

CONCEPT OF ADOPTION IN HINDU LAW VIS A VIS FEMALE RIGHTS

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ABSTRACT

Today we are living in the 21 century and there are 132 million orphans in the world, should married or unmarried really be discouraged from reaching adoption a child?

The concept of adoption is not a new concept rather the custom and practice of adoption is from past.

According to the Juvenile Justice (Amended) Act, 2006, adoption means, "The process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached with the relationship."

In India all adoption issues are handled by the Central Adoption Resource Authority (CARA), an autonomous body governed by the Ministry of Women & Child Development

The primary consideration of adoption was the interest of the childless adoptive parents, namely, the perpetuation of family name and lineage, protection in old age, performance of death rites and salvation of the adoptive parents.

In India adoption among Hindus is regulated by the Hindu Adoptions and Maintenance Act, 1956.

Prior to the Hindu Adoptions and Maintenance Act, 1956 only the adoption of son was recognized but after the commencement of this Act, daughter's adoption is also legally recognized. In 2011-2012 as against 94 boys, 106 girls were adopted in Kerala, India.

While Indian nationals who are Muslims, Parsis, Christians or Jews, according to Guardian and Wards Act, 1890 the parent only acts as a guardian till the child attains the age of 18.

If an adoption takes place, then an adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.

Key words : Adoption, Hindu Laws, Effect.

INTRODUCTION

The concept of adoption is not a new concept rather the custom and practice of adoption is continuing from the past. The dictionary meaning of the term 'adoption' is the act of taking and rearing of the child of other's parents as one's own child.

It means the "taking of a son" a substitute for the failure of male issue. Manu says "He whom his father or mother gives with water, at a time of distress, the son being of the same class and affectionately disposed, is known as a son given (or a Dattaka putra) provided that the donee has no issue".

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According to Sir Henry Mayne the entire law of adoption is based on the different texts of Manu and Vashistha and Metaphor of Shaunak.

Texts of Manu- Manu says: “ Boy, equal by caste, whom his mother or his father affectionately gives confirming the gift with a libation of water, in times at distress to a man as his son for he is without a son, must be considered as an adopted son”. Thus an adopted son shall be regarded as having been born in the adoptive family and all his relations with the natural family comes to an end.

This paper deals with the motivation of the parents to adopt a child and various aspects relating to adoption under the Hindu laws.

OBJECT OF ADOPTION

Child adoption in India has been a prevalent social practice from ancient times but with a different perspective. Generally the view is that when an individual completely loses his capability to conceive a child, then under that circumstance a child is being adopted. In the past, a childless couple would 'adopt' a child from one's own family. But now, it's not like this, adoption is not limited to relatives' children.

The people who adopt, their motives vary. The primary consideration was the interest of the childless adoptive parents, namely, the perpetuation of family name and lineage, protection in old age, performance of death rites and salvation of the adoptive parents. Thus there are basically two objects of adoption, firstly the adoption is made to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of water to the manes (departed souls) of the adopter and his ancestors. This is called the religious object. The second object of adoption is to secure an heir and perpetuate the adopter's name.

The reason for this is partly due to the belief that a son is indispensable for spiritual as well as material welfare of the family, particularly that of the father. In *Bal Gangadhar Tilak v. Shrinivas Pandit*, the Privy Council observed that adoption among Hindus is necessary not only for the continuation of the childless father's name, but also as a religious means to make those obligations and sacrifices which would permit the soul of the deceased (father) passing from Hades to Paradise. Similarly in *Amarendra Mansingh v. Sanatan Singh*, the Privy Council observed that 'among the Hindus, a peculiar religious significance has attached to the son, through Brahminical influence, although in its origin the custom of adoption was perhaps purely secular. The texts of the Hindus are themselves instinct with this doctrine of religious significance. The foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites'. While in *Hem Singh v. Harnam Singh*, it was observed by the Supreme Court that under the Hindu law adoption is primarily a religious act intended to confer spiritual benefit on the adopter and some of the ritual have, therefore, been mandatory, and compliance with them regarded as a condition of the validity of the adoption.

Thus, in ancient times, a son was considered to be great necessity both for religious as well as social. That is why the system of adoption came in to existence. Now, the trend is changing a lot. It is being noted that the single parent adoptions are also being done in urban cities. And number of child is being more adopted in 2012 as per the statical status of Central Adoption Resource Agency (CARA).

