



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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# SOCIAL AND LEGAL ASPECTS OF SINGLE PARENTING

AUTHORED BY - PAWANPREET SINGH

## ABSTRACT

Single parenthood is on the rise, not only in India but throughout the world. Being a single parent can be chosen for a variety of reasons. Only a few instances are divorce, separation, choice, widowhood, and abandonment. Being a single parent has a huge legal, social, and financial impact on the individual, their family, as well as on society at large. Impacts on the legal system include those related to child support, maintenance, and contact. Unfortunately, the Matrimonial Causes Act includes supplemental remedies for each of them. There can be no applications submitted without a divorce action. The lone parent endures the most hardships outside of the Marriage Act and customary law. The sole avenue for recourse at this time is the Child Rights Act, which many people are not aware of. By implementing new rules that are comprehensive enough to cover the welfare of every child and guarantee that there is no discrimination based on birth circumstances, society must take proactive steps to protect these single parents and their families. It's time to put an end to the practice of leaving youngsters alone.

**Keywords:** Single parenthood, Social and legal impact, Divorce, Maintenance and Marriage Act.

## INTRODUCTION

We are gradually entering an era where the idea of surrogacy is burgeoning in India as more women choose to be single parents for their children. There are certain barriers, such as disclosing the father's name and details to society. The question is whether single mothers have the right to use their names everywhere in the world and what exactly the laws are for unmarried single mothers to raise children. Initially, the law recognized only male parents as custodians of children; therefore, all state records required the father's name, and mothers had no rights as natural guardians over the children.

The number of single-parent households is rising in affluent countries as divorce becomes more common. The United States has the highest proportion of single-parent homes among developed nations (34% in 1998), followed by Canada (22%), Australia (20%), and Denmark (19%). Although divorce is less common in developing countries, other factors such as abandonment, death, and incarceration lead to single-parent families headed largely by women. Rates vary from less than 5% in Kuwait to more over 40% in Botswana and Barbados, depending on the country. In Ghana, Kenya, Rwanda, Cuba, Puerto Rico, Trinidad and Tobago, and other countries, women are in charge of more than 25% of households. According to projections, 50% of children born in recent cohorts will spend some time growing up with a single parent as a consequence of separation, divorce, or out-of-marriage births.

The not-the-most-up-to-date statistics above demonstrate a global trend away from the traditional notion of family, in which two parents are readily available to raise children. It could be seen as a breakdown of the concept of familial ties or as a protest against the status quo. Regardless of one's viewpoint, the main focus of this article is on the legal, social, and economic repercussions of the rising trend of single motherhood and how it affects the financial, political, and social aspects of family life.

## **RESEARCH QUESTIONS**

- Do the single mothers have the right to privacy to hide the name and details of father if the child is born with the process of surrogacy? And if yes, then what are the hurdles she has to face?
- What are the difficulties faced by single parents after divorce
- Who is legally capable for adopting child?
- Can the single mother be a natural guardian?

## **RESEARCH OBJECTIVES**

- To highlight the social and legal problems faced by single mother.
- To highlight the various methods of becoming single parent.
- To throw light on the process of adoption from Central Adoption Resource Authority.

## SCOPE OF THE STUDY

The research paper focuses on the current legal status of single parents and the rights available to them and the children. The study is limited to India. The topic is very important as the concept is still evolving and many issues related to the legislations regarding single parents are recently raised in the courts.

## RESEARCH METHODOLOGY

The research methodology is doctrinal and analytical research, the research that uses sources in the library. Various books, journal articles, book reviews have been referred. Apart from that online articles were also used. Case laws related to the provisions are analysed. This is the most suitable methodology, as various information could be accessed that helped in successfully completing the research paper.

## LEGAL DIFFICULTIES FACED BY SINGLE PARENTS AFTER DIVORCE

- Child Custody- there are two types of custody which are:
  - Physical Custody- Physical custody means with which parent the child will live. It all depends on the court after listening to all parties that the child will live with either father or mother or both.
  - Legal Custody- Legal custody means which parent takes the child's decisions—for example, which religion to follow and which not, etc.
- Child Support- For single parents, paying or collecting child support frequently presents a considerable legal challenge. It's crucial to keep in mind that child support payments might change depending on your new income and your kid's unique requirements.
- Adoption- States generally do not prohibit unmarried persons from adopting children, but adoption agencies may have different policies regarding single parents. Some adoption agencies may prohibit adoption entirely.
- Housing Discrimination- In our society, landlords do not give their house or flat for rent, especially to a single mother, because they think that the child she has may be illegitimate and she is of bad character, etc. But under the Fair Housing Act, denying people housing based on family composition, parental status, or gender stereotypes is illegal.

