

**|LAW AUDIENCE JOURNAL|**  
**|VOLUME 1|ISSUE 4|JUNE 2019|ISSN (0): 2581-6705|**  
**|INDEXED JOURNAL|IPI VALUE (2018): 2.06|**

**|LAW AUDIENCE JOURNAL®|**

**|VOLUME 1 & ISSUE 4|**

**|JUNE 2019|**

**|ISSN (0): 2581-6705|**

**EDITED BY:**

**LAW AUDIENCE JOURNAL'S  
EDITORIAL BOARD**

**[LAW AUDIENCE JOURNAL]**  
**[VOLUME 1|ISSUE 4|JUNE 2019|ISSN (O): 2581-6705]**  
**[INDEXED JOURNAL|IPI VALUE (2018): 2.06]**

**COPYRIGHT © 2019 BY LAW AUDIENCE JOURNAL (ISSN (O): 2581-6705)**

All Copyrights are reserved with the Author. But, however, the Author has granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email must be "Permission Required," at the email addresses given below.

Email: [lawjournal@lawaudience.com](mailto:lawjournal@lawaudience.com), [info@lawaudience.com](mailto:info@lawaudience.com),

Phone: +91-8351033361,

Website: [www.lawaudience.com](http://www.lawaudience.com).

Facebook: [www.facebook.com/lawaudience](http://www.facebook.com/lawaudience)

Instagram: [www.instagram.com/lawaudienceofficial](http://www.instagram.com/lawaudienceofficial)

Contact Timings: 5:00 PM to 9:00 PM.

**[LAW AUDIENCE JOURNAL]**  
**[VOLUME 1|ISSUE 4|JUNE 2019|ISSN (O): 2581-6705]**  
**[INDEXED JOURNAL|IPI VALUE (2018): 2.06]**

**DISCLAIMER:**

Law Audience Journal (ISSN (O): 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 1 & Issue 4 are the original work of the authors.

Views or Opinions or Suggestions, expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

**"THE CONCEPT OF ADOPTION UNDER INDIAN LAWS: WITH SPECIAL  
REFERENCE TO POST HAVING A BIOLOGICAL CHILD."**

*Authored By: Ms. Aishleen Sahni,*

*Symbiosis Law School, Hyderabad,*

*Email ID: aishleen\_sahni@yahoo.in,*

*Published At: <https://www.lawaudience.com/volume-1-issue-4/>.*

**I. THE BACKGROUND OF THE STUDY:**

The intent of this study is to comprehensively analyse adoption done by couple's post having biological children. It also seeks to understand the role of the judiciary in safeguarding the welfare and rights of the adopted children by having an in-depth layout of eligibility criteria which is a must for adoption. According to the *Merriam Webster Legal Dictionary*, adoption can be defined as a process where an individual voluntarily takes up the parenting of another child, from that person's biological or legal guardians, which means legally signing over the rights and responsibility of the child to the chosen adoptive parents<sup>1</sup>. (Webster, n.d.) There are legal and illegal forms of adoption. For instance, under the Indian Law framework of adoption, there is a legal coalition between the party willing for the adoption of a child, which forms the subject matter of 'Personal Law' where Hindu, Buddhist, Jain or Sikh by religion can make a legal adoption. However, in India, there are separate adoption laws for Muslims,

<sup>1</sup> <https://www.merriam-webster.com/dictionary/adopt>.

Christians and Parsis, which fall under the *Guardians and Wards Act, 1890* for legal adoption. The provision for adoption after a biological child is given under *Hindu Adoption and Maintenance Act, 1956 under Sec 11 (i) (ii) which allows the adoption of a child of the opposite gender to the adoptive parents which means if the adoptive parents have a son, they can only adopt a daughter and vice-versa.*

The provision for adoption after a biological child is given under *Sec 5 of the Adoption Regulations, 2017*<sup>2</sup>,

**Sec 5 Eligibility Criteria For Prospective Adoptive Parents:**

(2) Any prospective adoptive parents, irrespective of his/her marital status and whether or not they have a biological son or daughter, can adopt a child subject to following, namely:

(a) the consent of both the spouses for the adoption shall be required, in case of a married couple;

(b) a single female can adopt a child of any gender;

(c) a single male is not eligible to adopt a girl child;

**Jeshy C.O. vs. Union of India & Others**<sup>3</sup>

In this case, the High Court of Kerala as on 5th December 2018 dismissed the petition challenging the Adoption Regulations, 2017, stipulating the upper age limit for Prospective Adoptive Parents u/s 5 of the Adoption Regulations, 2017.

