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Adoption: A Way Forward

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ABSTRACT

We live in an age where it is easier to get information within seconds on any topic. The electronic media is filled with information related to adoption making it seem very simple and easy but in reality the scenario is different. The procedure for adopting a child in India is a protracted struggle therefore resulting in low adoption rates. The low adoption rates are also due to the stigma related to adoption. In India people are not very open minded when it comes to adoption. With the ongoing pandemic, people are aware about the physical consequences of corona virus which has increased covid fatalities leaving Lakhs of children orphaned, globally. This has made the orphan children vulnerable to illegal adoption, child trafficking, kidnapping, child labour and also in many cases leaving them unattended or disowning them by relatives causing them grievous mental trauma. No place to go, many children have committed suicide. Also after adoption, in many cases it has been seen that the children are not treated properly increasing the child's suffering. This article will highlight the issue involved in adoption and will also suggest some points which if followed could improve the life of orphan children. The government should look into the grievances of these orphan children and should expedite the procedure for adopting a child in India. The work of the government should not be stopped once the adoption takes place, it should keep a follow up to certain age about the conditions of the children adopted.

Keywords: Domestic Adoption Laws, Condition Of Adopted Children, Illegal Adoption.

I. INTRODUCTION

Adoption is a legal process by which the custody of the orphaned or abandoned child is given to the parents who willingly wants to take care of the child. In India people are governed by the personal laws. The procedures for adoption are also governed by the personal laws. Hindu adoption and maintenance act 1956 governs adoption for Hindus, Jain, Sikh and Buddhist. There are two other legislations also which governs adoption, namely, Guardian and Wards Act of 1890, it is for the foreign citizens, NRIs and Indian Nationals who are Muslims, Christians and Jews. The other one is Juvenile Justice Act of 2000, it deals with the adoption of children by non hindu parents. The process of adopting a child in India is very slow. In many

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cases parents have to wait for as long as 8-9 years to start their family through adoption. The most affected and vulnerable in this entire process are the children who are up for adoption. In many cases it has been seen that the trauma of the children does not diminish once they are adopted but in fact is aggravated as many people who adopt does not treat them as their own child. Also after adopting a child, if the parents conceive biologically then the adopted child is either abandoned or neglected.

II. HISTORY OF ADOPTION IN INDIA

Adoption still raises an eyebrow in India. The belief that only the biological children can bring good omen to the family Stops them from adopting a child even when the family is struggling to have a baby. In India adoption has been carried out since ancient time. It has also been practiced in two great classical epics of India: The Mahabharata and The Ramayana. One of the main characters of the Ramayana, Sita was adopted by the king of Mithila, king Janak and was brought up as princess of Mithila, receiving all the love and respect of being a daughter. But in reality the male child is mostly considered for adoption as these impacts the future generation of the family. Male Childs are believed to be important for the continuation of family name and also they can be assigned as legal beneficiary. According to Hindu mythology, attaining salvation is the ultimate goal of life and one of the ways parents can attain salvation is through their son lighting their parent's funeral pyre. People believed that if they die without having a male child they would go to hell and to prevent this from happening to parents turned to adopting a son, in case of infertility. One of the reasons people did not preferred adopting a girl child was because many people viewed girl as a burden and even if they adopted they did not treat her well depriving her of basic rights such as right to education and healthcare.

III. LAW RELATING TO ADOPTION IN INDIA

In India, there is a prescribed legal process that gives legitimate rights to both the adopted child as well as the adoptive parents. The objective of these laws are to protect the rights of an adopted child and to shift all the legal obligations and rights from the biological parents to the adoptive ones. The citizen of India can adopt in India under three major enactments:

1. Hindu Adoption and Maintenance Act of 1956 (Hindus, Jain, Sikhs or Buddhists)
2. Guardian and Wards Act of 1890 also known as (GWA) (Foreign citizens, NRIs and Indian nationals who are Muslims, Christians or Jews)

3. Juvenile Justice Act of 20³00 (a part of which deals with Adoption of children by non-Hindu parents)

(A) The Hindu Adoption and Maintenance Act, 1956 also (HAMA)

This Act covers Hindus, Buddhists, Jains or Sikhs. Some important points of this legislature is:

- Both married couples and single adults can adopt a child.
- Man can legally adopt with the consent of his wife.
- If a biological child already exists in the family, a child adopted should be of the opposite sex.
- Children adopted under this Act gets the same legal rights as that of a biological child.
- Only children under the age of 15 years can be adopted under this act.
- A single man adopting a girl child should be at least 21 years older than the adopted girl child.
- A single woman adopting a boy child should be at least 21 years older than the adopted boy child.
- Adoption under this act is irrevocable.

The person who can be adopted

- She or he is a Hindu
- She or he has not already been adopted
- She or he has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption
- Se or he has not completed fifteen years of age unless there is a custom or usage applicable to the parties which permits persons who have completed fifteen years of age to be taken in adoption.

(B) The Guardians and Wards Act, 1890 (GWA)

Before the Juvenile Justice (Care and Protection) Act of 2000 or the JJ act, the GWA act was the only act that allowed non-Hindus to adopt. However, this act was the first secular law that allowed for a child to be adopted in India. The features of this Act are:

³ www.researchgate.com
www.lawctopus.com

- The child adopted under the age of 18 years can only be a ward.
- The guardianship can be revoked by the courts or by the guardian.
- For any property or goods to be bequeathed to the child a will is required.
- This will can be legally challenged by blood relatives.
- Both spouses can legally be guardians.
- Single people can adopt children without any age difference limitation.

