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The Adoption: Unaddressed Moral Issues and Legal Problems in India

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ABSTRACT

The family is a fundamental social institution. Most people have been a part of a family at some point in their lives, and those who did not enjoy family life have suffered greatly throughout their lives. There are many benefits to living with family for an individual. From early childhood to old age, the existence of a family is a fundamental aspect of all human existence. A child's family is their first source of socialization, and how they are influenced by them in their early years can have a significant impact on how they turn out in life. When it comes to discipline and healthy relationships, the environment at home prepares a child for learning socially acceptable forms of behaviour. Unhealthy relationships within the family, the absence of one or both parents, and parents who do not act as role models for their children are all factors that negatively impact a child's development. The right of a child to have a family is fully acknowledged and implemented at the international and regional levels through conventions and other legislative and judicial processes. One of them that can offer a child a peaceful, loving, and understanding environment in which to grow is the "ADOPTION" process.

The study is about the moral issues and legal problems faced by the adopting parents in India. There is no uniform law for adoption. There have been instances of abuse. The study examines the current issues and the emerging problems due to lack of proper adoption laws in India.

Keywords: Adoption, adoption laws, moral issues, legal problems, juvenile justice.

I. INTRODUCTION

The right to a family is protected by Article 23 of the International Covenant on Civil and Political Rights, adopted in 1966. 1. The family has a right to protection from society and the government since it is the basic and natural group unit of society. 2. It shall be acknowledged that both men and women of marriageable age have the right to get married and start a family. 3. The willing parties must give their free and informed consent before entering into a marriage. 4. States parties to the current Covenant shall take the necessary actions to guarantee that spouses have equal rights and obligations before, during, and after marriage. In the event of a

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dissolution, provisions for the essential safeguarding of any children.²

The International Covenant on Economic, Social, and Cultural Rights, 1966, affirms the right to family in its Article 10. According to the article, families should receive the greatest protection and support available since they are the basic social unit and are in charge of raising and educating their dependent children. The free consent of the intended spouse is required before entering into a marriage.³

The right of a child to have a family is fully acknowledged and implemented at the international and regional levels through conventions and other legislative and judicial processes. One of them that can offer a child a peaceful, loving, and understanding environment in which to grow is the "ADOPTION" process. The greatest way to end the various forms of exploitation and deprivation that homeless or impoverished children must endure is to place them in a home with their parents. The act of adoption has been around since the beginning of time. Adults have been required to adopt and raise children who were not biologically related to them for as long as there have been humans on the planet.

Ever since the dawn of civilization, man has desired to procreate. However, nature might give one person many children while denying the other person even one. When there were no biological children born out of wedlock, people turned to other artificial means of achieving parenthood.⁴ India is a democratic nation dedicated to achieving welfare state goals. The state now ranks the welfare of orphans, surrendered, and abandoned children as a top priority. Institutional as well as non-institutional safeguards are in place for these kids. Though non-institutional care has many benefits, there are also many real-world issues associated with it. Adoption, foster homes, need-based support for the family's child, sponsorship, family homes, and children's villages are a few examples of non-institutional programs.

If sufficient facilities are available in the community, these non-institutional programs may be made available to the underprivileged children. Institutional treatment is likely to have a negative impact on children's perceptions, even though it is beneficial from the perspective of orphans, the impoverished, and children without parents. But in certain rare circumstances, it is absolutely necessary. As a result, institutional treatment should only be used as a last resort and children should only be placed in institutions when there are no other viable options.

² Panel of Legal Commentators: "Law Relating to Human Rights", (Asia Law House, Hyderabad, 2016) at ,P 33

³ Dr.V.K Anand: "Human Rights", (Allahabad Law Agency, Haryana , 2008) at P. 52

⁴ D.C.Manooj: " Adoption Law and Practice " (Deep & Deep Publications, New Delhi, 2008) , at P 2

II. HISTORY OF ADOPTION

The Hindu historical period spans from 1000 B.C. to 1100 A.D. Based on the literature that is currently available, one thing that is evidently expressed during this specific time period is the intense and passionate desire for every Hindu to have a son. A crucial component of our evolutionary past is parenting. It is instinctive for mothers to care for their young in order to ensure their survival and well-being. Humans are the only animals that have a prolonged infancy. The extended early years provide parents and children with the opportunity and time to form strong bonds. Poetry is made of the everlasting bonds of love and affection that arise between people and transcend biological functions. Different types of marriages were recognized under ancient Hindu law. Procreation and the birth of children were the goals of these marriages. In a society where fathers were the primary source of relationships, it was only natural to want children. This desire manifested itself as the desire for a son to carry out the father's last funeral ceremonies and carry on his family line. Thus, the yearning for sonship persisted throughout. The institution of adoption developed when it was unable to be satisfied within the preconceived ideas of Hindu Dharma.