KINDS OF ADOPTION

There are five kinds of adoptions which can be considered as special but they now stand abrogated by the Act:

1. Kritrima adoption-This form is prevalent in the province of Mithila and among Nambudris of Kerala. In this kind of adoption the adoptee is not severed from his natural family and his consent is necessary because the adoptee is major. Adoptee should be of the same caste as that of an adopter. The peculiarity of this adoption form is that under it even one own father or brother could be adopted.
2. Dwyamushyayana adoption-In this form a person is given in adoption under an agreement that he should be considered to be the son of both, the adoptive father and the natural father. The word Dwyamushyayana means-a son of two fathers.
3. Illatom adoption- This was an adoption of a son-in-law. This kind of adoption has no religious significance as it was with the view that the adoptee would assist in agricultural operation and cultivation of land. The adoptee was to marry the adopter's daughter. If the adopter had a son, even then such an adoption could be made.
4. Adoption of girls- This was unknown to the general Hindu Law. It was prevalent among the devdasis or the dancing girl community by custom. In *Hira v. Radha*, Bombay High Court regarded it as an immortal custom and such adoption were considered as invalid in law. But other Courts have different views that such adoption should not be made with the object of training the girls to lead an immoral life of prostitution.
5. Rules of inter-country adoption Applications for appointment of guardian under Section 7 of the Guardian and Wards Act, 1890, to appoint the foreign person as guardians and application under Section 26 to seek the permission of the Court to take the child out of the country for the purpose of adoption as a son or daughter by the applicants, is called as inter-country adoption. These are not at par with the concept of adoption known to the Hindu Law. In *Lakshmi Kant Pandey v. Union of India*, the Supreme Court laid down the approach that is required to be adopted by the Court while dealing with the applications under the Guardian and Wards Act, 1890, seeking orders for appointment of foreign prospective parents as guardians of Indian children for the purpose of adoption. Court had suggested that it would be desirable if a Central Adoption Resource Agency is set up by the Government of India, which will act as clearing house of information in regard to children available for inter-country adoption.

ADOPTION UNDER PERSONAL LAW

The Hindu Adoption and Maintenance Act (HAMA), 1956, provides for adoption of Hindu children by the adoptive parents belonging to Hinduism. But after the enactment of the Hindu Adoption and Maintenance Act, 1956, the concept of adoption has undergone radical change. The performance of the 'Datta Homam' attaching religious sanctity is left out. A girl now is adopted. Even an unmarried has been given a right to adopt. Even no Hindu person can adopt a son or daughter, if they already have a child of that sex. It also provides that there should be an age difference of 21 years between the adoptive parents and adopted child whenever they are of opposite sex. This is intended to prevent sexual abuse.

Dwyamushyayana form of Adoption- The modern Hindu Law recognizes only two kind of sons, namely, aurasa or a natural son and the dattaka or adopted son. There are other types of adoption also which were recognized by custom. Adoption under the custom prevalent in a community was in "Dwyamushyayana" form. The term "dwyamushyayana" is applicable to an adopted son relating his filial relation to his natural father with his acquired relation to his adoptive parents when there is a mutual agreement between the natural father and the adoptive father that the adopted son shall be the son of both. The son so adopted is technically called "Dwyamushyayana". The Dwyamushyayana adopted son is of two kinds, (1) absolute i.e, nitya dwyamushyayana and (2) incomplete, i.e, anitya dwyamushyayana. The absolute dwyamushyayana son is one who is given in adoption with this stipulation: "The son of two (the natural father and adopter)".

Mulla on Principles of Hindu Law, has enumerated the form of "dwyamushyayana" adoption as: where a person give his son to another under an agreement that he should be considered to be the son of both the natural and the adoptive fathers, the son so given in adoption is called dwyamushyayana. In this form of adoption it is essential to prove such an agreement and it should also be proved that there was the ceremony of giving and taking of the adoptive son. And such son inherits both in his natural and adoptive families.

In Nilmadhub Doss V. Bishumber Doss and others (1869), Judicial Committee has recognized the absolute dwyamushyayana form of adoption, and held that this form of adoption is not to be deprived of his lineage to his natural father or to bar him of his right to inheritance to his natural brother estate.

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