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Why There Is A Pressing Need For Uniformity In The Adoption Laws Of India?- Sudiksha. K ¹**Abstract**

The current arena of adoption laws pose as a challenge and inconvenience to the population of the country and is in desperate need for reform. The ideals of the constitution which highlight justice and equality to all is not in line with the laws that govern adoption, the differences between the Hindu Adoption and Maintenance Act, 1956 and the Guardianship and Wards Act, 1890 prove to us the same. Despite the introduction of the Juvenile Justice Act (Now Juvenile Justice [Care and Protection of Children) Amendment Act, 2006], the adoption processes in India are neither simplified nor unbiased. With the glaring disadvantages present to single unmarried parents and the LGBTQIA+ community, the laws need reform to keep up with the modern ideals of equality and justice.

Keywords– Adoption, reform, social justice, legal reform.

Introduction

Adoption as a process is not foreign to India's Customs and traditions; in ancient India, the process of Adoption was commonly referred to as 'Dattahoma/Dattadidhiti'. Many Smriti's like Manu, Kapila, Lohita discuss about the general rules and laws of adoption and inheritance. But this concept of adoption dealt majorly with carrying forward the family line and hence the male children were the only preferred option for adoptions². Adoption in India though moving forward from its ancient ideals still lacks many of the vital features that needs to be addressed at the earliest.

Adoption in India

Adoption was often seen as a tool to 'normalize' marriage or to carry out the family line of the

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² Handa, N. K. (NA). *Adoption in Ancient India*. Retrieved December 2020, from SCRIBD:
<https://www.scribd.com/doc/20167904/ADOPTION-IN-ANCIENT-INDIA#scribd>

household. This parent-based approach on adoption has seen some major changes throughout time and has evolved to a stand where it can be seen as an act to give the gift of a home and a sense of family to children who yearn for it.

Primarily, Adoption laws can be traced back to the Hindu Adoptions and Maintenance Act, 1956 that was accessible to the Hindu, Sikh, Jain, and Buddhist religions only³. Initially this privilege was only granted to the male sex, but after many reforms it has come to involve the female sex as well. The Muslims, Christians, Parsis and Jews had no refuge under their personal laws and could only seek refuge under section 8 of the Guardians and Wards Act, 1890- which only granted the status of a guardian and ward unlike the HAMA which granted the rights of a natural born child onto the adopted child. This distinction thus created between the 'Hindu's' and 'non-Hindu's' needed to be bridged so the Juvenile Justice (Care & Protection of Children) Act was brought into play. This act which was applicable to all the Indian citizens conferred the rights of a natural child on the adopted child. It even allowed for adoption of children from the same sex and brought a semblance of uniformity to the haphazard adoption laws that preceded this act⁴.

A further analysis on the adoption laws of the country

We must also include in our analysis, the introduction of the Adoption of Children Bill 1972 which sadly could not be introduced as an Act due to the strong opposition from the Muslim Community, who believed that this Bill was in direct violation of the 'right to religion' as Islam does not recognize the concept of adoption. This cosmopolitan and secular Bill was a step forward in bringing uniformity in the adoption laws of the country which did not discriminate between married, unmarried, single, or widowed parents and promoted the welfare of children⁵. While the government has made efforts to bridge the gaps, attempts by the judiciary should also not go unnoticed. An important case *Shabnam Hashmi V. Union of India*⁶ must be considered; the petitioner here appealed for the recognition of the right of an individual belonging to any religion to adopt, as the Muslim law did not make provisions for the same. Here the court also

³ Section 2 of the HAMA clearly sets out the scope of individuals who are applicable to apply for adoption

⁴ Meena, N. (n.d.). *Adoption Laws in India: Challenging Existing Law*. Retrieved December 2020, from Manupatra <http://docs.manupatra.in/newsline/articles/Upload/E8EFE493-114B-4E5B-A014-682EB1729301.pdf>

⁵ Rao, R. J. (1975). A Uniform Law of Adoption: A Critique on the Adoption of Children Bill, 1972. *Journal of the Indian Law Institute*, 17(2), 287-298. Retrieved December 2020, from <https://www.jstor.org/stable/43950486>

⁶ *Shabnam Hashmi V. Union of India* (1984) 2 SCC 244.

held that religion under no circumstances should be considered as a bar for adoption and the Juvenile Justice Act could enable uniformity in the country's adoption laws and acknowledged the statutory right to adopt.

Despite the efforts of the Judiciary and Government alike, we must remember the ethos upheld by our Constitution which these laws are in violation of; Article 44 of the Constitution provides that the State shall always endeavor to provide for its citizens a uniform civil code. The 'Right to Equality is a fundamental right that is provided to every individual in this country, further we should also bring in Article 38 (2) that highlights that the state shall... eliminate inequalities in status... and so on.

