

ABORTION LAWS IN INDIA

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Abstract

Abortion is a phenomenon that has been debated since time immemorial and, even now, continues to be a matter of controversy. It is multi-faceted since it requires the fulfillment of multiple things, including faith, ethics, medicine, and law. Abortion is a societal problem that gives women liberation and gives them the ability to make their own choices. The abortion debate in India, though, would be pointless if the critical question of female feticide were not taken into account. In this paper titled "Abortion Laws in India" the author will discuss the status of adoption in India, the laws related to the same and uniform code for adoption.

Keywords: *Act, Abortion, Law, Maintenance, Rights, Uniform Civil Code.*

I. INTRODUCTION

In the twentieth century, one such heated controversy was Reproductive Rights, the freedom to select women to complement the states' political ideology. In fields such as suicide, morals, infanticide, philosophy, ethics and women's rights, this dilemma is glaring.¹

Pro-choice claims centered on the welfare problems faced by women & feminist reversals, i.e. the freedom to self-determination is taken into consideration.

In her study Adrienne Rich examined, Institutional Motherhood² requiring women not to be self-conscious, intelligent, but to have maternal instinct and to be submissive to the natural order of things, and Mary Daly has argued that the required dependency of men on women for

¹ DIPIKA JAIN, BRIAN TRONIC, Conflicting abortion laws in India: Unintended barriers to safe abortion for adolescent girls, Indian Journal of Medical Ethics Vol IV No 4 October-December 2019.

² Adrienne Rich's Feminist Examination of Motherhood (Visited on 23th Jan 2021).

their biological reproduction is used to explain male power over women's reproductive capacity, so women and children are guarantees of men's immortality.³

In Right to Choose, this argument also creates three crucial things: the intense emotional feelings conveyed as to the legal availability and acceptability of abortion on both sides, these feelings are embedded in universal beliefs, i.e. on moral obligation, divine will, and these convictions are reinforced in pluralistic society through religious belief.

Globally, the legislation relating to abortion are complex. Abortion is constitutionally lawful in some countries without any excuse being obtained before the procedure, but in other countries the same is eligible & conditional. These factors included: the mother or fetus was at mental/physical risk, etc. Although there are nations where toto is banned in abortion. In the Soviet Union, spurred by the feminist Alexendra Kollantai, the Reproductive Right emerged on a foreign plane. On public welfare and fostering smaller households, the radical change was justified.

For the first time in 1968, the Universal Legal Instrument declared that parents had a constitutional right to openly and responsibly decide the amount of their children's separations. The United Nation reinforced this Reproductive Freedom, where the exclusive rights to freely decide the spacing of children are granted to the parents. The Convention on the Elimination of All Types of Discrimination against Women (CEDAW) offered information and guidance on family planning for contraceptive care to work properly.

II. DISCUSSION

A. Adoption in India: -

In India, the tradition and custom of adoption stretches back to ancient times. While the purpose of the act has varied, the act of adoption still remains the same. Adoption was predominantly viewed as a sacramental act. Not only among the writers, but also among the judges, there has been an acute controversy whether adoption has a secular motive that predominates or whether the religious motive predominates.

There were several laws relating to adoption under the old Hindu law, which could only be justified on the grounds that adoption was a sacramental act. In the case of a presentation Hindu Adoption & Maintenance Act, 1956⁴ of both the theological and sacramental facets of adoption,

³ *Ibid.*

⁴ Hindu Adoption & Maintenance Act, 1956 (Visited on 23th Jan 2021 at 2:00 pm).

it has specifically started and made adoption a secular institution. Both adoptions after 1956 are secular and legal, and the provisions of the act must be checked for validity.

In addition, the personal laws of Muslims, Christians, Parsis and Jews in India do not permit adoption. Perhaps, they usually opt for guardianship of a child through the Guardianship and Wards Act, 1890⁵.

Indian citizens who are Hindus, Jains, Sikhs, or Buddhists are allowed to adopt a child formally. As part of the Hindu Code Bills, the Hindu Adoption and Maintenance Act of 1956 was enacted in India. This led to the implementation of a few reforms which liberalized the adoption system.

B. Hindu Law: -

Hindu law is the only law that addresses an adopted child as a rival to a normal child because of the assumption that a son is necessary for the family's moral and material well-being. Earlier, Hindu law allowed the implementation of only male rules and limitations on Caste and Gotra were enforced. Under Hindu law, it is not possible to adopt a female child. Furthermore, only the male had the right to adopt and his wife's opposition was immaterial.⁶

Such constraints have changed with the course of time. In today's multicultural culture, gender prejudices have declined to a large degree. At present, under modern Hindu law, any Hindu male or female has the right to adopt whether he or she has achieved the majority and is of sound mind. Mostly, in the Hindu Adoptions and Preservation Act of 1956, all of these statutes, rules and regulations were illustrated.