## LITERATURE REVIEW

In Effect of Single Parent Family on Child Delinquency, the social aspects of single parenting is discussed.<sup>1</sup> The author mainly focuses on the causes of juvenile delinquency and how a single parent family can aggravate the problem than a normal family. Unwed Mother: A Socio-Legal Study<sup>2</sup>, examines the legal status of a single mother in India. It also analyses the effect of support programs given to the mothers in our country. Biology, Intention, Labour: Understanding Legal Recognition of Single Motherhood in India<sup>3</sup> discusses about the problems faced by single mothers especially when the details of father of the child is asked for documents. The author mentions that this violates the privacy of single mothers. 'Allow surrogacy for single men, mothers'<sup>4</sup>, this article examines the court's observation on a plea challenging the current status of surrogacy laws in India which excludes single men from becoming a parent. The article 'The new laws relating to surrogacy and assisted reproduction, and related challenges'<sup>5</sup> explains the new surrogacy and ART bills, which were passed in 2016 and the opposition's views about the ban on commercial surrogacy, which would deprive many poor woman out of income.

## INHERITANCE RIGHTS OF CHILDREN IF HE/SHE HAS A SINGLE PARENT

### After The Divorce of the Parents

Even though their parents are divorced, children still have legal claims to their possessions. The customary inheritance laws of the relevant faith are applicable in such circumstances. As a result, the kid has a claim to inherited property, and if the father dies, leaving behind the self-acquired property, the son inherits it according to custom. If the father personally obtained the assets, he might leave them to anybody else during his lifetime through a written will.

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<sup>1</sup>Effect of Single Parent Family on Child Delinquency, <https://www.ijsr.net/archive/v3i9/U0VQMTQ0MA%3D%3D.pdf>, Last visited 10<sup>th</sup> October 2022.

<sup>2</sup>Unwed Mother: A Socio-Legal Study, <https://www.i-scholar.in/index.php/ijphrd/article/view/194779>, last visited 11<sup>th</sup> October 2022.

<sup>3</sup>Understanding Legal Recognition of Single Motherhood in India, <https://pure.jgu.edu.in/id/eprint/2536/#:~:text=The%20article%20shows%20that%20in,the%20labor%20of%20parenting>, last visited 11<sup>th</sup> October 2022.

<sup>4</sup>Allow surrogacy for single men, mothers, <https://www.thehindu.com/news/cities/Delhi/why-exclude-a-single-man-or-a-married-woman-from-surrogacy/article65468510.ece>, last visited 13<sup>th</sup> October 2022.

<sup>5</sup> The new laws relating to surrogacy and assisted reproduction, and related challenges <https://iasscore.in/current-affairs/the-new-laws-relating-to-surrogacy-and-assisted-reproduction-and-related-challenges>, last visited 15<sup>th</sup> October 2022.

### **If The Child Is Adopted**

Adopted children are eligible to receive a portion of their adoptive parent's wealth and have the same inheritance rights as biological children. The adopted child can thus claim the same property as the biological child if the adoptive parent passes away without leaving a will. However, following adoption, a kid forfeits the ability to inherit from his biological parents or any related communal property, according to the Hindu Adoption and Dependent Act of 1956. However, birth parents have the option to willingly bequeath such property, or any part of it, to their children.

## **EGG AND SPERM DONATION**

An individual can become a parent through egg (oocytes) or sperm (semen) donation, which is later inseminated to the woman's body or given for in-vitro fertilisation. Currently there is no proper legislation to regulate egg donation or sperm donation in India. But Indian Council of Medical Research (ICMR) has issued certain guidelines regarding this. Sperm can be donated through a sperm bank. In India, egg or sperm can't be donated by a known donor. The donor should be anonymous. The egg donor should be married and should have a child of minimum of three years old. She can donate only once in her lifetime and can donate only seven eggs, which should be given to only one party seeking service. The person should be free of infections. He or she has to undergo genetic tests and has to specify blood and Rh group. All the biological information like height, weight, age, skin color etc are collected. These details cannot be disclosed except to ICMR or court. The donor should not be below 21 years of age and not more than 35 yr old. The eggs can also be frozen for future use. The clinic should be legally registered and the professionals should meet qualifications as prescribed by ICMR. The ART clinics should help individuals to choose the right donor. Written consent of patient should be taken after informing them about the risks. Written consent of the bank (from where egg or sperm is collected) should also be taken. Embryos should not be placed in any animal except humans for experiments and it should be approved by Institutional Ethics Committee. The donors doesn't have parental rights over the kid. Apart from infertile couples, this method is popular among individuals who wishes to become a single mother or father, gay and lesbian couples. But there are many concerns related to this method. Mixing of sperm and selection of gametes from the same geographical area, which leads to genetic problems, can lead to complications.