**In Para No. 12 the High Court held that:**

*“In a matter of adoption, what is to be looked into is the welfare of the child and where it is stated that the maximum age is prescribed keeping in mind the probability of the prospective*

<sup>2</sup> [http://Central Adoption Resource Authority \(CENTRAL ADOPTION RESOURCE AUTHORITY \(CARA\)\).nic.in/PDF/Regulation\\_english.pdf](http://CentralAdoptionResourceAuthority(CENTRALADOPTIONRESOURCEAUTHORITY(CARA)).nic.in/PDF/Regulation_english.pdf).

<sup>3</sup> MANU/KE/3582/2018 (India).

*adoptive parents surviving the formative years of the child, this Court cannot, in exercise of its powers of judicial review, say that such a guideline is violative of the right of the prospective adoptive parents or that it is discriminatory. It is not for this Court to consider the reasons behind the fixing of a particular age or to substitute its own wisdom for that of the executive by fixing a criterion for adoption at variance with those provided in the impugned guidelines. In case the petitioners have a contention that the guidelines issued by the Central Adoption Resource Authority (CARA) are not supported by scientific studies, it is for them to approach the Central Adoption Resource Authority (CARA) seeking appropriate steps in the matter. Since the guidelines for adoption clearly affect the rights of prospective adoptive parents, I am sure; the concerns raised by the petitioners will be addressed appropriately by the Central Adoption Resource Authority (CARA). However, the challenge raised against the guidelines on the ground of discrimination as also on the ground of unreasonableness and ultra vires are, according to me, not sustainable. The challenge, therefore, is repelled. The writ petitions are dismissed reserving the rights of the petitioners to approach the Central Adoption Resource Authority (CARA) as mentioned above, if so advised.”*

The provisions of our legal statutes portray that a person can adopt a child even if they have a child already, according to the ***Hindu Adoption and Maintenance Act (HAMA), 1956*** the child adopted must be of the opposite gender to the one already in existence. However, in the other two adoption laws, there is no such norm that a person must satisfy while adopting. These laws have a provision where the biological children of the couple, who are being considered for adoption, must also; give their consent to the decision as an independent individual in writing.

## II. OBJECTIVE OF THE RESEARCH:

There are many gaps and limitations that are prevalent in the area of adoption, the qualitative and quantitative researches are lacking when it comes to the adopted children and the potential adoptive families due to the stigma attached to these in India. The main agenda is to analyse all the existing societal beliefs about adoption, literature, rules and regulations related to adoption and to understand the nuances behind this gap or to understand the aspect which has not been implemented in the legal structure. Moreover, it is an effort to include and explore the main rationale of the couple behind adoption, the acceptance of this choice by biological children, the support of this decision within the close family members and how this will affect the dynamics of the family unit. Keeping this in mind the main objective of the research will be to formulate the policies, recommendations, public and community-based strategies and to examine previous judgements for loopholes and to further understand the various interventions and the role played by the stakeholders regarding the controversial or the untouched section within the jurisdiction of adoption.

## III. LITERATURE REVIEW:

The aim of this research is to review the existing literature related to the study. The review of literature is organized in a way to understand the existing laws with reference to the adoption of a child and how the constitution of India offers protection to the ward through the various Acts in force. *The Hindu Adoption and Maintenance Act (HAMA), 1956, Juvenile Justice (Care and Protection of Children) Act, 2015 and Guardianship and Wards Act, 1890* are a few of the Acts which offer overall protection to the children who are up for adoption. All these laws also elaborate on the various provisions regarding nature and the importance as well as the eligibility of various individuals for adopting a child in India. According to the

various studies being conducted every year by the scholars of the social sciences on the various aspects and domains of adoption, it is commonly voiced an opinion which states that constructive research in this specific area is still lacking (Baltimore, 2008)<sup>4</sup>. Through the course of the literature review, we will also be looking at the element of adoption through the lens of religion, taboo, the conflict between the identity of the individual adopted and the psychological impact of this on everyone who is a primary stakeholder.

