

Law on Adoption in India

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What is Adoption? Adoption refers to the process of transferring from its biological family to one's own family which results in the permanent transfer of all the rights and responsibilities of the child from the biological parents to the adoptive parents. As a socio-legal process, adoption confers the same mutual rights and obligations that exist between natural parents and the child. For the orphan and abandoned children, who are deprived of growing in family settings, it confers the most important avenue for their care, protection and upbringing. The child gets identity of his/her adoptive parents in the society. There are many institutionalized children waiting for families and so also many childless parents in need of children. So adoption process brings them together.

Adoption in ancient India:

Traditionally, adoptions in India were within the families itself and the members of a family came forward to help a childless couple to enjoy the joys of parenthood. A sister having three daughters giving one daughter to her elder childless sister or a man adopting his teenage brother-in-law when his own son died in an accident were common examples of adoption which were intra-families. According to the Smritis, adoption was parent based and not child based. Adoption of a son was more frequent as it was believed that a male could only perform the necessary funeral rites.

In recent years, however, the views on adoption have changed and it is moving in the direction of being child based and not parent based. A great amount of stress is laid to ensure the well being of the child in question and as a result of that, various laws have been enacted to oversee adoption process in India.

The objectives of adoption:

- (i) To get old-age protection by the adopted child.
- (ii) To perpetuate family name and fame.
- (iii) To keep secured the family property.
- (iv) To solemnize of last rites and rituals of parents.

Adoption laws in India: The citizens of India can adopt under three major legislations:

The Hindu Adoptions and Maintenance Act, 1956: This act applies to all Hindus, Buddhists, Jains and Sikhs and it came into force on 21st December 1956. This act consists of 30 sections with sections 1-17 dealing with the adoption rules. A few major points of this Act are:

- **Section 6** is the main section of this Act which puts down the requisites of a valid adoption. No adoption shall be valid unless the person adopting, the person giving in adoption and the person who is to be adopted have the capacity to do so.
- **Section 7** says that any Hindu male who is a major and of sound mind can adopt and if he has a wife, he has to take the consent of the wife.
- **Section 8** says that any Hindu female who is a major and of sound mind can adopt and if she has a husband, she has to take the consent of the husband.
- However, in both the cases, the consent of the wife/husband need not be taken if the wife/husband has completely and finally renounced the world, has ceased to be a Hindu or has been decided by a Court of competent jurisdiction to be of unsound mind.
- **Section 9** talks about the capacity of the person to give in adoption. Only the mother and father can give in adoption and if they both are dead or have renounced the world or have been declared to be of unsound mind or have abandoned the child or the child's parentage is not known, then the guardian of such child can give in adoption with prior permission of the Court.
- **Section 10**— a child can be given in adoption under this Act only if he/she is a Hindu, not already been adopted, not been married and not completed the age of 15 years.
- **Section 11** enlists some other conditions of a valid adoption such as a person cannot adopt a son if he already has a living son, grandson or great grandson and cannot adopt a daughter if he already has a living daughter or granddaughter. Also, there must be an age gap of at least 21 years between a single man adopting a girl and between a single woman adopting a boy.

- **Section 12**– Children adopted under this Act get the same legal rights as a biological child might.
- Adoption under this act is irrevocable by virtue of **Section 15**

The Guardians and Wards Act, 1890: Prior to the Juvenile Justice (Care and Protection) Act, 2000, this was the only legislation which allowed non-Hindus (those not covered under the Hindu Adoptions and Maintenance Act 1956) to adopt.

- Here, the parent adopting is called a ‘guardian’ and the child is a ‘ward’ hence the child does not have the same rights as that of a biological child.
- Any child under the age of 18 can be a ward.
- Unlike the HAMA 1956 where adoption is irrevocable, the guardianship can be revoked by the courts or by the guardian himself. Also, here both spouses can legally be guardians whereas under HAMA a married man/woman cannot adopt without the consent of the wife/husband.
- Single people can adopt without any age difference restrictions.

