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Legal Aspects of Child Adoption in India

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ABSTRACT

Child adoption is one of the most important concepts that every people should be aware of. Many families are without child and many children doesn't have families. Always a child wants a family for betterment and family wants a child for its future. The concept of child adoption is introduced only to join the family and child were both are in need. The concept child adoption also improves the lifestyle of a child. This article is about the legal procedure of child adoption in India. It also says about the duties of adopted parent and the adopted child after adoption. It gives information about the adoption agency and the legal procedure that should be followed by those agencies while giving a child for adoption.

I. INTRODUCTION

Child adoption is a legal process that involves accepting the responsibility of caring for a child who is not biologically related to the adoptive parent. Through adoption process children can receive the love and the support they need in their life to improve their lifestyle. The biological parent of the child transfer all the rights, privileges, and responsibilities to the adopting parents. The adopted child gets all the privileges after the complete process of Adoption as a biological child of the adopting parent. A couple by adopting a child build their families were it's a challenging life experience for both the parent and the adoptive child. India child adoption is governed by The Hindu Adoption and Maintenance act 1956(HAMA), The Guardian and Wards Act of 1890 and The Juvenile Justice Act 2015(JJ Act). The Central Adoption Resource Authority (CARA) is the central body responsible for monitoring and regulating adoption in India.

Laws that governs adoption process

- The Hindu Adoption and Maintenance Act of 1956 apply to Hindus, Buddhist, Jains and Sikhs and it also grant rights inherit the property. Under HAMA id irrevocable and the child cannot be given or taken back once adopted. This act also includes child whose parentage is not known and raised as Hindu, Buddhist, Jain or Sikh.
- The Guardian and Wards Act of 1890 apply to Muslim, Parsi, Christians and Jews. Under GAWA, the connection formed upon adoption is only guardian and ward and it

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does not amount to biological child status on adopted child. But adoption under Muslim law is not recognized.

- The Juvenile Justice (Care and Protection of children) Act 2015 this act is replaced the earlier Juvenile Justice (Care and Protection of children) Act 2000. This law is related to children that are allegedly in conflict with law and children that need care and protection.

II. ELIGIBILITY IN INDIA TO ADOPT A CHILD

- **Who can Adopt**

The Juvenile Justice Act 2015 has lays down specific eligibility criteria for the prospective adoptive parents.

The adoptive parents can be married or single.

The age difference between the adoptive parent and child should not be more than 45 years.

In case of single parent, they should be above 30 years of age.

The adoptive parents should not have more than two living biological children.

The adoptive parent can be of any gender.

The adoptive parents need to be physically, emotionally, mentally and financial stable.

- **Who cannot Adopt**

In India, some people are not eligible to adopt a child. The Juvenile Justice (Care and Protection of Children) Act of 2015.

- a. A person has been found guilty for child abuse.
- b. A person has been found guilty for neglecting a child.
- c. A person has been declared to be unsound mind by court.
- d. A couple has been divorced.
- e. A person married or single, below 21 years of age.
- f. A person has been convicted of an offense punishable under the Indian Penal code or any other law.

- **Child who can be Adopted**

According to Juvenile Justice (Care and Protection) Act of 2015, the following children are legally eligible for adoption

Children who have been orphaned as a result of death of one or both parent and have no relative

to take care.

Children have been voluntarily given up for adoption by their parent or guardian.

Children with special needs or disabilities are also legally eligible for adoption.

Children need a stable and loving home, such as children living in institutional care or children who have been subjected to abuse.

Children have been abandoned by their parent and are unable to be reunited with them.

III. CHALLENGES FACED ON CHILD ADOPTION IN INDIA

- It's lengthy and complex adoption process. Adoption process in India can be time consuming. A data from CARA indicates that over 29,000 parents are waiting to adopt but only 2,131 children are legally free for adoption. Also on an average it takes three years for completion of adoption process.
- Returning the child after adoption has seen a trend of adoptive parents returning their children after adopting. In a recent report by CARA reported over 1500 children across the country has been returned to child care institution in last five years.
- Illegal and unregulated practices have been disturbing instance of illegal adoption practices in India, like child trafficking and child selling.
- Health condition is one of the important problems faced in adoption. In the case close adoption access to the medical background of child is nearly impossible. In case of open adoption, the birth of father may be absent sometimes and access to child's health history become impossible.
- Cultural background, if the adopted child is from different cultural background. The child faces some terms of discrimination from the family members. This is often seen in case of international adoptions. Adopted child may find difficulties in adjusting to the adopted family ethnic background and vice versa.