#### **IV. RESEARCH QUESTIONS:**

- 1)** Why do Hindu Adoption and Maintenance Act (HAMA), 1956 has low adoption of a child of the opposite gender to the adoptive parent which they already have which means if you have a son, you can adopt only a female child and vice-versa?
- 2)** What is the available jurisprudence on restrictions on adoption when adopter has a biological child?
- 3)** What are the judicial precedents available?
- 4)** Whether the laws for adoption after biological child same in other countries as India?

#### **V. RESEARCH METHODOLOGY:**

The purpose of this research is to understand the decisiveness of the adoptive parents, the adopted child and the role played by the judiciary in making it possible. The study is doctrinal research. To come up with constructive and in-depth reasons extensive doctrinal research has been conducted on this subject. Apart from this as part of the data collection for this study many internal and external sources like web portals, law journals and other primary

---

<sup>4</sup> <https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=16287&context=rtd>.

and secondary sources from the Indian jurisdictions have been examined. Individual cases have also been scrutinized and referred to, in order to further comprehend the practical aspects in a better manner. This research work is also a reflection of my opinions and perspectives of other scholars from the legal fraternity. This will further aid me in interpreting the views and highlighting new patterns, themes and perspectives. This research will be carried out under the supervision of my mentor *Mr. Ahmar Afaq, is an Assistant Professor at the Symbiosis Law School, Symbiosis University, Hyderabad*<sup>5</sup>.

## VI. INTRODUCTION:

'To adopt' means 'to take by choice'. By usage, it has assumed a specific meaning 'to take voluntarily a child of other parents as one's own child'. In the Smrti, among the procedures of 'Dattakavidhi', the giving off the child by the birth parents is an important rite. So, the child is designated as 'Dattaka'. Child adoption is a practice that can be found in many cultures and its origin go back into antiquity and was known to Greeks. Greece<sup>6</sup> had the earliest laws for adoption which were provided in a practical way. Even though the practice of adoption was known it was not used in the Roman period, however, it developed much later. The concept of adoption came into existence when abandoned children were taken away for slavery. Many such cases of abandoned children started coming up which was the reason behind the system getting institutionalized, and it was an important matter falling into the category of family laws. In the 19<sup>th</sup> century, the system of adoption was brought back. According to the *Hindu Adoption and Maintenance Act (HAMA), 1956* the legal process of adopting children was something which was done only by a Hindu adult, this law further focused on the legal obligations of a Hindu man to provide" maintenance" to various family members including

<sup>5</sup> Assistant Professor at Symbiosis Law School Hyderabad.

<sup>6</sup> Code of Hammurabi.

his wife, parents and in-laws. India as a Nation has always been governed by Personal Laws, initially common laws did not permit adoption, and moreover, illegitimate children were ostracized by the society and were never given much recognition within the law. While going through the history of adoption in India it was evident that the ancient Hindu Laws believed that a son<sup>7</sup> was needed for performing religious practices and for continuing the lineage<sup>8</sup>. Adoption of a female child was not prohibited but it was neither recognized.” The more the number of criteria for adoption the less the ease of adoption for prospective parents. Around 1 lakh children are homeless and parentless in India who is in need of a family. Tough competency rules could be avoided as it negatively affects the interests of the adoptive parents as well as the adoptive child.

#### **VII. THE INDIAN COURT'S APPROACH TOWARDS THE ADOPTION LAWS:**

In *Bal Gangadhar Tilak vs. Shri Shrinivas Pandit*<sup>9</sup>, the Privy Council held that under Hindu, adoption was a means by which not only the father's name was carried forward, but it aided for the fulfilment of various religious rites and practices under Hindu law that mandated the involvement of a son”. Women did not have the freedom to adopt. This clearly shows that even though Hindu culture recognized adoption but it was not free from gender injustice. When Hindu Adoptions and Maintenance Act (HAMA), 1956, as enacted in 1956 gender justice was provided and women also got the right to adopt. The law brought about radical changes in the adoption process by giving women the freedom to adopt and be

<sup>7</sup> Sonship: that was recognized in twelve different forms in the ancient period for spiritual reasons. Manu also defines adoption as a substitution of a son.