III. PROBLEMS RELATING TO ADOPTION IN INDIA

There is no single, comprehensive adoption law in India. The Hindu Adoption and Maintenance Act, 1956 (HAMA) is the only piece of legislation in India that recognizes adoption as lawful. Only Hindus are eligible to use this Act. It states unequivocally that only Hindus may adopt Hindu children, though under certain conditions, biological parents or guardians may also offer their children for adoption. However, some communities—Muslims, Christians, Parsis, and Jews—do not understand what adoption is. They can use the Guardians and Ward Act of 1890 to take on the role of guardians for the child, preventing it from having the same status as it would have with adoptive parents. The legal system continues to prioritize parents over children. It disregards the entitlement of every child to a caring family environment.

IV. MORAL ISSUES

- a) Adoption abuses: It was observed that certain adoption-related cases are handled improperly. The adopted child may experience abuse and neglect. In varied degrees, this is present in every society, appearing occasionally as child labor, child trafficking, begging, the use of children for the transplantation of camel race organs, etc.
- b) Financial commitment: In order to be able to raise the adopted child, the prospective adoptive parents must be able to support themselves financially. The prospective

adoptive parents upload their income certificate when they register for the Child Adoption Resource Information Guidance System, and they also submit it when they are verified. In addition to this, there are additional expenses related to adoption that the prospective adoptive parents must also cover.

- c) **Health Constraints:** One of the main obstacles to adoption is one's health. The potential adoptive parents must be in good physical, mental, and emotional health and free from any serious illnesses. Conversely, every potential adoptive parent desires a healthy child. When a child is adopted, their medical history is frequently far from ideal.
- d) **Ethical Difficulties:** Adoptive parents typically encounter certain ethical dilemmas. Important information connecting the adopted parent and child is frequently concealed by the agency, which may present problems down the road. Many Europeans and other foreigners travel to India in order to adopt children; this situation is fraught with concern about human trafficking. In addition, a couple deals with issues pertaining to social stigma.
- e) **Emotional and Cultural Issue:** It can present new difficulties for both the adopted child and the adoptive family when the adopted child comes from a different cultural background than the prospective adoptive parents. The family is a crucial institution in helping a child learn the difference between right and wrong. The family's child experiences both good and bad things in life. A child's interaction with the family fosters the development of certain traits that help the child interact with their surroundings. As a result, some kids struggle to adapt to the many shifting circumstances both inside and outside the home, and Serious issues with the child's ability to fit in with the family can also be caused by genetic problems.

V. LEGAL PROBLEMS

- a) **Unequal property distribution:** An adopted son, like a natural son born after the adoption, is entitled to a share on partition. However, custom dictates that when the adoptive father's estate is divided between him and his later-born natural son, the adopted son receives the following shares instead of the equal share given to the natural son: a) 1/3 of the adoptive father's estate in Bengal; b) 1/4 of the adoptive father's estate in Benaras; and c) 1/5 of the adoptive father's estate.
- b) **Legal complexities:** It is crucial that adoptive parents are aware of and comprehend all national laws governing child adoption. The majority of potential adoptive parents and biological parents in India are unaware of the Central Adoption Resource Authority's

child adoption legal requirements.

- c) **Adoption Process Delay:** A delay in the adoption process causes prospective adoptive parents to have a different mindset. This could make potential adoptive parents lose interest in adopting a child. Following the completion of legal procedures, prospective adoptive parents have 48 hours to declare their choice. The parents must go to the agency to express their willingness if they give their consent. The child will then be made available for adoption. The agency will assist in facilitating the court procedure that concludes the adoption process. Within sixty days, if the prospective adoptive parents decide not to adopt the child that is displayed to them on the website, they will have another choice. If they disagree with the second choice, they have to begin again.
- d) **Extremely stringent guidelines:** Domestic adoptions are subject to extremely stringent guidelines, and adoptive families' eligibility is closely examined. Because of this, adopting a child becomes extremely difficult, and most of the time, the family is discouraged from adopting a child as a result of these rules.

VI. CONCLUSION

Adoption was a process introduced to give a better life to the children who have lost their parents or who have been abandoned by their parents. However, it is found that the adoption process is cumbersome and therefore the adopting parents are put through lot of hardships. The adopting parent faces legal issues and the child faces moral issues during and after the adoption process. It is time for the Government of India to revisit the adoption policies and guidelines and draft a revised adoption laws for the country.
