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Legal Aspects related to Adoptive Children in Indian Society

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Introduction:-

Adoption is a process whereby a person assumes the parenting for another and, in so doing, permanently transfers all rights and responsibilities, along with filiations, from the original parent or parents. Unlike guardianship or other systems designed for the care of the young, adoption is intended to effect a permanent change in status and as such requires societal recognition, either through legal or religious sanction. Historically some societies have enacted specific laws governing adoption; where others have tried to achieve adoption through less formal means, notably via contracts that specified inheritance rights and parental responsibilities without an accompanying transfer of filiations. Modern systems of adoption, arising in the 20th century, tend to be governed by comprehensive statutes and regulations.¹

The Hindu Adoptions and Maintenance Act were enacted in India in 1956 as part of the Hindu Code Bills. The other legislations enacted during this time include the Hindu Marriage Act (1955), the Hindu Succession Act (1956), and the Hindu Minority and Guardianship Act (1956). All of these acts were put forth under the leadership of Jawaharlal Nehru, and were meant to codify and standardize the current Hindu legal tradition. The Adoptions and Maintenance Act of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, as well as the legal obligations of a Hindu to provide "maintenance" to various family members including, but not limited to, their wife or wives, parents, and in-laws.

Adoption is a permanent family building option with complete transfer of all legal rights and responsibilities from the birth parents to the adoptive parents, who are then responsible for raising and parenting the child. Adoption does not include either foster care or guardianship (both of which are usually intended to be temporary or informal adoptions) (a common practice in some cultures, in which relatives other than biological parents, often extended family members, reuse children).

Inherent in the above definition are both social and legal meaning adoption. Many in infertility and adoption professionals also use the word in its social meaning to describe third party reproduction. The most common type of adoption is the relative, grandparent or stepparent adoption but when most people think of adoption, they usually mean noncreative adoption (there is no biological link between the adopted child and the adoptive parents).

The most common reason for non-relative adoption is infirmity. These adoptive parents are known as traditional adopters. Other categories include people who choose to adopt but are able to have children biologically known as (pre frontal adoption). Adoption- a complete subject highly affected by socio-cultural psychological and legal factors has changed enormously in the past 10-20 years. One of the biggest changes is the decreased stigmatization of single mothers. In the past, it was generally considered best to wait until infertility treatments were finished before starting to explore adoption but now most professionals agree that it is wise for people to start to investigate adoption while they are pursuing infertility treatment.²

Who can adopt?

All adults are able to adopt. Today other adopters include many single people (the majority of whom are women) Homosexuals, Lesbian, married unmarried and widow or widower. Age restrictions are less strict depending on the approach and financial and other restrictions vary greatly. Financial subsidies are available for some public agency adopters. When a male adopts a child with the consent of his wife, she becomes the adoptive mother of the child (Section 14(1) if he has more than one wife the senior most wife (by Marriage not by Age) becomes the adoptive mother and rest becomes step mothers. A Married woman cannot adopt even with the consent of her husband. When a virgin bachelor widow or widower adopts a child and marries subsequently the spouse is relation to the child as a step parents (Section 14 (3). The adoption in Hindu Law means complete transplantation of the child in the adoptive family. This means that he is not merely the child of the adoptive parents but he is also related to all relations on

mother's side as well as father's side as if he is the natural born child of the family. The adoptive parents are the natural guardians of their adopted minor child.. The position of an adopted child in respects of inheritance and maintenance is the same as that of the natural born child Two persons cannot adopt the same child two persons do not means husbands and wife two persons do not mean two sisters, two brothers or two friends.³

Age difference between the parents and child, If a Hindu wants to adopt a child of the opposite sex he or she us be older to the child by at least 21years (Section 11). When the Guardian exercise power of giving the child in adoption prior permission of the court is necessary. The financial position amend social status of the proposed adopter may also be taken into consideration.⁴

A clear consensus in the adoption community is that it is vital to tell a child that he or she is adopted. Almost everyone recommends that this process should begin before the child has language so that the adoptive parents become used to and less anxious about saying the word adoption and so that the child grows up familiar with hearing about it in a positive way. Children do not begin to understand what adoption means until they are 4-5 years old, when they start to understand reproduction. Children understanding of adoption changes as they go through different development stages.

