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**CHALLENGES AND REFORMS IN HINDU
ADOPTION LAWS**

Submitted by –

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Roll no. – C 23



**BHARATI VIDYAPEETH NEW LAW COLLEGE,
PUNE**

CLASS – BBA.LLB

YEAR – 3rd

DIVISION- C

SUBJECT NAME – FAMILY LAW II

DECLARATION

This is to declare that the Research Report titled as “Challenges and Reforms in Hindu Adoption Laws” is bonafide work submitted at Bharati Vidyapeeth New Law College, Pune is an outcome of my work and is undertaken by me. I, further declare that the present work is bonafide one and outcome of my own efforts, this research report or any part thereof, has not been submitted in part or full to this or any other university for any degree or diploma or any similar title.



Jaahnavi Mishra

C-23

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Date – 28/08/2023

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INTRODUCTION :

“Childbirth is an act of nature, adoption is an act of god”

The term Adoption is not just limited to the process of legally being a parent to the child of another but a social, cultural, sentimental, religious, and complex process. It is beautifully defined in the Encyclopedia of Religious and Ethics, which states that, “Adoption indicates the transfer of a child from old kinsmen to the new. The child ceases to be a member of the family to which he belongs by birth. The child loses all rights and is deprived of all duties concerning his natural parents and kinsmen. In the new family, the child is like the natural-born child with all the rights and liabilities of a native-born member¹.”

Hindu adoption law in India is mainly based on family relations and is founded on the complex concepts of equality, child welfare, individual rights and contemporary notions of lineage, ancestor worship, and family continuity. It, however, faced its share of difficulties, just like any other growing legal system, which has led to a number of modifications to balance tradition and modern demands.

The Law has travelled through challenging ground, addressing issues anchored in tradition while adjusting to the needs of a changing community. The newly implemented changes demonstrate a dedication to a developing legal system that respects diversity, protects children's welfare, and upholds the integrity of a practice that supports Hindu tradition.

BACKGROUND AND CONTEXT:

The Hindu Adoption and Maintenance Act of 1956 is the primary statute governing Hindu adoption in India. This rule was designed to control the adoption practice among Hindus. In order to preserve the rights and welfare of the adopted child and to uphold Hindu traditions and practices, the Act sought to provide a legal framework for such causes.

¹ <https://thelawmatics.in/can-a-mother-give-her-second-husbands-surname-to-her-child/>

This legal system, which is based on religious and cultural traditions, first ran into problems like gender bias that favored male heirs and convoluted, uneven adoption procedures, etc. However, improvements included gender neutrality, streamlined procedures, and so on, placed a higher priority on the well-being of the adopted child and an effort to address these above mentioned problems. In order to create a more inclusive, child-centered, and fair adoption environment, these changes also tried to fit contemporary family arrangements while juggling the tricky line between upholding tradition and embracing modern principles.

The difficulties and changes in Hindu adoption legislation are placed in the perspective of the complex Indian culture, where deeply ingrained gendered, religious, and cultural traditions coexist with more contemporary ambitions for justice and child care. These difficulties result from complicated adoption procedures entrenched in various regional customs and historical biases favoring male heirs. In response, improvements are being made that emphasize the child's best interests while also providing gender-neutral clauses and streamlining the adoption process. These changes address the conflict between protecting the cultural legacy and adjusting to shifting family structures, capturing the larger story of a society aiming for a harmonious fusion of tradition and modernity in its legal systems.

IMPORTANCE AND SIGNIFICANCE OF THE STUDY:

1. *Lessening Social Stigma:*

Adoption laws assist in lowering the social stigma or shame that is frequently attached to adoption in different communities. By establishing a legal framework for adoption, they help alter societal views and influence more people to view adoption as a respectable and dignified way to start a family.

2. *Child Welfare and Protection:*

Adoption laws are largely intended to protect children's well-being. They seek to give the children a secure and supportive atmosphere because they are aware that not all children have the opportunity of being raised by their biological parents. In all adoption proceedings, these regulations make sure that the child's best interests are put first,

emphasizing their physical, emotional, and psychological well-being.

3. *Cultural and Religious Considerations:*

Hindu Adoption laws often intersect with cultural and religious beliefs. The study could examine how these laws are influenced by traditional practices and beliefs, and how reforms might balance these considerations with modern legal principles.