IV. CHILD ADOPTION PROCESS IN INDIA

The adoption procedures India are governed by the guidelines issued by CARA. The process involved several legal procedures.

- Registration with adoption agency

The first is to register with government recognized adoption agency. The parents need to fill application form along with supporting document and submit it.

- Home study

The home study is detailed view of family's suitability to adopt by reviewing their financial, emotional, and physical stability.

- Counseling

Before adoption process, parents will go through a counseling session. This helps them to understand the challenges in adoption process.

- Getting acceptance letter

The letter of acceptance should be issued by the adoption agency after completion of the initial screening process. This letter is issued by the adoption agency once they determine that parents are suitable for adoption.

- Legal procedures

To transfer the child's custody adoption agency initiates legal procedures to the adoptive parent. This process involves obtaining birth certificate for the child with adoptive parent names, obtaining adoption deed and also obtaining court order.

- Foster care

Before the adoption being finalized the agency give the child to the adoptive parent for the period of 6 to 12 months. During this time the agency monitors progress and support provided by the adoptive parent to the child.

- Finalization of adoption

After foster period the agency, submit a report court. The report decides whether child can be granted to adoption to the adoptive parent. If the court grants adoption order, the agency provides parent with new birth certificates for the child with adoptive parent names.

- Post adoption follow up

After the adoption is finalized the agency conduct post- adoption visits to ensure that the child is well adjusted and supported by their adopted parents.

Formalities for post – adoption

- Post placement visits
- Medical check-ups
- Education and upbringing

- Reporting to central adoption resource authority
- Adoption certificate
- Legal formalities
- Support groups
- Updating documents.

Documents required for child adoption

The adoptive parent should produce the following original documents during legal adoption procedure.

- Identity proof(aadhar card, pan card, passport)
- Address proof
- Certificate of marriage
- Health certificate
- Family photograph
- IT statement of preceding three years
- Letter of recommendation
- Adoption of decree
- Written consent form

Punishments for illegal adoption

If a person sends a child to foreign country without court permission then the person can be punished with 3years of imprisonment or 1 lakh fine or both.

If the caretaker of the child, abandon the child under the age of 12 years, then will be punished with 7years imprisonment or fine or both.

If the caretaker of the child, assault, abandon, abuse, expose or willfully neglect the child in a manner likely to cause physical or mental suffering, then they will be punished 3years jail or 1 lakh fine or both.

The adoptive parent receives any child from adoption agency without the legal procedures. Then registration of the agency and its recognition shall be withdrawn for at least one year and the parent will be punished with imprisonment for 3years or fine of 1 lakh or both.

V. RIGHTS OF ADOPTED CHILD

- Under Hindu Adoption and Maintenance Act 1956, the child adopted under this act has been given the right of biological child and possess equal inheritance rights in their adoptive family but the child cannot inherit from their biological family once adopted.
- Under Guardianship and Wards Act 1890, the parent child relationship is not established, the child does not have any inherent right of succession from their parent properties but through will such inheritance right can be given.
- Under Juvenile Justice Act 2015, the child adopted has been given the status of biological child and possess equal inheritance rights.

Case laws

In *Sawan Ram V. Kalawanti*, AIR 1967 SC 1761, It was held that adoption by widow Hindu female is not only for herself but also for her dead husband. Since the adopted child loses all the rights from his biological family. The same are to be replaced by similar rights in adoptive family. Thus the adopted son would get rights of a member of that family as adopted son of the husband.

In *Rahasa Pandiani (Dead) By Lrs. V. Gokulananda Panda*, AIR 1987 SC 962, it was held that when there is a claim for adoption then the same has to be proved by way of clinching evidence. An oral adoption must be presented with some documentary evidence which could dispel the clouds of uncertainty. In absence of any evidence which would show that there was an adoption it would be wrong and unreasonable to give declaration for adoption, especially in cases where oral adoption is made as claim.

In *Shabnam Hashmi V. Union of India*, AIR 2014, The Supreme Court held that Juvenile Justice Act was an enabling legislation and its aims at achieving the purpose of uniform civil code. Thus it was held that any person belong to any religion could adopt a child subject to the rules. On the point of giving adoption the status of a Fundamental Right it hesitated but recognized the Statutory Right to adopt.

VI. CONCLUSION

There is an improvement in the adoption laws for Hindu. But without enacting uniform civil code, other religions cannot adopt child in India legally. Child adoption also helps the child to improves its lifestyles and get proper protection. This leads to the bright future of the child. Also, it improves the condition of the childless parents.