

# Adoption: Issues and Challenges

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## 1. Introduction

As we all know India is a country of diverse religion in which according to the 2011 census, 79.8% of the population of India practices Hinduism, 14.2% adheres to Islam, 2.3% adheres to Christianity, 1.7% adheres to Sikhism, 0.7% adheres to Buddhism and 0.4% adheres to Jainism. Zoroastrianism, Sanamahism and Judaism. As they don't have their own personal law for governing adoption. The only option left with them is to become guardian under guardian and wards act of that child. Even our legislature tried so many time to constitute a uniform law for adoption through which adoption can made without any discrimination but failed. Some acts says about this:

Section 56 (2) of juvenile justice act says parents can adopt child from one relative to another irrespectively to their religion.

There are conditions for both who can adopt a child? And who be adopted?

**Section 7 of Hindu Adoptions and maintenance act** defines that, any Hindu male, can adopt a child if he fulfills the following conditions:

- a) He is a major
- b) He is of sound mind i. e. must not be suffering from insanity or idiocy.
- c) He shall adopt any child only with consent of his wife, unless the wife has completely and finally renounced the world.
- d) He must be competent by court.
- e) He has a wife living

Explanation:

If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons.

Case:

### **Bholooram and ors. Ramlal and Ors**

The question raised through this case was if any person have more than one wives living at the time of adoption, whether the consent of all is necessary or not?

As per the explanation of section 7 of Hindu Adoptions and maintenance act if any person have more than one wives living at the time of adoption consent of all wives is necessary unless any reason stated.

**Section 8 of Hindu Adoptions and maintenance act**, any Hindu female, can adopt a child if she complies with the following:

- Women must be a major
- If women wants to adopt a child must attained the age of eighteen even she is unmarried.
- After adoption If she gets marries her husband would be stepfather and that women would always called as adoptive mother as earlier states.
- Women must be of sound mind.
- Even if women is not married then also she can adopt a child even having an illegitimate child.

**Explanation:** if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

After qualifying these conditions a women can adopt a child and such adoption would be a valid one.

### **Conditions for adoption:**

- Adoptive parents must be a Hindu
- Child was not adopted earlier
- Adoptive parents can't adopt a child if they are below the age of fifteen years unless there is custom or usage allow the parties for adoption in the age of fifteen years of age.
- Female can adopt a child even if she is not married but a male can't adopt a child (male can't adopt a female without marriage).

India is a country where so many different types of people live with different religion and customs. Each religion has its own set of practices even the personal matters are also governed by those customs only. Religious like - Hindus, Muslims, Christian and Parsis all have their own customs on which adopt a child.

Even child have right to be pampered, to be take care of and have right to get all the facilities which a child must get for her better future. As per the reports in India per year so many children's gets abandoned in some unfortunate cases even some children stuck in human trafficking and sexual violence. Only few of them able to reach the adoption agencies and get a chance for better future but some are lives on road earn their life through begging or child laboring (ban as per labour laws but still some are their).

### **Laws Relating to Adoption in India:**

- 1) Hindu adoption and maintenance act, 1956
- 2) Guardians and Wards act, 1890
- 3) The juvenile justice (care and Protection of children) act, 2000

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4) Central Adoption Resource Authority

### 1) Hindu Adoption and maintenance act, 1956:

As India is diverse country in which so many religion are their like Hindu, Muslim, Parsi, Jew, Christian. Adoption is governed by personal laws but there are some criteria which stated in this act that states the persons who are qualified for adoption like:

- As per section 7 of this act person must be a Hindu, must be of sound mind, must have a living wive and competent of a court.
- As per section 8 of this act person can adopt a child when he or she attains the age of eighteen year of age.

#### Note:

If child biological family exists then adoption to the opposite sex is allow but must attain the age of twenty one years or older than the child. Example: adoption of a male child by a female, then the female shall be at least twenty one years of age or older than the son. The child which was adopted has the same right as the biological child have. There is an irrevocable adoption under this act.