C. Guardians And Wards Act, 1890: -

The Hindu Adoption and Maintenance Act was, as the name itself implies, mainly the rules for Hindu society. Another legislation had to be made that was sensitive to other religions' personal rules that did not fall under the 1956 Hindu Adoption and Maintenance Act. This gives rise to the 1890 Act of Guardians and Wards.

The 1890 Guardians and Wards Act was a statute to supersede all other existing legislation. It is the first common non-religious rule applicable to all of India, except the state of Jammu and Kashmir, about the guardianship of a child.

For Muslims, Christians, Parsis and Jews, this rule is clearly explained, as their personal laws do not allow complete adoption, but rather guardianship. It extends to all children, irrespective

⁵ Guardianship and Wards Act, 1890. (Visited on 23th Jan 2021 at 3:00 pm).

⁶ Central Adoption Resource Authority. (Visited on 23th Jan at 3:30 pm).

of race or religion. It was claimed that any child who had not attained the age of 18 would be a minor. The court or some other designated official will nominate these children as guardians. They would determine who would take position as the guardian of the said child or as a guardian by excluding another. All these processes took place only after the person who was able to take a child under himself and to serve as his guardian submitted an application.

Applications should include all the documents that may have been submitted, including the guardian's information and any reasons for guardianship as well. It was just the first step. Once the appeal is approved by the judge, a date for a hearing may be scheduled. Prior to reaching a judgment, the court will hear facts.

Unlike the procedures provided in the Hindu Adoption and Maintenance Act, 1956, where a child once adopted has a single parent set, there may be more than one guardian for a minor and his belongings. In these guardianship cases, the court was required to use its discretionary power and to consider the minor's interests. It is necessary to take into account his or her age, sex, religion, the compatibility quotient with the guardian, the death of the parent, etc. The choice of a minor must also be taken into account.⁷

D. Uniform Civil Code For Adoption:

For all residents of India, laws related to crime and punishment are the same, and so are laws relating to trade, contracts and other relations. However, as is obvious from the case laws and the authority alluded to above, there are no clear family laws in the Indian sense.⁸ A uniformity of such regulations has been demanded for a long time. One must have equal rules for all in order to treat all people equally. In the event of adoption, an emotional dilemma is created by the visibly separate rules for Hindus and non-Hindus. Non-Hindu parents who would choose to welcome and treat a child as their own are not lawfully empowered to name the parents themselves or claim the child as their own. Therefore, with regards to adoption, there was a call for a uniform civil code.⁹

There is no breach of the human right of worship by a uniform civil code of adoption laws. It should be noted that the Directive Standards of Public Policy enable the State to bring about uniformity of legislation. As India is a signatory to the CRC (Convention on the Rights of a Child), such uniformity is important so that it is possible to strengthen and protect the rights of

⁷ *Supra* 5.

⁸ Prerna, UNIFORM CIVIL CODE AND LAWS OF ADOPTION AND CUSTODY, ILI Law Review, Summer Issue 2017.

⁹ Hindu Adoption & Maintenance Act, 1956 (Visited on 23th Jan 2021 at 2:00 pm).

adopted children. The Hindu Adoptions and Preservation Act, 1956 constitutionally acknowledges adoption because adoption is a major aspect of Hinduism.¹⁰

The Act initiated substantial reforms to the law of adoption among Hindus and has strengthened the status of women in this regard. It is ridiculous because, in the absence of a uniform code of adoption, Muslim and Christian Indians will not lawfully adopt a child. If, like Hindu women, a Uniform Civil Code is enacted, women following other faiths may also be allowed to accept it.

In all facets of social life, the status of Indian women will certainly increase with the arrival of the Uniform Civil Code. One way to prevent controversy would be to allow people the option of opting out of religion-based classification. It should not be mandatory for a series of religious personal rules to regulate the life of a person; instead, the need for an hour is further regulation to guarantee fundamental human rights.¹¹ Individual states should take the initiative if the Centre is unable to go ahead. Goa is one state that has shown the way and which follow suit from other states. A secular India requires a civil code which is standardized.

Besides this, care must be taken that the uniformity requested for breaks through the gender inequality shackles as well. There is a need to end the various laws on adoption for men and women. To adopt an infant, both must have equal rights.

III. CONCLUSION

Adoption is a noble cause, giving joy to children who have been neglected or orphaned. This offers an opportunity to shine through the compassionate side of humanity. It is a beneficial curriculum in which the infant is regarded as the born child of nature and given all the affection, care and consideration.

At the same moment, it fills the vacuum of parents who yearned for girls, echoing from the walls of a home with their laughter and mischief. While it was possible to make a few changes to make all the laws on adoption a little uniform.

¹⁰ *Ibid.*

¹¹ Sharda Girijesh Sharma, Uniform Civil Code and Adoption Laws in India, 17 Jul 2008.