<sup>8</sup> As already decided by Privy council in *Rama Subbaya v. Chenchu Rammaya* “that the substitution of a son of the deceased for spiritual reasons is the essence of the thing and the consequent devolution of property is a mere accessory to it”. Similar opinion was given in another judgement of *Chandreshekhar Mudaliar v. K. Mudaliar*.

<sup>9</sup> (1915) 17 BOMLR 527 (India).

adopted, including giving rights to married women, widows and single women to adopt as well. The legislation is said to have adopted a secular approach towards adoption.

In *Sandhya vs. UOI*<sup>10</sup>, the honourable judiciary stated that this legislation has a secular mission. But it is not really secular in nature, it is religion specific. The only aspect of secularity is only with respect to the adoption of a child of any gender. According to UNICEF<sup>11</sup>, India has 29.6 million orphaned and abandoned children and only a fraction of children finds their way into family care because adoption rates in India are abysmally low. Adoption rates in India have always been low but Central Adoption Resource Authority (CARA)<sup>12</sup>'s statistics show that in 2010 there were 5,693 in-country adoptions whereas in 2017-18 the total no. of in-country adoptions was only 3,276. These figures are disturbing for a population as huge as India. There are a lot of couples who consider adoption as an option and only a few have a positive view about it and are willing to adopt whereas there are few couples who have no knowledge about the legal process of adoption.

***The reasons for the low level of adoption in India are because:***

- 1) There are not enough children available for adoption because the ratio of abandoned children to institutionalised care is lopsided and no proper record for the same has been maintained
- 2) Most Indians have a skewed perception of adoption because they want their genes, blood and lineage in their children and this mindset acts as a barrier.

---

<sup>10</sup> A.I.R. 1998 Bom 228 (India).

<sup>11</sup> UNICEF- United Nations International Children's Emergency Fund.

<sup>12</sup> CENTRAL ADOPTION RESOURCE AUTHORITY (CENTRAL ADOPTION RESOURCE AUTHORITY (CARA))- Central Adoption Resource Authority.

- 3) Couples who already have a biological child find it difficult to adopt the child of the same sex as the first child as the law does not allow them to do so. Sec 11(i) (ii) of the Hindu Adoptions and Maintenance Act (HAMA), 1956.

Hindu Adoptions and Maintenance Act (HAMA), 1956, allows the adoption of a child after having biological children but the child being adopted must be of the opposite gender as the biological child. There is no such restriction under the other two laws, i.e. the *Guardians and Wards Act, 1890* and the *Juvenile Justice Act (JJ Act), 2015* which has enabled many Indians to adopt a child of the same gender. Why should this be a prohibition? Adoptee should be free to decide which gender he or she wants to adopt regardless of the gender of the biological child. It makes absolutely no sense for putting a restriction on such an issue.

Adoption of children is a noble social cause which is in the maturing stage and various laws have been made to prevent these adopted children from misuse or problem at a later stage. Our country has a large number of orphaned children who are in need of family care. The word orphan is irrespective of gender i.e. male or female and hence in order to keep a gender balance among this deprived community, same-sex adoption is prohibited by the Hindu Adoptions and Maintenance Act (HAMA), 1956. In the absence of this law, in many communities/castes only sons will get adopted and girls will get left out creating a gender imbalance in the orphaned community. Moreover, adoption is mainly for the welfare and wellbeing of a homeless child and if someone has the means to raise an orphaned child in order to provide the child with a better life then there should be no such restrictions.

Analysing the Hindu Adoptions and Maintenance Act (HAMA), 1956 law, the ideology and the rules of adoption are in-sync with the policies enunciated by the government towards

traditional ideal Indian family comprising of children of both the sexes which can be seen in the philosophy of 'hum do humare do' i.e., we as a heterosexual couples maintaining gender-balance by having one son and one daughter to carry forward the legacy of the family in the future. This idealistic family cannot be chosen since it is a biological creation. However, this idealistic family is possible through adoption, ensuring a gender balanced adoption amongst the destitute children in India. Also, this particular clause is violative of certain articles of the Indian Constitution. However, in case of famous celebrity Sushmita Sen<sup>13</sup> former Miss Universe, 1994 who went against the odds by adopting two daughters. This is technically not permitted by the Hindu law. It took her two years to adopt her second daughter as the court didn't allow it. The custody for the same was even more difficult to get, it took her ten years to adopt her second daughter. She initially adopted her second daughter through *Guardianship and Wards Act, 1890*. Was given her parental rights successfully granted by Bombay High Court. The rules for the common man are different.