### 2) Guardians and Wards act, 1890:

As India is a diverse country in which different religions people live like Hindus, Parsi, Christian's, Jews and Muslims all have different culture have their own personal laws for adoption as there is no such general laws for adoption. As per this act if a child is of twenty one years of age can become a guardian of the child. However, this act does not provide any adoptive rights to the guardian and the only relationship which exists between the child and the parent is the guardian - ward relationship. But this act does not confer the status of adoptive child as a biological child.

### 3) The juvenile justice (care and protection of children) act, 2000:

Before this act if a child need care and protection there is no such laws which can protect the interests of child which is in need of care and protection. To protect or safeguard the interests of the child which needs of care and protection or we can say for welfare of the children this act was passed by the parliament which is known as the juvenile justice (care and protection of children) act, 2000.

In this act proper definition of adoption, adoption regulations, and abandoned child is defined.

As per **section 56 of juvenile justice (care and protection of children) act, 2000** adoption means

- Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of the act, the rules made there under and the adoption regulations framed by the authority.
- Adoption of a child from one relative by another relative, irrespective of their religion, can be made as per the provisions of this act and the adoption regulations framed by the authority.
- Nothing in this act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

- All inter - country adoptions shall be done only as per the provisions of this act and the adoption regulations framed by the authority.
- Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the court, shall be punishable as per the provisions of section 80.

As per **section 57 of juvenile justice (care and protection of children) act, 2000** states the eligibility of adoptive parents:

- The prospective adoptive persons shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.
- In case of couple, the consent of both the spouses for the adoption shall be required.
- A single or divorced person can also adopt, subject to fulfillment of the criteria and in accordance with the provisions of adoption regulations framed by the authority.
- A single male is not eligible to adopt a girl child.
- Any other criteria that may be specified in the adoption regulations framed by the authority.

### 4) Central Adoption Resource Authority (CARA):

Central Adoption Resource Authority was set up on 20th June 1990. It is an autonomous body which is under the Ministry of social justice and Empowerment, Government of India. As this body matters are also concerned with adoption only. It's main function is to mandate and regulate the procedure of inter - country adoption and in - country adoption of children on India. Central Adoption Resource Authority basically deals with the children of orphanages, abandoned, and surrendered children through their recognised adoption agencies. Inter - adoption deals with the accordance of the provisions of The Hague Convention on Inter - country Adoption, 1933 which is ratified by the Government of India in 2003.

#### Judicial analysis:

- 1) Jijabai Vitthal Rao vs Pathan Khan
- 2) Shabnam Hashmi vs Union of India
- 3) Swan Ram vs Kalawati

#### Adoption under Hindu Law:

The Supreme Court has observed that the objects of the adoption are twofold:

- 1) The first object was religious i. e. to secure the spiritual benefit to the adopted and his ancestor, by having a son for the purpose of offering funeral rites and libations of water to the means of the adopter and his ancestors.
- 2) The second was to preserve the continuance of one's lineage.

## 2. Conclusion and Suggestion

At last I want to conclude that the adoption mean to adopt a child for providing parents

Love and affection to that child and for parents they got a child which help them in future. In India adoption is

governed under Hindu Adoption and Maintenance Act, 1956. In this act it was clearly stated who can adopt or who can be adopted. According to me somewhere this act is biased with women as Hindu married women cannot adopt a child without permission of the husband but husband can adopt a child. As in India it is governed by personal laws due to their own customs and religion but their must a single procedure for all for adopting a child. Still there is an requirement of more adoption agencies as many children who do not have their parents are begging, laboring and many more rather than all this they also have right of proper education or we can say a family. At last I must say things are improving but need more improvement.

## **References**

Bare acts:

- [1] Hindu adoption and maintenance act, 1956
- [2] Guardian and wards, 1890
- [3] The juvenile justice (care and protection of children) act, 2000
- [4] Central Adoption Resource Authority.

Articles and journals

- [5] [www.serviceindia.com](http://www.serviceindia.com)
- [6] <https://lawtimesjournal.in/adoption-laws-in-India/> accessed