The Juvenile Justice (Care and Protection) Act 2000 (amended in 2006)

This act mainly deals with the care and rehabilitation of children irrespective of the fact that they are biological or adoptive. A tiny section was inserted with regards to adoption however by the amendment of 2006 this section was expanded. The major points of this act are:

- Any Indian citizen can adopt a child who is legally available for adoption.
- The person adopted gets the same rights as that of a biological child.
- The religion of the adoptive parents is not relevant- this is one of the most highlighted aspects of this Act.
- Single people can also adopt and adoption is irrevocable.
- While the Act covers all of India, it is only possible to adopt under this Act in areas where the Juvenile Justice Boards have been constituted. This is still an ongoing process and many states are in the process of issuing notifications for the constitution of these boards.

Adoptions in Muslim, Christian, Parsis and Jews :Personal laws of Muslim, Christian, Parsis and Jews do not recognise complete adoption so if a person belonging to such religion has a desire to adopt a child can take the guardianship of a child under section 8 of the Guardians and Wards Act, 1890. This statute only makes a child a ward, not an adoptive child. According to this statute, the moment child turns to the age of 21, he is no longer considered as a ward and treated as individual identity.

In “*Mohammed Allahadad Khan v. Muhammad Ismail*” it was held that there is nothing in the Mohammedan Law similar to adoption as recognized in the Hindu System. Acknowledgement of paternity under Muslim Law is the nearest approach to adoption.

However, an adoption can take place from an orphanage by obtaining permission from the court under Guardians and Wards Act. Christians can take a child in adoption under the Guardians and Wards Act, 1890 only under foster care. Once a child under foster care becomes major, he is free to break away all his connections from his adoptive parents.

Why Legal Adoption:

Legal adoption is irrevocable and provides an extended security ring for the adopted child. It ensures the status of the child in the adoptive family. A legally adopted child can enforce all his/her rights in the Court of Law. On the contrary, informal adoptions do not carry any legal sanction and are gross violation of the law of the land. As per Supreme Court of India Directives, specific guidelines have been laid down by the central Adoption Resource Authority, the apex controlling body in matter relating to adoption in India under the Ministry of Women and Child Development for legal adoption of Indian Children.

CONCLUSION

An adoption is a pious act so it should be performed by the people at a large scale because India is a country where there is too much population and there is a huge number of unwanted children.

In the past few years, agencies and adoptive parents have noted a growing preference for the girl child over boys in India’s adoption system. Adoption is one of the ways to control and prevent female foeticide and infanticide problem raging in India. And what could be better to give a good and standard life to a child who really need it.

REFERENCES

- [1] The Juvenile Justice (Care and Protection) Act 2000 (amended in 2006)

- [2] The Guardians and Wards Act, 1890
- [3] The Hindu Adoptions and Maintenance Act, 1956
- [4] ShabnamHashmi v. Union of India, AIR 2014 SC
- [5] Sawan Ram v.Kalawanti, AIR 1967 SC 1761
- [6] Adoption of Payal @ SharineeVinayPathak and his wife SonikaSahay @ Pathak, 2010(1) BomCR434
- [7] ShrinivasKrishnaraoKango v. Narayan DevjiKango, 1954 AIR 379
- [8] Laxmi Kant Pandey v. Union of India, 1984 AIR 469
- [9] Philips Alfred Marvin v. V. J. Gonsalves AIR 1999 Ker 187
- [10] Ms.TeestaChattoraj v. Union of India, 188(2012) DLT 507
- [11] RahasaPandiani (Dead) By Lrs. v. Gokulananda Panda, AIR 1987 SC 962
- [12] YaqoobLaway v. Gulla, 2005 (3) JKJ 122
- [13] A.S. Sailaja v Principal, Kurnool Medical, AIR 1986 AP 209
- [14] Wikipedia
- [15] Adoption in India- Policies and Experiences by Vinita Bhargava