The leading critique against the introduction of a uniform law on adoption is the 'Right to Religious Freedom' provided under Article 25 of the Constitution, which ensures that the state shall not interfere in matters that are deemed to be integral or essential to any particular religion. Since the Muslim Personal law as mentioned before does not recognize the process of adoption, it vehemently opposes Bills that want to bring in uniformity in the Adoption laws of India. It is pertinent for one to understand that the uniformity in law will not violate the fundamental rights and that the right to religion is not an absolute one as a state must always place the welfare of the people at large ahead while drafting bills. This was also held in the *Durgah Committee v. Hussain*⁷ case; where the religious practices that would be protected should be essential and integral to the religion itself. The Supreme Court may decide the scope under which the practices can be deemed as essential in pursuing their beliefs and may approach an egalitarian and strict approach when it is in direct affect to the community at large⁸.

The reality in the adoption arena

A pressing issue that pops up while we study the adoption law is that; despite favorable laws that allow single women and men to adopt, there are a large fraction of individuals who struggle to adopt children and we must take a closer look at the issues they face. While the Statutory body CARA (Central Adoption Resource Authority) does set out guidelines that should smooth out the process of adoption for single parents wishing to adopt, the inherent biases present within the system has completely corrupted the process.

⁷ *Durgah Committee v. Hussain* AIR (1961) SC 1402 (1415)

⁸ Sharma, S. S. (n.d.). *Uniform Civil Code and Adoption Laws in India*. Retrieved December 2020, from Social Science Research Network : [http://ssrn.com/abstract=\[1162110\]](http://ssrn.com/abstract=[1162110])

These biases arrive from the narrow, traditional notion of a family which contains the ideal two-parent set up comprising of a loving relationship between the father and the mother. This linear thought process in the system of adoption has dominated the minds of social workers to this date. Despite concessions in the laws regarding adoption, in a survey it was highlighted that in 2018-19, there were only 121 domestic adoption by single women and 95 internationally, whereas adoption by single men in the same year were only 3 in both the domestic and international spheres⁹. The flaws in the adoption system as highlighted before create a scenario that limits the total number of adoptions despite an ever-growing number of children who are being put up for adoption. This gap that is thus created jeopardizes the lives of many children who can only dream of a loving and caring family or support system.

Glaring indifference in the current system

On the same note we cannot miss out on analyzing the legal system that completely ignores the civil right of marriage, surrogacy, and adoption to the LGBTQIA+ community. Neither the laws nor the central agency CARA discuss about the community's right to adopt and raise a child. As of 2014, the law in fact has prevented same-sex couples from availing the option of adoption and this was done while considering the amendments made to the "uniform" Juvenile Justice Act that omits to mention adoption in regards of same-sex couples. While the case of Navtej Singh Johar v. Union of India¹⁰ has banned for any discrimination on sexual orientation and sex, the laws of adoption are an obvious exception for the same¹¹.

The glaring differences that are setup against the community lie on the premise that homosexual couples are inferior when compared to heterosexual couples and for the same reason the child will not grow in a 'stable' loving environment. This traditional outlook has been supported by many such people, one of whom for example would be: Malti who runs an adoption agency in Bangalore who holds the view that giving children to homosexual couples will 'corrupt' their upbringing and leave them in an 'inferior household' and this is a notion shared by the society

⁹ Bhatt, S. (2019, August 11). *Despite a favourable law, why do single women and men struggle to adopt*. Retrieved December 2020, from The Economic Times: <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>

¹⁰ Navtej Singh Johar v. Union of India W.P (CrI) No. 76 of 2016

¹¹ Heliwal, M. (2020, April 2). *On LGBTQ Adoption and Legal Reform: The Fight for the Community is Still Not Over*. Retrieved December 2020, from Youth ki Awaaz: <https://www.youthkiawaaz.com/2020/04/why-should-there-be-an-amendment-in-c-a-r-a-for-the-lgbt/>

at large¹². With over 20 million children who remain without families, India can no longer nurse old toxic notions that will hamper the society's welfare at large and therefore must change itself along with the changing morals of the times.

Conclusion

With the above presented facts and circumstances, it becomes very clear why India has a pressing need for uniform adoption laws which is clearly the need of the hour and must run on every religion. The slow-paced improvements that were being made in the adoption laws so far though positive are not revolutionary and so uniform law will instead set India in the right path of development. Adoption will always be a sacred and pious process that ensures that the child being adopted can experience the happiness and comfort of a family. If the process is revamped and allows the above-mentioned set of parents to adopt, then the number of children who will get a chance at a secure future would dramatically increase. The pace at which our population is growing and the lack of financial and social security for homeless and parentless children who would attain majority will require a 'Uniform Code' in adoption which will also attempt to improve the economic and social wellbeing of the society at large.

¹² Awasthi, P. (2019, November 10). *India's Adoption Policy Discriminative against LGBTQIA+, 20 Million Kids Remain Without Family*,. Retrieved from The Logical Indian:
<https://thelogicalindian.com/exclusive/adoption-policy-discriminative-against-lqbtqia/>