In the landmark case of *Sandhya vs. UOI*<sup>14</sup>, this provision of *Hindu Adoption and Maintenance Act (HAMA) 1956*, was challenged to be violative of Article 14 and 21 of the constitution but the judiciary denied the arguments stating the provisions are constitutionally valid and no fundamental right was breached. It was conceived by the court of law that it does have a mythological and secular mission. It is secular only in terms of adoption of a child of any gender. If you see it is a violation of article 21 which clearly states "it is the protection of life and personal liberty". And a matter as important as adoption should be devoid of such vague and unnecessary restrictions. Suppose if a person has a child born naturally after the adoption, there is a chance of bias attitude of the adoptive parents.

<sup>13</sup>[http://zeenews.india.com/entertainment/celebrity/sushmita-sen-granted-legal-adoption-of-second-daughter\\_51424.html](http://zeenews.india.com/entertainment/celebrity/sushmita-sen-granted-legal-adoption-of-second-daughter_51424.html).

<sup>14</sup> *supra* note 10.

Ashok A. Desai, J. (1998), said the right to have the size of a family according to one's own choice is comprehended within the concept of human dignity. Since the impugned provisions, namely, Hindu Adoption and Maintenance Act, 1956, Sec. 11(i) prevent such right, they are violative of the Constitutional guarantee<sup>15</sup>.

In the landmark case of adoption of Payal vs. Sharinee Vinayak Pathak<sup>16</sup>, it brought into the judicial sphere the question of adoption as a fundamental right. In this case, the petitioners had a biological daughter and they assumed the guardianship of another surrendered baby girl of five months. The girl remained with them for 4 years after which the couple formally applied to adopt the child. The High Court of Bombay observed that adoption is a basic feature of the right to life under Art. 21 of the Indian Constitution. The Court held that the right to life is asserted parents and individuals, men and women seek to adopt to give meaning and fulfilment to their lives. Also, the right to life also protected the interests of children who are in need of special care and protection. Therefore, the court held that the embargo on the adoption of same-sex children by the Hindu Adoption and Maintenance Act (HAMA), 1956, would have to give way to statutory provisions in the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act that allowed the parents to adopt a child irrespective of the number and sex of their biological children.

In all these cases, we see that the Court took the role of judicial activism and safeguarded the right of adoption as an inherent right implied in the right to life under Art 21 of the Indian Constitution.<sup>17</sup>

---

<sup>15</sup> Sandhya Alias Supriya Kulkarni & Anr vs. Union of India & Anr (A.I.R. 1998 Bom 228) (India).

<sup>16</sup> O. O. C. J. Petition No. 31 of 2009, Judges Order No. 298 of 2009 (India).

<sup>17</sup> [https://blog.iplayers.in/fundamental-right-to-adopt-a-critical-analysis-of-competency-of-persons-in-adoption-process/#\\_ftn9](https://blog.iplayers.in/fundamental-right-to-adopt-a-critical-analysis-of-competency-of-persons-in-adoption-process/#_ftn9).

However, this attitude changed because of the recent decision in the case of *Shabnam Hashmi vs. Union of India and Ors*<sup>18</sup>. In this case, the issue was regarding the right of Muslim's to adopt. The court took a very liberal view and gave adopted right to Muslims under Juvenile Justice (Care and Protection of Children) Act, 2015. It upheld the status of Juvenile Justice (Care and Protection of Children) Act, 2015 as a secular law of adoption in India and it granted the right to adopt across all religions in India, irrespective of what personal laws say. The court rejected the stance that the right to adoption was a right envisaged under the right to life of Article 21. The court stated that it is on the parliament to meet the constitutional obligations of Article 44 that it is for future generations to craft a UCC once there is a dissipation of conflicting thought processes prevailing in India.

The Supreme Court tried taking the recourse of Article 44 but the decision came as a major setback against the right of adoptive parents and children eligible to be adopted. However upright it may be to grant the right of adoption the status of a fundamental right, we are unable to do so due to the Supreme Court's decision in the Shabnam Hashmi case. The decision brought the need to revise our adoption laws so that the joy of parenthood can be enjoyed by everyone. Every child in India should have a basic right to have a family.

