

MORALITY OF ADOPTION LAWS

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ABSTRACT

Having a child is mostly every parent's dream. As of late adoption was to give childless guardians an occasion to get their own loved ones yet that should have been occurred inside the confined relations. Yet, presently the circumstances are different and adoption laws are outlined as to give JUSTICE TO CHILDREN.

In India, adoption has been polished for bunches of years. Hinduism being the significant religion polished in India, sagas and chronicled records have aggregated information of holy people and royals who had been received and who embraced. Ramayana and Mahabharata are the two such splendid legends of Hinduism which propose references to adoption. Adoption isn't just one of the most productive and effective segments of India's kid government assistance program, yet additionally one of the most directed legitimately and procedurally. In any case, there exists a specific section of the Indian populace which has for some time been and still is, condemning of numerous parts of adoption, intra-nation adoption specifically, trusting it to be a zone of youngster government assistance that is unregulated and open to manhandle. Intermittent accounts of infants and kids being "sent out", embraced youngsters winding up in unfamiliar massage parlours just as real adoption tricks, similar to the one as of late disentangled in Andhra Pradesh just fan the fire. This is unquestionably a difficulty for the reason for adoption in the nation. As per the Child Adoption Resource Information and Guidance System (CARINGS), for each 10 new parents in India, just a single child is accessible. There are insufficient children open for adoption in light of the fact that the standardized consideration proportion of abandoned children to kids is disproportionate. The framework of our Indian law within the context of adoption law is pretty complex and controversial. This paper will analyse these laws and also make a comprehensive understanding of the moral aspect in the society.

CHAPTER I

RESEARCH OBJECTIVES

The objective of this paper focuses on the broader perspectives to gain a deeper understanding and ensure a sense of clarity before analysing the paper:

- Looking into the genesis of adoption laws and the society.
- Comprehending the different types of adoption laws.
- Outline the religion and gender bias in the adoption laws of india.

RESEARCH QUESTIONS

- Has the society been part of a major portion in the public going for adoption?
- Are adoption laws in india neutral with respect to its ethnic culture?
- Can its morality be questioned due it being divided based on religion in a country like India?

SIGNIFICANCE OF THE STUDY

This research paper tries to compose and discover certain new horizons when it comes to the morality and effectiveness of adoption laws.it will help and understand the scope of adoption laws with respect to the society. The paper aims to explore and establish a critique on how the society's influence has been there in framing these laws. We will also look into the biases that adoption laws are based on.

RESEARCH METHODOLOGY

This research paper is doctrinal in nature. The various authoritative texts and judicial pronouncements have been analysed and juxtaposed in order to establish a comprehensive understanding of the subject matter in question. Due credit has been given to sources used in the course of this paper.

SCOPE AND LIMITATIONS OF STUDY

the scope of this paper lies within the border of adoption laws in India and the morality of how adoption is perceived to be. When it comes to the society, it plays a huge role in our life and affects our decisions no matter how much we try to be independent. There are certain parts of the society who question the concept of adoption itself which this paper will elaborate. When it comes to the limitations of this paper, there has not been a complete survey for understanding how people perceive their choices when it comes to adopt. Nevertheless, the author of this paper has reviewed various pieces of literature by renowned philosophers to gain a better perspective of the same.

LITERATURE REVIEW

The author of this paper has reviewed most of the resources available pertaining to this topic.

(Adoption Laws in India: Challenging Existing Law, 2020) mainly helps to understand the evolution of the existing adoption law and what does the Indian adoption law system basically try to convey and the provisions available in our constitution. We will also use this piece as a resource as a preview to the historical precedence of adoption in Indian mythology as well as American.¹

(Bhatt, 2019) This news article aims to show the reasons as to why people don't usually adopt and assume that they are morally obligated to how the society which binds their hands. What are the morally wrong practices that people use during the process of adoption and what its impact will be in judicial purview. The CARA (Central Adoption Resource Authority) has had several instances of being partial and biased when it comes to giving permission to certain based on social and moral principles which they believe is essential for a person.²

¹ Docs.manupatra.in. 2020. *Adoption Laws in India: Challenging Existing Law*. [online] Available at: <<http://docs.manupatra.in/newsline/articles/Upload/E8EFE493-114B-4E5B-A014-682EB1729301.pdf>> [Accessed 24 November 2020].

² Bhatt, S., 2019. Despite a favourable law, why do single women and men struggle to adopt a child in India. *Economic Times*, [online] Available at: <<https://economictimes.indiatimes.com/news/politics-and-nation/despite-a-favourable-law-why-do-single-women-and-men-struggle-to-adopt-a-child-in-india/articleshow/70621618.cms?from=mdr>>.

Certain case laws also will be discussed in this research work in order to focus on the legal aspect in detail. Shabnam Hashmi case is a very important judgement when it comes to rights of adoption as Muslims.³ This paper will also discuss some more case laws like Sawan Ram v Kalavanthi⁴, Laxmi Kant Pandey v Union of India and some more.