(C) The Juvenile Justice (Care and Protection) Act of 2000, amended in 2006 also known as (JJ Act)

The JJ Act is formed primarily for the care and rehabilitation of children who are in conflict with the law. This law was much needed which would allow children whether adopted or biological the same rights. There was also the need for a law which distinguished adoption from the religion of the adoptive parents. The 2006 Amendment Act has therefore since enlarged the provisions of this act. The main points of this Act are:

- Any citizen of India can adopt a child who is legally up for adoption.
- The adoptee gets the same rights as that of a biological child.
- The religion of the adoptive parent is not relevant under this act.
- Single people can adopt.
- The adoption under this act is irrevocable.
- Some time limits have been set to ensure that children are considered legally up for adoption earlier.
- The effort is on the best interest of the child.

IV. INTER-COUNTRY ADOPTIONS

Inter –country adoption has created a new social aspect to the institution of adoption. People from different countries have started adopting children from countries like India but these adoptions are not free from misuse. The existing Indian law for adoption is silent in this regard. The provisions of guardian and wards act 1890 are applied in the context of inter country adoption. The foreign resident who wants to adopt a child will have to apply to the court for the guardianship of the child. Absence of a uniform law in India and caste prejudices have made inter – country adoption more popular than domestic adoption.

V. CHALLENGES IN DOMESTIC ADOPTION

1. Although the state agencies and CARA (Central Adoption Resource Authority) are providing for adoptions but the fact which cannot be ignored is that private adoptions are still taking place through some unauthorised sector.
2. The adoption agencies are generally perceived as a group of money minded people therefore they are always under the check⁴ of whistle blower.
3. Some states do not maintain proper records of adoption so it becomes difficult to carry out research.
4. These adopting agencies also suffer from budget downturn which makes it difficult for them to carry out their work efficiently.
5. India follows the concept of close adoption which means that the details of biological parents are not disclosed but it has been seen that when a child gets this information from any outside source it disturbs the relationship between the adopted child and the adopting parents.
6. Also the adoption by single parent is legal but there is no such data showing the success rate of single parents adoption.

Most of the times, adoption agencies are perceived to be “money makers” and so they are constantly put under “scanner” by the whistleblower. There is a lack of consistent and complete data in some states which makes it difficult

Although there are state approved agencies providing for adoption and CARA (Central Adoption Resource Authority) an autonomous body governed by the Ministry of Women & Child Development to look into the provisions of adoption. But the fact which cannot be ignored is that private adoptions are still taking place in some hospitals through agents and unorganized sectors. Most of the times, adoption agencies are perceived to be “money makers” and so they are constantly put under “scanner” by the whistleblower

VI. SUGGESTIONS

The world is moving forward at a very fast rate. People are very career oriented nowadays especially women. To live a desired lifestyle, motherhood for many women has taken a backseat. To keep up with the changing time, many people are choosing adoption which helps the orphan getting a family and new opportunity and also the desire to grow as a family is fulfilled without any compromise on their job. This is not true for all the adopted kids. Their

⁴ www.livelaw.in
www.bbc.com

lives are also changed but for the worst. Also, many people prefer adopting kids below the age of 5 years as it is easy for both the kids and the parents to mix up. Very few people consider adoption of children above the age of 5 as it is difficult for both of them to adjust. This often makes orphan children above the age of 5 feel less valued, they feel neglected from the society, have low self esteem, become aggressive, anxious. In simplest way depriving them of their basic fundamental rights of equal opportunity and right to live with dignity. The government should take steps in empowering these children as they are the most vulnerable group and also because children are the future of the country. For children living in orphanage and adoption centres good education should be given to them so that feel accomplished which will turn them into as asset for the country. Moral science class should also be included in the curriculum as this subject will teach them the life lessons which are important for living a dignified life. The government should appoint public counsellors and should make it mandatory for them to visit these centres once in every month. This will keep the children's mental health in check. Private institutions should also step forward and provide their educational access to the adoption centres for free of cost. This will help these children getting access to higher education. Government schools like Kendriya Vidyalaya should give free of cost education to these children as this make them feel valued and will promote right to equality in them. The government should make it compulsory for the adoption centres to take the kids to defence station on their respective days as this will provide purpose in their life and will implant the feeling of nationalism in them. The government should provide regular monetary help which will in turn increase the quality of their life. Govern⁵ment should also give some financial support for their great future and college fees and help them grow their life a decent and a respectful life. The law of adoption should be uniformed throughout the country showing more acceptances towards the children from every community and religion. This will also increase the adoption rates and will provide better future to the orphaned.

VII. CONCLUSION

Adoption is a righteous act. It gives home to orphaned children and the joy of child to childless parents. Once the adoption takes place, there is no difference in the eyes of law between the adopted and the biological child of the parents. Adoption cannot be revoked once made final.

The pandemic has made the situation worse by forcing people to do child trafficking in return of some cash. This can be prevented with the help of government policies and by imposing grave penalties for offenders. The government should expedite the procedure of adoption

⁵ www.theprint.com

keeping in mind the mental health of the orphaned children and making the adoption law uniform will make the society inclusive of all.