4. *Gender Equality and Women's Rights:*

The study could explore whether the existing laws uphold gender equality and women's rights, particularly in cases where the adoption process involves a widow or a woman seeking to adopt. Reforms might be necessary to ensure equal rights and opportunities for all parties involved.

5. *Guardianship and Custody:*

The rights and obligations of adoptive parents are outlined by adoption laws, which also address guardianship, inheritance, and custody concerns. Finding a balance between the rights of biological parents and adoptive parents might be aided by a thorough investigation.

LITERATURE REVIEW:

Due to its connections to societal, religious, and legal frameworks, Adoption—an essential component of family law, holds enormous significance in Hindu culture. The goal of this literature study is to provide insight into the complicated interplay between traditional and contemporary legal requirements by exploring the issues and revisions surrounding Hindu Adoption Laws. This paper prepares the ground for a thorough investigation of the changing landscape of adoption practices within the Hindu community by combining previous research and observations.

1. *Gender Bias and Discrimination:*

In the book "Women and Law in India" by Archana Parashar addresses the need for gender-neutral changes and raises the issue of gender inequalities in legal systems, particularly adoption laws.

2. *Ambiguity in Guardianship and Inheritance:*

Hindu Law: Beyond Tradition and Modernity" by Werner Menski addresses the intricate Hindu family rules, such as guardianship and inheritance, and how they relate to adoption.

3. *Conflict with Religious and Cultural Beliefs:*

"Religion, Law, and Society: Across the Globe" edited by James T. Richardson may examine the relationship between legal systems and cultural and religious traditions, particularly Hindu Adoption Laws.

4. *Historical Development:*

In Manusmriti (Verse 9.141) - Even if he may have originated from another family, an adopted son who possesses all of a person's good traits will inherit that person's possessions. In the Dharmashastras, which are ancient Hindu law texts that set forth moral rules and guidelines for religious behavior, a son is given a highly important role; men are thought to be essential for preventing the torments of hell for the dead and for offering funeral sacrifices for them. The language of Baudhyana also reveals the religious motivation behind adoption: "I take thee for the fulfillment of my religious duty. I consider you to be the continuation of my forefathers" (Baudhyana II, 7–19).

The number of types of adopted sons recognized by ancient Hindu law was decreased from five to two:

- a. *dattaka* (used throughout all of India)
- b. *Kritima* (states bordering Mithila)

The majority of the laws governing adoption were derived from books by Manu and Vashishtha as well as a metaphor by Shaunak. The passage of the Hindu Adoptions and Maintenance Act in 1956 altered everything. The two most notable modifications brought about by this legislation, in addition to numerous additional criteria and changes to the accepted practice, are as follows:

The spiritual significance of it was decreased because females might be adopted and do not participate in funeral oblations. Only a physical transfer was necessary for adoption; the Datta Homam rite was not.

Datta Homam ceremonies were significant in ancient Hindu law to formally recognize adoptions. By means of a religious oblation or propitiation, clarified butter is burned and presented as a sacrifice to the fire. Adoption was not legitimate without this ceremony, even if the kid had been transferred or the natural parents had passed away.

STATEMENT OF RESEARCH PROBLEM:

The issues with the Hindu adoption laws and the requirement for thorough revisions are the focus of the research problem in this study. The goal of this study is to carefully examine the difficulties that the Hindu adoption system's legal structure faces in operating effectively. It goes into detail on how adoption within the Hindu community is hampered by legal issues, cultural restraints, and societal attitudes. The research also aims to suggest and examine potential changes that may be made to the Hindu adoption laws in order to bring them into line with modern societal values, protect the rights of all parties involved, and guarantee the welfare of adopted children. This research helps to modify Hindu adoption laws to make them more inclusive, egalitarian, and pertinent in the contemporary setting by examining the issues and pushing for required modifications. This research helps to modify Hindu adoption laws to make them more inclusive, egalitarian, and pertinent in the contemporary setting by examining the issues and pushing for required modifications.

RESEARCH OBJECTIVES:

A thorough analysis of the issues with the present Hindu adoption laws, identification of the areas that need change, and the formulation of evidence-based recommendations that help create a more fair, effective, and child-centered adoption framework within the Hindu legal system.

RESEARCH QUESTIONS

1. What are the key challenges faced by Hindu Adoption Laws in India?
2. How does the complex legal framework contribute to the difficulties in the

adoption process?

