

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Legal Position of Adoption in India

PADMAPRIYA B.¹

ABSTRACT

India has a vast variety of traditions, cultures, and methods when it comes to the case of inheritance. In the current times, adopting a child has become quite often and common. The main significance of adoption is the social, emotional, and legal process in which children who will not be raised by their biological parents become full and permanent legitimate members of another family while maintaining genetic and psychological connections to their biological family. Adoption as a family formation has been the subject of extension study for the past three decades. Adopting a kid had created an intensive societal change in the developing world. The discovery by children that they are adopted is very painful, since these children may feel that their biological parents left out them. The acceptance of an adopted child has always been questioned by the family members of the adoptive parents eventually leading to a legal dispute mainly regarding property rights. After independence reforms were brought and the Hindu Adoptions and Maintenance Act, 1956 was implemented which allowed any person who comes under the definition of Hindu under Section 2 to be eligible for adoption. It has gone into advanced changes regarding gender equality. Adoption can be the loveliest option not only for single parents and childless couples but also for homeless kids. This research paper covers the legal position of adoption in India, its societal impacts, issues and challenges faced in adoption and rights of an adopted child.

Keyword: *Adoption; Hindu Adoptions and Maintenance Act; Significance of Adoption; Societal change.*

I. INTRODUCTION

‘Adoption – because family isn’t made from blood, it’s made from love.’. Adoption has a great impact on the adopting family. It will impact not only the family but also the society, the community, and the child’s future. Basically, in past times, adoption was considered as a means for a childless married couple to normalize their relationship. The adopted child will automatically get legal status from their adopted parents and have the right to enjoy the property, privileges, and duties of a child. India has a long practice of child adoption. In the days of old, it was confined to the family and was surrounded by religious and social practices. Even though it was restricted and considered as an unwanted practice, through change in the society adoption

¹ Author is a BB.A.LL.B. (Hons.) student in India.

has been legalized and accepted by the society.

Adoption is the process through which the adopted child is forever separated from his/her biological parents and becomes the lawful, legal child of his/her adoptive parents with all the rights, privileges, duties, and responsibilities that are connected to a biological child [1]. Adoption is the only advantage for orphans, homeless kids, destitute youth, single parents, and also for childless couples. The main aim of adoption is to create a parent-child relationship.

II. VIEW OF ADOPTION IN DIFFERENT LAWS

Adoption is defined in Hindu law, Christian law, Mohammad law and English law in different views and perspective which are summarized below:

(A) Adoption in Hindu Law:

Adoption is observed by Hindu Law further as a sacramental rather than a secular act. The adoption concept can be viewed under two parts i.e.,

1. To ensure one's decline will continue
2. To guarantee the execution of his/her funeral rights.

Adoption has been depicted in Manu smriti and it means transplantation of a child from one family to another family. Their role is not only to be considered as an adopted child but also to be considered as their kid. Hindu Adoption and Maintenance Act has defined adoption as a much broader concept by using the word 'Child' instead of 'Son' [2]. A child includes both genders and not merely a son.

According to act – “a Hindu means not only a person who practices Hinduism but also covers other sects of Hinduism, such as Buddhists, Jains, Sikhs, Virashaiva, Lingayat, or members Arya Samaj [3] The Hindu Adoption and Maintenance Act includes everyone residing in India who is not a Christian, Muslim, Parsi or Jew”. The following are the valid requirements for a legal adoption under the Hindu Adoption and Maintenance Act, of 1956:

- The prospective adoption parent must be able to accept the adoption of a child.
- The individual placing the child for adoption is competent to do so.
- The adoptive child must be able to be adopted lawfully.

Adoption is a process of including the kid forever into a family with all the rights of a natural child, in which he/she was not born. Traditionally, a child was adopted for temporal and religious practice purposes and more recently to fulfill the emotional and parental instincts of the adopters.

Manu says,

‘By a son, a man achieves victory over all people; by a son’s son he enjoys immortality; and subsequently by the son of the grandson he reaches the solar abode’

To complete the adoption an actual giving and taking ceremony called “DATA HOMAN” must be performed (obligation to the fire). It should be noted that these considerations might not always be crucial to the legality of adoption.