The article “Adoption: Some Urgent Concerns” talks about provisions of adoption under the Juvenile Justice Act, 2000 and how certain people use adoption for illegal means like child trafficking and child labour. The author also questions the morality and explains it in detail.⁵

The journal article titled ‘divided dharma and Adoption Laws in India’⁶ which go into the genesis of adoption laws in India to gain a better perspective of the current provisions as well in the Indian judicial system.

“Procreation, Adoption and the Contours of Obligation” is an article which explores the philosophical aspect of Adoption thereby helping the author of this paper and in defining the broad contours of the duty to adopt children without any biases.⁷

CHAPTERIZATION

The paper will be divided into mainly 4 parts.

- The first one will include the prologue to adoption and the information the author aims to discuss in the due course of our paper.
- The second chapter will comprise of the morality of adoption laws when it comes to society’s influence.
- Third chapter understand the genesis and the disparity in the adoption law where it is based on religion. This makes us question its real morality with questions like questions like “do adoption laws have to be divided based on religion? Why couldn’t Muslims adopt?”

³ Shabnam Hashmi v Union of India [2014] 4 SCC 1 (Supreme Court).

⁴ Sawan Ram V. Kalawanti [1967] AIR 1761 (Supreme Court).

⁵ Mukhija, K., Adoption: Some Urgent Concerns. Manupatra

⁶ Harneel.K. Lally, Divided Dharma and Adoption laws in India, (2017) 4 SOAS L.J. 133

⁷ Travis Rider, “Procreation, Adoption and the Contours of Obligation” (2015) Journal of Applied Philosophy, vol.32, no.3, pg:293

→ My next and final chapter will base itself on it will also give my perspective and a model which can be implemented in our society.

SOURCES OF DATA

This paper uses secondary sources of information for its research papers. The data collected are from case laws, journal articles, newspapers and research papers of established and on a credible basis only. It also uses the opinions and comments of certain people in order to analyse what is the society's view on this particular subject. The various software's and databases used for the ongoing research include Ms Word, Turnitin, SCC Online, Manupatra, Google scholar etc.

CHAPTER II: A SOCIAL OUTLOOK FOR ADOPTION LAW

in every community, children are regarded as god's angels and when they come into your life it's a milestone achieved. Although, not all ways to procuring children is equally supported, valued or respected. There are certain ideals like pronatalist and bionormative⁸ which have been imbibed in our society. These create certain obstructions in order to perceive adoption as a whole and viable solution to this world of millions of orphans.

So what exactly is being a pronatalist? Majorly defined, it's a social ideology which in fact promotes immense value on having children and can be based on various philosophical commitments. As we have learnt, for instance, a person who believes in utilitarianism can argue that a person should bear as many children as possible thereby increasing the wellbeing prevalent in the world.

And in order to respond back to such barriers, it is necessary to challenge such ideals and relieve the society of a misconception of the society who choose adoption as the last resort to have children. These ideologies are rooted in people's minds resulting in conservative thinking considering the gender norms, religious activities and expectations to follow customs. Christine

⁸ Nicholas Park and Patricia Wonch Hill, "Is Adoption an Option? the Role of Importance of Motherhood and Fertility Help-Seeking in Considering Adoption," (2014) Journal of Family Issues ,35, no. 5: 601-626.

overall⁹ elaborates how this ideology of pronatalist builds and maintains social identities along various lines like gender and how much of pressure is built up and is Omni present. All these result in tendency to question the procreation abilities of man and woman disregarding their true character. So conceiving children as their own becomes what a general society deems fit to expect than giving a bright future for children who are in need of their guardian angels.

However, on the other hand, there are certain philosophers that feel they have the duty to defend children who wish to be adopted instead of being judged and being everyone's last choice because of not procreating and contextualizing their arguments or what they call as a "global orphan crisis" coming to our country, India has established HAMA (Hindu Adoption and Maintenance Act) and GAWA (Guardians and Ward Act) when it comes to adoption laws. The HAMA includes Hindus, Jains, Buddhists and Sikhs. And under this act, adoption is basically just like providing all the rights of a natural born child where they can get status of that as well as inherit. However, there are restrictions for the same where a parent cannot adopt a child of the same sex, if they have another of the same gender. This makes this act gender specific in way disrespecting the society's choice to their child. The GAWA is where children don't possess all the rights as kids and lose the wards to gain individual identities upon turning 21 years. Adopted parent's can leave a will which can even be contested by the 'blood' related child. These enactments of the act do not speak of surrendered and abandoned children which suggests there wasn't any legislation for them due to which misogynies in respect of adoption was bound to happen.

With respect to the subject matter above, the author considers it a duty to understand and analyse the existing philosophical literature in the way of arguments of the basis with respect to racial solidarity, reparative justice and preservation of customs and traditions.

Moral realism teaches us something different and immense. there has been a long history where adopted children also feel the separation of their emotional bond with their mates as well as series of abandonment or any possible disruption of an emotional bond. Moral realism clarifies our doubts of what is really meant to be true and what not. A huge number of these truths come out when they decide what is the best situation and environment to raise a child. This raises yet another situation where homosexuals are not yet allowed to adopt in countries like India. These issues

⁹ Christine Overall, why have children? The Ethical Debate. (2012) Cambridge, MIT Press, vol. 71.

make sure of an important link in the bridge between our actions that we do in a day and the prospering of our civilization that we hope to build with a better future.