There is no Uniform law in India for adoption. Shabnam Hashmi fought for the right of a human being to adopt and be adopted as a fundamental right. This judgement is one of the most important judgements which state that adoption is now a fundamental right. A person from any religion can adopt under the *Juvenile Justice Act 2015*<sup>19</sup> This Act does not lay any restriction on the gender of the adoptive child after having a biological child. This judgement

<sup>18</sup> A.I.R. 2014 S.C. 1281 (India).

<sup>19</sup> The Juvenile Justice Act, 2002 defines adoption in Section 2(aa) where it confers upon the adoptive parents and the child all rights, privileges and responsibilities that are attached to a normal parent child relationship.

allows all future parents, irrespective of their religion to adopt under this secular Act. The law has to understand the fact that there are many social problems in India which are the bay into the progression of the society. A huge chunk of the Indian population lives in rural India and even today a lot of places still follow the practice of female foeticide<sup>20</sup>. Rajasthan, Punjab, and Haryana<sup>21 22</sup> are the three states where maximum female foeticide happens; the moment a girl child is born they either kill her or abandon her. Most of the times these abandoned girl children are found by NGO's and is raised in an orphanage. Sec 11 (i) (ii) of *Hindu Adoption and Maintenance Act 1956* has a very gender biased approach for married couples with biological children. This way even if the couple has a daughter cannot adopt a daughter. There are a lot of other factors why a girl child is not adopted but this clause surely adds up to the reasons why so many girl children are still waiting to be adopted in order to have a better life.

**Shweta Gupta vs. Rahul Keshav Jadhao & Anr**<sup>23</sup>, The Allahabad High Court, in this case, allowed a woman's petition to give her child from the former the marriage in adoption to her new husband and further held that:

*“Indian law does not, on renunciation of child by either parent, vests an exclusive right in the other to give the child in adoption; however, such renunciation of the child by a parent can be taken into consideration while determining whether the power to give in adoption has been delegated, or to determine the consent to giving in adoption. This Court can also not lose sight of the duty cast on it to exercise parents patriae jurisdiction to secure the care, protection and welfare of the child. International Convention on Rights of Child to which*

<sup>20</sup> <http://www.sascv.org/ijcjs/snehlata.pdf>.

<sup>21</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/132445/14/14\\_chapter%206.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/132445/14/14_chapter%206.pdf).

<sup>22</sup> [https://www.academia.edu/4378479/research\\_paper\\_on\\_female\\_foeticide](https://www.academia.edu/4378479/research_paper_on_female_foeticide).

<sup>23</sup> (MISC. SINGLE No. 15554 of 2017) (India).

*India is a signatory, also talks about ensuring a system of adoption to be in place which serves the best interest of the child, the same being of paramount importance. Accordingly, the writ petition is allowed and the impugned order dated 03.07.2017 passed by the learned court below, as is contained in annexure no.1 to the writ petition, is hereby quashed and the application moved by the petitioner seeking leave to give Master Lakshya in adoption is allowed.”*

### **VIII. INTERNATIONAL PERSPECTIVE OF ADOPTION:**

Adoption laws in different countries are a whole lot different than India. Adoption is a process by which a child whose biological parents are unable to take care of it and the child is “adopted” and is given the same legal and social status as though he/she were the biological child of the adoptive parents but not all cultures have the same system or understanding of adoption as in western sense.

#### **VIII.I THE CONCEPT OF ADOPTION IN CHINA**

The People’s Republic of China is one of the world’s most old civilizations which has a recorded history of more than 5,000 years. The China Centre for Welfare Adoption (CCWA)<sup>24</sup> located in Beijing, is the governing authority responsible for placing children into China’s international adoption program. This government-run program makes sure that children receive adequate care in welfare homes while providing parents with a stable adoption process. In China, families with biological children and adopted children may still adopt regardless of gender. Families can have up to 5 children under the age of 18 in the

---

<sup>24</sup> CCCWA- The China Centre for Children’s Welfare and Adoption.

home and the youngest child must be at least 3 years of age at the time of dossier<sup>25</sup> submission. No LGBTQ individuals or couples are allowed to adopt.

