court might provide temporary maintenance. From the date of filing until the date of dismissal, the husband may be ordered to pay the wife interim support. The term "Pendente Lite" may be used interchangeably with this term to describe the idea. In the event of a divorce, permanent maintenance is provided to the wife regardless of her ability to earn a living, however the woman is expected to pay any necessary legal fees out of her own pocket.

All relevant circumstances will be taken into account when deciding whether or not to make a grant, including the parties' financial situations, the spouse's current and future requirements, the spouse's assets and obligations, and any other relevant circumstances. The primary goal of compensation is to restore a person to a financial position that is enough to meet their fundamental necessities. Marriage serves as the foundation of any community. Each spouse has certain responsibilities and entitlements, the neglect of which might lead to the family's financial hardship. When it comes to laying out the rules for adoption and maintenance under Indian law, the Hindu Adoption and Maintenance Act, 1956 provides a comprehensive and satisfying picture. The clear and detailed rules for adoption and maintenance made possible by previous judicial precedents and judgements are icing on the cake.

As a result of the verdicts, India is now more liberal in this area. It is only Hindus who are subject to the Hindu Adoption and Maintenance Act, 1956. As part of the Hindu Code Bills, this law was enacted in 1956. The act is the primary piece of legislation regulating adoption in Hindu law, and it has advanced the concept of adoptees' and adoptors' rights. Adoption as a concept is taken from Manu smriti. The Hindu Adoption and Maintenance Act, 1956 has standardized Hindu practice in a way that strikes a balance between the right to life and justice and the protection of the elderly, the continuation of family, the security of the performance of last rites and rituals, and the service of the rights of orphans. May the success be with all divinity and scholars, may all the worlds become happy.”, Our judicial system paves the way to peace and prosperity.

¹³ Purus tam Mahakud Vs Smt. Annapurna Mahakud