CHAPTER III: ADOPTION LAW AND RELIGION

Everywhere around the world, having children is celebrated no less than a festival and is valued as a good thing. People engage in various celebratory rituals and adoption curbs the some of these rituals which leads to certain cultures disregarding the concept of adoption and promotes scepticism from family members, friends, and strangers about their decision to adopt rather than procreating.

Adoptions tends to even imbibe gender bias in this society especially in a country like India. Although after the bringing in the Act, it was stated that “gender discrimination was eliminated”, it is till now prevalent in the current age. Unless a woman’s husband dies or renounces the world, or suffers from any disability, a married woman cannot adopt, even with the consent of the husband. However, while the women can’t adopt, men can adopt with the wife’s consent which still shows evidence to the patriarchal society that we live inning this era of equal laws and preserving women’s dignity, there is completely no reason to give the husband veto to deprive the wife of maternal feelings and instincts.

There are certain case laws which speak of the lacunas in adoption laws which will be elaborated in the following paragraphs.

In *Shabnam Hashmi V. Union of India*, it was finally held as religion being no limit for adoption. It is in fact a very prominent case with respect to adoption. the petitioner here was a Muslim who had taken care of a young girl ever since she was a little girl. she claimed to have asked for recognition of for a person irrespective of their religion since Muslim law did not allow adoption. Finally, a three judge bench of the Supreme Court decided the case that was part of right to adoption by virtue of juvenile justice Act, 2000, the CARA guidelines and the Rules of 2007. However, the All India Muslim Personal Law Board said that Islamic law does not recognise the Adoption idea itself. The supreme Court ruled the J.J Act,2000 was enabling law and seeks to

achieve the Uniform Civil Code. Thereby, it was held that any individual belonging to any religion could adopt. Though hesitated, they acknowledged Adoption the status of Fundamental Right.

There was another case with respect to Adoption under the Hindus. The Sawan Ram vs. Kalawanti wherein the deceased had died which led to the women being a widow and several parts of the properties been mortgaged to another individual and some to the Grand Niece. The appellant filed a case that the transfer of property to another individual was illegal. During the case pendency, the widow adopted a child due to which the litigation failed. And when the widow died, the appellant again filed a case for a share in the estate on the grounds of adoption being fictional and not granted property right. However, the court said that “Adoption by a Hindu woman would be considered a part of the Deceased husband’s family and not only for herself. Since on being adopted, the child loses rights of his Biological family, the same rights are to be given by the Adoptive family thereby granting privileges as an adopted husband’s son to being a member of that family”. Looking at the choice of words we can see that the court referred the son as husband’s son who is dead while the widow who was the one to initiate it. It is time for the law to be gender neutral and understand that such cases speak of the courage of individuals who inspire themselves as well as others to make a difference by expressing themselves and fight for their rights.

All these religions basically lack its value on rules and regulations, visible in the absence of complementing dharma, codification of laws and a legal system. An instance of this where traditional Sikhism do have any concept of either personal laws or legal jurisprudence when considered fundamentally. This void that is created among the traditional religious laws, the British interpreted and attempted the codification of these laws, the “progressive” nature of these new laws and where the choices of people have led to further divergence finally yielding to the diminishing number of legal adoptions.

Finally, viewing the circumstance from the Indian social perspective, it makes it clear that the public as well as the society are not social and progressive enough to understand the amends to follow the new act in order to replace their personal and family laws even though there exist restrictions among these laws.

It is our duty to rise above all these differences and restrictions and find our way back to humanity where we are allowed to choose to bring in a child that we want irrespective of gender, caste or religion.

CHAPTER IV: A DEDUCED OVERVIEW

Adoption is really an important constituent of the society as it gives children the love, care and nurturing they deserve and at the same time it gives the parents who literally pray for kids a second chance at life to fill their void. Although it high time that the Adoption laws understand the value of equality and making it uniform. But just due to that fact, it is unjust to say the current laws are baseless and useless as it did give results. however, with the ever changing society and situations resulting out of discrepancy its necessary to instil a Uniform Civil Code for adoption laws. There has been a need for this to ensure equal laws and equal status of the laws disregard to personal laws being divided based in religion which have become static and cannot be altered with respect to the changing society.

Adoption laws when it comes to Hindus has in fact shown a lot of improvement as well as women in the society. Although, it is really unreasonable and miserable to know that Muslims cannot legally adopt a child in India as per Muslim Shariyat Law which makes us question if India is as neutral as it seems to be. By imbibing Uniform Civil Code, it will enable the other religions TO Be part of this humble process and give every parent less child what they in fact deserve in their life. Kids are the future of our nation The children's programs that play an important role in human resource development should enable this opportunity so the kids can be mental fit, physically active and nurtured. And this process should not be driven by religion and Gender as a criterion that promotes inequality and thereby vialing social justice.

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