### **VIII.II DEMOCRATIC REPUBLIC OF CONGO (DRC):**

There is a great need for adoption in the Democratic Republic of Congo as it is home to four million of Africa's orphaned children. The orphan crisis in the DRC has been brought about by armed conflict, disease, economic crisis and sexual violence. Most of the children there are suffering from malnutrition and less than half of the population has access to safe and clean drinking water. The law of adoption in DRC are not very stringent given the conditions of the orphan children. DRC does not have any age limit for the children to be adopted. The adoptive parents may only have two children at home already, and may not adopt more than 3 children from the DRC.

### **VIII.III THE CONCEPT OF ADOPTION IN UNITED KINGDOM (UK):**

Article 12 of the European Convention on Human Rights (ECHR)<sup>26</sup> protect the right to start a family. The 1998 Human Rights Act includes this right in UK law. Article 14 of the ECHR states that the other rights contained in it should be applied without any discrimination on the basis of sex, race, birth or "other status". In broad terms, the ECHR protects both the right to adopt a child and also to enjoy the other rights contained within it without discrimination - regardless of whether one is adopted or adopts.

In the UK there is no restriction on the gender of the adopted child if the couples already have a biological child. *The Adoption and Children Act 2002*, states the welfare of the child must

---

<sup>25</sup> Dossier- a collection of documents about a particular person, event, or subject.

<sup>26</sup> ECHR- The European Convention on Human Rights.

be the 'Paramount Consideration' of both adoption agencies and of any court asked to make an adoption order.

#### **VIII.IV THE CONCEPT OF ADOPTION IN UNITED STATES OF AMERICA (USA):**

In the United States of America (USA) Adoption laws are not very stringent. The US government has a website; Child Welfare Information Gateway<sup>27</sup> which lists each state's licensed agencies. Most of their law is based on uniform adoption law. In the USA it is not a fundamental right to adopt<sup>28</sup>. The rules and regulations laid down are not based on any religion it is common for all religions. Maximum no. of states in the US one of the two adoptions either open or closed. The adoptive parents can only adopt if there is a permission granted by the court based on the investigatory report.

#### **IX CONCLUSION:**

*Hindu Adoption and Maintenance Act 1956, Juvenile Justice Act 2015, Guardianship and Wards Act, 1890 and Central Adoption Resource Authority (CARA) guidelines are the rules and regulations available in our country for facilitating adoption*<sup>29</sup>. Instead of having 3 separate laws there should be one common law for adoption. Also, now the nature of Hindu Adoption has become secular *and the concept of adoption is no more a child to a childless couple it's more of a home to a homeless child*. The law for adoption should not be gender biased and should not be religious. We are in the 21<sup>st</sup> century where the lawmakers should be thinking of uniform law for adoption with strict penal punishments in case of human rights violations. Adoption strongly needs to be a fundamental right since it would provide relief to

<sup>27</sup> <https://www.childwelfare.gov/>.

<sup>28</sup> Lindley v. Sullivan, 889 F.2d 124.

<sup>29</sup> [http://CentralAdoptionResourceAuthority\(CENTRALADOPTIONRESOURCEAUTHORITY\(CARA\)\).nic.in/Parents/Guideline\\_RI.html](http://CentralAdoptionResourceAuthority(CENTRALADOPTIONRESOURCEAUTHORITY(CARA)).nic.in/Parents/Guideline_RI.html).

childless couples. A nurturing home is essential for a child's development and for him/her to grow into a healthy individual physically and mentally. It is the duty of the court to make sure that to adopt or to be adopted is a basic right for both parent and child so that parentless children have a happy life. At the same time, there must strict guidelines if the adoption scams are to be avoided, to ensure that such a right is not being misused such as recent cases of child trafficking or child pornography. Uniform Civil Code (UCC) is a practice which will take time to come into force but through adoption, a step can be initiated.

Judiciary has done its part by passing judgements which are breaking the taboos in the society now the legislature needs to provide a uniform law of adoption as it is needed in the society for its better functioning and development of the Indian judiciary.

## *References:*

### **Websites:**

- 1) *www.manupatrafast.com.*
- 2) *https://sconline.com.*
- 3) *https://www.meriam-webster.com.*
- 4) *cara.nic.in (Central Adoption Resource Authority (CARA) Guidelines).*
- 5) *Hindu Adoption and Maintenance Act (HAMA), 1956.*
- 6) *Juvenile Justice (Care and Protection of Children) Act, 2015.*