3. What is the extent of gender bias in Hindu Adoption laws and its impact on Adoptees?

METHODOLOGY:

The research approach for this study will involve utilizing existing data sources. This study, which focuses on the topic of Adoption in Modern Hindu Law, will primarily rely on a review of previously published materials. The data and information for this doctrinal research will be drawn from a variety of sources, including academic papers, published articles, relevant legal cases, online websites, and texts from both legal and non-legal domains. It's important to note that the scope of this study will be confined to a specific timeframe to gain a comprehensive understanding of the concept of Adoption within the realm of Family Law in India.

HYPOTHESIS:

The challenges with Hindu adoption regulations, such as gender biases, legal complications, clashes with cultural and religious beliefs, and uncertainties in guardianship and inheritance, are speculated to be the source of inefficiency and inequity in the adoption process. It is predicted that deliberate efforts to address these challenges will lead to the Hindu legal system's adoption framework becoming more equitable, effective, and child-centric.

CASE LAWS:

1. *Shirnivas Krishnarao kango v. Narayan Devji Kango, 1954 AIR 379²*

In this case, the petitioner and defendant challenged whether an adopted child to be

² 1954 AIR 379, 955 SCR 1

given a share in the property of his joint undivided property.

2. *In Re: Adoption of Payal at Sharinee Vinay Pathak and his wife Sonika Sahay Pathak 2010*³

In this case, the Parliament went to the Supreme Court asking if a Hindu couple already having a natural child, governed under The Hindu Adoption and Maintenance Act, 1956, can adopt a child of the same gender under the Juvenile Justice Act of 2000.

3. *Sawan Ram v. Kalawanti, AIR 1967 SC 1761*⁴

In this case, the adopted child was deemed to be a member of the family of the dead father. Because an adopted child loses all his rights to his biological family, he can still be awarded all the rights of a member of his new family.

GAPS, CONTROVERSIES AND CHALLENGES:

1. *Complex legal framework:*

Hindu adoption laws in India are shaped by a multitude of statutes and legal clauses, most notably the Hindu Adoption and Maintenance Act of 1956. This legal landscape can prove intricate and perplexing, posing difficulties for individuals, legal practitioners, and even judicial authorities striving to consistently decipher and apply these laws.

The intricacy of these legal provisions can engender disputes and legal wrangling, resulting in protracted adoption proceedings and administrative complications.

The instance of *Prakash v. Phulavati*⁵ (2015) underscored the intricate nature of Hindu adoption laws. In this case, the Supreme Court elucidated the legal ramifications of retroactive amendments, significantly influencing the handling of adoption cases within the legal system.

2. *Gender bias in adoption laws:*

³ 2010 (1) Bom CR 439

⁴ 1967 AIR 761, 1967 SCR (3) 687

⁵ (2016) 2 SCC 36

Historically, Hindu adoption laws exhibited a preference for male heirs and the adoption of male children, perpetuating gender inequality. Despite subsequent amendments designed to address this bias, gender disparities persist in certain facets of adoption practices.

In an effort to combat gender-based discrimination, the Hindu Succession Act underwent amendments in 2005, with the specific aim of rectifying gender bias not only in inheritance but also in adoption-related matters.

The case of *Githa Hariharan v. Reserve Bank of India*⁶ (1999) presented a pivotal legal challenge. It questioned the constitutional validity of particular provisions within the Hindu Minority and Guardianship Act, thus shedding light on the issue of gender prejudice within adoption laws. This case played a significant role in drawing attention to and addressing gender-based disparities in the legal framework governing adoption

3. Social Stigma:

Social stigma associated with adoption, especially in rural areas, can deter potential adoptive parents and affect the integration of adopted children into their families and communities.

Legal reforms aim to promote adoption as a socially accepted practice and provide legal protections to adopted children.

The *Shabnam Hashmi v. Union of India*⁷ (2008) case emphasized the need to destigmatize adoption and protect the rights of adopted children.

4. Lack of Uniformity:

From country to country or states of India, adoption laws and procedures differ from each other, making it difficult for people to easy access to parenthood.

5. Time Consuming process:

The process of adoption is not a simple process as it is a matter of a child's life. Taking about the adoption process under Hindu Adoption Law is a lengthy, bureaucratic, and time-consuming process. Sometimes due to this complexity and layers of examination,

⁶ AIR 1999 2 SCC 228

⁷ AIR 2014 SC 1281

people get intimidated and discouraged from considering adoption as a possibility.

6. Adoption by LGBTQ+ Individuals and Couples:

The difficulties LGBTQ+ people or couples may have while trying to adopt a child under Hindu adoption rules.