Mental health and adoption professionals recommend that disclose the decision to adapt to family and close friends as soon as it is made. The reason is that it takes time for people to adjust to the idea and to prepare for the arrival of the

child and adoptions can happen quite quickly. It is important for the adoptive family to have support of their family and friends. The issue of disclosure must be handled carefully. Under this Act only Hindus may adopt subject to their fulfillment of certain criteria. The first of these asserts that the adopter has the legal right to (under this Act that would mean they are a Hindu). Next, they have to have the capacity to be able to provide for the adopted child. Thirdly the child must be capable of being adopted. Lastly, compliance with all other specifications (as outlined below) must be met to make the adoption valid.

Men can adopt if they have the [consent](#)(s) of their wife or of all of their wives. The only way of getting around obtaining the permission of the wife or of the wives is if she or if they are unsound, if they have died, if they have completely and finally renounced the world, and if they have ceased to be a Hindu. Men who are unmarried can adopt as well as long as they are not a minor. However, if a man were to adopt a daughter, the man must be twenty four years of age or older. Women can adopt if they have the consent of their husband. Again, the only way of getting around obtaining the permission of the husband is if he is unsound, has died, has completely and finally renounced the world, and has ceased to be a Hindu. Women who are unmarried can adopt as well as long as they are not a minor. However, if a woman were to adopt a son, the woman must be twenty four years of age or older. If the child is adopted and there are more than one wife living in the household, then the senior wife is classified as the legal mother of the adopted child.

In India, an Indian, Non Resident Indian (NRI), or a foreign citizen may adopt a child. There are specific guidelines and documentation for each group of

prospective adoptive parents. A single female or a married couple can adopt a child. In India, a single male is usually not eligible to be an adoptive parent. An exception to this rule is the noted dance instructor Sandip Soparrkar, who has recently adopted a young boy. This is a special case rather than the norm. A single man desiring to adopt a child may be eligible if he applies through a registered agency. However, he will still only be able to adopt a male child.

What are the conditions to be fulfilled by an adoptive parent?

An adoptive parent should be medically fit and financially able to care for a child. A person wishing to adopt a child must be at least 21 years old. There is no legal upper age limit for parents but most adoptive agencies set their own benchmarks with regard to age. For a child who is less than a year old, the adoptive parents can have a maximum combined age of 90 years. Also, neither parent must be older than 45 years.

In the case of adoption of older children, the age of the parents may be relaxed accordingly. For example, for a one-year-old child, the age limit is 46 years, for a two-year-old child, it is 47 years and so on. The upper age limit for an adopted child is 12 years while for an adoptive parent it is 55 years. In the case of an adopted child with special needs, the age limit may be relaxed marginally by the state government, depending on the evaluation of the case. However, in all cases, the age of the parent cannot exceed 55 years.

What are the laws governing adoption?

Indian citizens who are Hindus, Janis, Sikhs, or Buddhists are allowed to formally adopt a child. The adoption is under the Hindu Adoption and Maintenance Act of 1956. Under this act, a single parent or married couples are not permitted to adopt more than one child of the same sex. Foreign citizens, NRIs, and those Indian nationals who are Muslims, Parsis, Christians or Jews are subject to the Guardian and Wards Act of 1890. Under this act, the adoptive parent is only the guardian of the child until she reaches 18 years of age.

Foreign citizens and NRIs are supposed to formally adopt their child according to the adoption laws and procedures in the country of their residence. This must be carried out within two years of the individual becoming a child's guardian. There is also a Juvenile Justice Act of 2000, a part of which deals with adoption of children by non-Hindu parents. However, this act is applicable only to children who have been abandoned or abused and not to those children who have been voluntarily put up for adoption.

Can a parent ask for a specific child?

An adoptive parent is allowed to ask for a child, as per her preferences. For example a parent may ask for a child of a certain age, gender (if it is the first child in the family), skin color, religion, special features, health condition, etc. However, greater the specifications, more difficult it is to find a child who conforms to them. This restricts the pool of children available for adoption.