(B) Adoption in Other Laws:

Personal law of Muslims, Christians, Parsis, and Jews does not recognize complete adoption. As non-Hindus do not have an existing law to adopt a child legally, those willful people can only take Guardianship under the provisions of The Guardian and Wards Act, of 1980. This kind of relationship however does not provide the same status as a child born biologically to the family. Moreover, the adopted child cannot become their own and take their name or inherit their property by right unlike the Hindu Adoption and Maintenance Act, of 1956. This kind of legal guardian-ward relationship exists until the child completes 21 years of age.

(C) Adoption Under English Law:

The English adoption law emerged due to industrialization and it was started recognized during the latter half of the 19th century. English law of adoption [Adoption Act 1976] is very similar to the Hindu law of adoption. English law of adoption is very close to Hindu law of adoption as it also lies that the adopted child, for all intention and motive, becomes like a natural-born child.[4] It also recognizes intercountry adoption and is ratified by the International Convention on Adoption. English courts have been given the responsibility for making adoptions. In England, adoption results in the adopters and the adopted child assuming the same legal relation as if the child had been born to the adopter within marriage. [5]

III. SOCIETAL CHANGES IN INDIAN ADOPTION

Children who became orphaned due to desertion, poverty, and wars created a reason for the authorities to look into their welfare [6]. Such children were spontaneously included in their families by the next relatives, from either side of the family. This alteration of the children’s well-being created a trackway to Indians adopting separate children during the 1920s. Because there was no consciousness of documentation, the number of separate children being adopted during this time is not accessible. [7] The matter of, conventional adoption appears as a matter of personnel and familial interest moving in the direction of reforming child welfare. This improvement in the children’s welfare paved the opportunity for Indians to adopt children who

were not related in the 1920s. The number of unconnected adopted during this time is unknown because documentation was not widely known.

IV. CONTEMPORARY CHANGES IN ADOPTION

In olden days, the view of adoption has changed a lot. India's perception of adoption has seen a considerable change [8]. The adopted parents are starting to comprehend the social and legal aspects of adoption. It is important to note that the number of kids entering institutions either through surrender or abandonment has significantly decreased over the past few years. Family planning and legally ending pregnancies are the source of this. The changes in the line of promoting adoption have been evolving in current times. The policies are designed in a way to help the children of our country. There have also been cases that have set precedents for providing training to the judiciary on handling adoption cases. It is also the responsibility of NGOs and Child Welfare Agencies to give necessary guidance to raise children with special needs. Moreover, the common man should need to understand and work for the welfare of the child.

V. ISSUES AND CHALLENGES RELATED TO ADOPTION IN INDIA

Adoption has become a common process nowadays [9]. There are many issues and challenges relating to adoption that still exist even though laws are framed in the country which are followed below [10]:

(A) Issues:

- Adoption is the lengthiest process which may take up to three years to conclude. This is essential because a high number of parents are waiting to adopt from a small pool of children that are available for adoption.
- Since, Hindu Adoption and Maintenance Act is accountable for governing adoption, aspects related to orphans are dealt with by the Ministry of Women and Child Development. So, this may create a major conflict in the adoption process.
- Child trafficking is also a major issue in adoption cases and the child bears emotional trauma having faced crises like losing their parent or family or being separated from them due to desertion. Most importantly, As the government has not directed satisfactory resources toward getting children registered hundreds of children remain unavailable for adoption by prospective parents.

(B) Challenges:

Even though the state government agencies are taking care adoption process, the reality is that private adoptions are quite often taking place in some hospitals using agents and unorganized sectors:

- Almost entirely, agencies are detected to be ‘money makers’ and so they continuously come under ‘scanner’ by the informant.
- There is a non-appearance of constant whole data in some states which makes it hard to conduct research studies [11]. If and when there is an allocation downturn, most of the agencies that are usually responsible for collecting data may find it hard to continue their work.
- Single-parent adoption has been legal, but till now there is no study of any growth in single parents who have adopted. There are no facts available on the success rate of single-parent adoption.