In certain regions or nations, laws and rules exhibit bias against LGBTQ+ individuals and couples throughout the adoption process. These legal hurdles can involve explicit prohibitions on LGBTQ+ adoption or the absence of clear legal safeguards, resulting in inequalities in the adoption rights and possibilities of LGBTQ+ prospective parents.

The case of *Adar v. Pennsylvania Department of Public Welfare (2010)* within the United States illustrates the legal bias faced by LGBTQ+ individuals in adoption. The court ruled that Pennsylvania's prohibition of adoption by same-sex couples violated the constitution, representing a legal triumph for LGBTQ+ adoption rights. This case exemplifies the ongoing legal struggles to challenge prejudiced adoption laws and advocate for equal opportunities in adoption for LGBTQ+ individuals and couples.

7. Adoption of Older Children:

Special difficulties and changes that come with adopting older children, who may require different emotional and psychological care than newborns do. Adopting older children involves unique legal complexities compared to infant or younger child adoption. Older children may have a say in the adoption process, and their consent or opinions may carry legal weight, depending on local laws. Furthermore, older children may have established relationships with their biological families, which can complicate the termination of parental rights

MEASURES / REFORMS:

1. Simplification of Laws and its procedure:

The establishment of laws like The Hindu Adoption and Maintenance Act, 1956, Juvenile Justice Act, 2015 and The Guardians and Wards Act, 1890, etc helps in reducing the complexity of process and helps in providing clarity and uniformity to any adoption process all over India.

2. Gender Neutral Adoption laws:

More laws should be made to provide equal opportunities to both the adoptees. It is often seen that a father with good financial stability is given more importance than a mother of the same, while adopting a child. Also, it is preferred to have adoptees as a couple for better care of the children.

3. Adoption Awareness:

It is seen that India is still illiterate and unaware of the adoption laws. There still exists discrimination between the adopted and non-adopted child, making it more difficult not only for the child to adjust to the family, but for the family members or the parents (adoptees) to think over their decision to adopt a child. Therefore, there is a desperate need for social awareness regarding adoption.

SCOPE AND LIMITATIONS OF RESEARCH:

The scope of this study is centered on Hindu adoption laws in India, specifically examining the provisions outlined in the Hindu Adoption and Maintenance Act of 1956. The research will delve into aspects such as the historical background, gender biases, interfaith adoption challenges, and the differentiation between guardianship and adoption within this legal framework. It's important to note that this study does not extend to the analysis of adoption laws within other religious communities in India. Moreover, the research is constrained by the availability of legal documents and data, and it should be acknowledged that regional disparities in implementation might not be fully reflected in the findings.

CONCLUSION

The study's analysis of Hindu adoption law's difficulties and revisions provides insight on the complex legal framework that controls adoption activities in the Hindu community. The study brought to light a number of significant issues that emphasize the demand for continued improvements in this area.

First, it became clear that the current Hindu adoption legislation, which is heavily influenced by ancient practices and beliefs, poses a number of difficulties in the

context of modern society. Uncertainties that impede straightforward adoption procedures are frequently produced by the intricate interaction of religious standards, family dynamics, and changing society norms. Additionally, because several sections disproportionately influence women's rights and functions within the adoption framework, the law's gendered features came to the fore.

The study also highlighted the urgent need for legislative changes to bring the Hindu adoption legislation into line with contemporary sensitivities and egalitarian ideals. Reform proposals can concentrate on streamlining the adoption processes, defining the duties of different stakeholders, and encouraging a more inclusive strategy that considers the child's best interests while upholding the rights of all parties.

The study also highlighted the importance of teaching and increasing understanding of the subtleties of Hindu adoption law among the legal community and the general public. Increased knowledge can help debunk myths, lessen societal prejudices, and provide a more forgiving and encouraging atmosphere for adoption processes.

The call for thorough modifications in the Hindu adoption legislation becomes crucial in response to these difficulties. Reforms should be built on a comprehensive strategy that takes into account the legal, social, and ethical ramifications. Involved members of civil society, academics, religious leaders, and legal professionals may work together to create a framework for adoption that is more equitable and effective for the Hindu community.

In conclusion, the Hindu adoption legislation is at a crossroads between tradition and modernity, demanding careful adjustments to maintain its applicability and efficacy in the changing adoption scenario. The society may work toward a more equitable and child-centric adoption system that respects the rights and aspirations of all parties by addressing the stated obstacles and implementing significant reforms.

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