Depending on the adoptive parent's desired details, children are scrutinized to find

a suitable match. When a child with the desired characteristics is found, she is shown to the prospective parents. In case the parents are unhappy with the selection, about two more children with the same characteristics may be presented to the parents.

Who can be adopted?

The adopted child can be either male or female. The adopted child must fall under the Hindu category. The adoptee needs also to be unmarried; however, if the particular custom or usage is applicable to the involved parties then the adoptee can be married. The child cannot be the age of sixteen or older, unless again it is custom or the usage is applicable to the involved parties. An adoption can only occur if there is not a child of the same sex of the adopted child still residing in the home. In particular, if a son were to be adopted then the adoptive father or mother must not have a legitimate or adopted son still live in the house.

Legal Implications for an Adopted Child

From the date of the adoption, the child is under the legal [guardianship](#) of the new adopted parent(s) and thus should enjoy all the benefits from those family ties. This also means that this child, therefore, is cut off from all legal benefits ([property](#), [inheritance](#), etc.) from the family who had given him or her up for adoption.

What happens if one partner in a couple wants to adopt and the other does not?

However, this disparity becomes a real problem and an indication that the couple is not yet ready to adopt because couples include two individuals. It is not surprising that each will be at a different point with regard to such an important decision usually but not always, the women arrives at this decision first. An adequate amount of time is necessary to explore adoption. For couples that have forgoing default in coming to an agreement counseling with a professionally experienced in infertility and adoption is recommended.

For some people, the decision to adopt was made early in life or was based on moral or religious reasons. For those who decide to adopt as a result of infertility, the decision is often made either when they have no choice but to end medical treatments or when they decide that enough is enough. For traditional adopters, adoption always starts as a second choice, and the challenge is to arrive at a point where this family building method is not seen as “second best” This point is reached when people educate themselves about adoption and when they become comfortable with the differences of adoptive parenting. Many adoptive parents view adoption as adding to and expanding their identity.

Adoption can take anywhere from a few months to years. The time frame depends on the different decisions that potential adoption parents make such as the type of child that they are willing to adopt e.g. newborns available health, history, financial status etc. In recent years, home studies have shifted from performing a purely evaluative function to providing a parenting readiness opportunity. Social workers help prospective adopters explore their motivations to adopt, examines their expectations about what it means to build a family through adoption and educate them about becoming an adoptive family.

Do adopted children have more psychological problems than other children do.?

This is a common question of all those who think about adopting. A higher proportion of adopted children are found in mental health treatment. Adoption affects all individuals differentially. It is a complex subject, which is either in the foreground or the background of adoptees. Adoptive families often have biological children as well as adopted children. Such families are called blended families. Some of these families already have a biological child or children before they adopt (and many have suffered from secondary infertility which is extremely common) and some have a biological child or children born after they adopt. Despite the common myth that, if a woman adopts, she will automatically conceive afterwards, pregnancy after adoption occurs at the same rate as for people who do not adopt.

Blended families often face more curiosity and security than families with either all biological or all adopted children, which can bring distinct challenges and difficulties. Often, however, adoptive parents in blended families feel more secure in their knowledge that they love their children equally, even though they have arrived in different ways.

What happens when adopted children find their biological or birth parents:-

The result of this experience varies with the individuals involved. Some times it leads to an ongoing relationship between the adoptee and birth parents family, much like an extended family, and some times there is little contact after the initial contact is made.. The most common fear of adoptive parent is that the search will lead to their rejection by the adoptee; this fear is clearly unfounded. .

Are adopted children happy?

Most adoptive children grow up to be healthy, well adjusted individual. It is noted that majority of the adoptee were physiologically, Social healthy and strongly attached to family. ⁵

Fears and Concerns about adoption

1. The birth mother will come and take the child away.
2. The couple will be unable to adopt because they are too old or do not have enough money or the adoption criteria will be too strict.
3. All adopted children are damaged or experience more emotional differences.
4. The adoptive parents will be unable to talk with their child about adoption.
5. Adoptive children will search for their birth parents and then abandon their adoptive parents.
6. Adopted children will not be accepted by their families and society.

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