VI. INDIAN ADOPTION REGULATIONS

In India many laws are framed to Adoption. Adoption is the most common way which is practiced by many people. Many laws are framed to regulate positive adoption and they are still followed by the people in the society. The law relating to adoption are mentioned below:

(A) Hindu Adoption and Maintenance Act:

This act allows the Hindus with the right to legally and lawfully adopt a child. HAMA is the only personal law that recognizes adoption in India [12]. According to The Hindu Adoptions and Maintenance Act, of 1956, one should fulfill the following requirements before adoption:

- Any person who is a male Hindu, with a sound mind and a major is eligible to adopt either a son or daughter, including Buddhists, Jainists, and Sikhs. However, if such a person was still married while adopted, he can only do so with the prior permission of his wife (except she is incompetent in giving her consent as per the court).
- Any person who is a single Hindu woman, or if she is married, whose husband has passed away, whose union has broken up, or whose husband is not competent according to court, is qualified for the adoption of a son or daughter.

a. Inheritance Rights:

The child adopted under HAMA [Hindu Adoption and Maintenance Act] has been given the status of a biological child and possesses equal inheritance rights in his adoptive family, though, he cannot inherit from his biological family once adopted [13].

(B) Guardianship and Wards Act, 1890 (GAWA):

In non-Hindu religions, complete adoption is not recognized, so if a person wants to adopt a child, he/she can take guardianship of that child under GAWA,1890.

- Under GAWA, the relationship that gets established after the adoption i.e., of a guardian and a ward [14]. The major fact is that when the child attains the age of 21, he/she no longer remains a ward but instead assumes his/her identity.
- A guardian under this act can be of a person or property or both. Any person designed as a guardian through 'Will' is given earlier preference and the court shall not assign any other person as a guardian till the aforementioned person ceases to be a guardian under the law.

a. Inheritance Rights:

Under this Act, since the parent-child relationship is not created, the ward does not have any inherent right of succession to his/her parent's properties but through a Will, such inheritance right can be given. The only thing is that it could be challenged by a blood relative.

(C) Juvenile Justice (Care and Protection) Act

India's first step toward secular adoption was the Juvenile Justice (Care and Protection Act) of 2000. The Central Adoption Resource Authority (CARA), which regulates it, created the protocols for both international and domestic transactions.[15]

According to section 2(aa) of the Juvenile Justice Amendment Act, 2006, 'adoption means the process through which the adopted child is permanently separated from his biological parent and becomes the legal and lawful child of his adoptive parents with all right, privileges and responsibility that are attached to the relationship'.

- The Child Welfare Committee considers orphaned and abandoned children who are below two years old eligible to be adopted within two months of the baby's birth. A maximum of four months may pass if the youngster is older than two years old.
- Unlike, the Hindu Adoption and Maintenance Act this act allows parents to adopt a child of the same sex, there are no restrictions as such.
- The Bombay High Court's Nagpur Bench upheld the adoption conditions do not only apply to abandoned, orphaned, or relinquished children. The Juvenile Justice Act also permits adoptions from close family members.

a. Inheritance Rights:

The child adopted under this Act has been given the status of a biological child and possesses equal inheritance rights.

(D) Central Adoption Resource Authority (CARA):

Adoption is governed by the Central Adoption Resource Authority [CARA] under the Ministry of Women & Children [16]. According to this, the following should be present:

- The adoptive parents have to be willing, able, and financially secure the adopted child before they adopt. No matter their marital situation or if they have a biological son or daughter, any eligible adoptive parent may adopt a child.
- A kid from any gender can be adopted by any female but a male person cannot adopt a female kid. For a couple, the approval of both people is a must
- The potential adoptive parent's ages at the registration time will be utilized to establish their qualification and capacity to adopt children of various ages.

VII. RECOMMENDATION

Adoption is highly practiced in current society, there are many challenges that are in need to get overcome through many amendments. Some drawbacks like

- A birth mother will experience grief and loss, because there is no post consultation session
- High cost for adoption
- Open & closed adoptions have many challenges
- Lengthy and complex adoption process
- Lack of management in post adoption issues

Even Though there are many drawbacks, there is a need to change the adoption technique in the society like:

- Regulating laws regarding adoption
- Giving proper guidance, care and instructions during the process
- Giving clear knowledge about adoption
- Ensuring and verifying the validity of adoption through both private agencies and government
- Stopping the unwanted process of adoption

VIII. CONCLUSION

Adoption in past decades where an heir to the adoptive parents and son to perform religious rights. It is on the adoptive parents' will and benefit. Adoption happened with the growth of social justice, equality of law, and welfare of the children. In this current modern-day, Adoption is analysed from the point of welfare and psychological development of the adopted child. Children are the future pillars of society and every person must give proper physical and mental growth for their prosperous future. Adoption automatically creates a strong relationship between the adopted child and adopted parents even though they are not related.

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