Recently, the Kerala High Court held that the single mothers have right to privacy. The petitioner, a single mother, who became pregnant through IVF sought to strike down the column regarding

the details of the father of a child born to a single mother in birth certificates. There should be no question on paternity and the child born out of these methods has the rights of a naturally born child.

As per the Assisted Reproductive Technology (Regulation) Act, 2021, if the child born through assisted reproductive method is abandoned then it will be punished with a fine of not less than 5 lakh which may extend to 10 lakh and an imprisonment of three to eight years and fine of ten to twenty lakhs for the second time. If sex selective assisted reproductive process is done then it will be punished with a fine not less than ten lakh which may extend to 10 lakh or imprisonment not less than 5 years which can extend till 10 years or both. Since children born through ART are not recognised under any law, they are considered as illegitimate. There are problems related to inheritance rights of such children. The child won't be able to know their genetic parent as the donor's identity is not disclosed.

## **FOSTERING**

Fostering is the practice of taking care of a child, usually for a short period of time. In India, the legislations related to fostering are at a nascent stage. The foster parent only has guardianship. The biological parent of the foster child is still the legal parent. In India, an individual has the right to become foster parent. Some of the legislations related to fostering in India are Model Guidelines for Foster Care, 2016 (issued by Ministry of Women and Child Development), Juvenile Justice Act and Integrated Child Protection Scheme. A man cannot take care of a girl child. The child can be adopted for a short term, which is below one year and for long term which is beyond one year. Only two kids can be placed for fostering with the same person (only 4 kids including biological children). The children will be sent to parents of similar culture if possible. The foster parent should not be involved in any criminal proceedings. The child's biological parents may be having mental illness or unable to take care of the kid or may be in jail. The child can be victim of abuse or natural disasters. The child has the right to know about his or her biological parents. They also have the right to know about the developmental schemes. The foster parents should provide the kid education, food, clothes and other basic necessities. They can adopt the same child after taking care of it for a period of five years, if there are no other claimants for the child. The foster parents have the right to be heard and respected. They should not be discriminated on the basis of their social origin.

For juvenile offenders, foster care is prescribed under Section 42 of the Juvenile Justice Act of 2000<sup>6</sup> and section 23 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016 for rehabilitation. Under Section 28 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016<sup>7</sup> a 'fit person' who has the capacity to take care of the child can become a foster parent of a juvenile offender, if approved by a committee. Under this act, a child should not remain with the fit person for more than 30 days and the period should be decided by the committee. Apart from this, many individuals adopt kids through sponsorship programme. But most of the people are not aware of this method. Malpractices and non- proper working of the mechanism are also the demerits.

## **SURROGACY**

Surrogacy is a method used by mothers who cannot conceive a child. There are two types of surrogacy – gestational and traditional, in which gestational surrogacy is allowed in India. Currently, in our country only divorced and widowed woman can go for surrogacy. Generally couples are preferred. Recently, the government banned commercial surrogacy. The surrogate mother should not be more than 45 years old. It can be a relative, who belongs to the same generation as the intending parent. A person cannot be a surrogate mother for more than thrice in life. If the person gets divorced during the procedures then the laws relating to normal conceiving would apply. The surrogate child has all the rights of a biological child. In 2022, the Delhi high court has remarked that the ban on single men to adopt through surrogacy invades their right to privacy.

## **CARA (CENTRAL ADOPTION RESOURCE AUTHORITY)**

Central Adoption Resource Authority (CARA) is an autonomous and statutory body of the Ministry of Women & Child Development, Government of India. It was set up in 1990 under the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>8</sup>. It functions as the nodal body for the adoption of Indian children. It is mandated to monitor and regulate in-country and inter-country adoptions following the provisions of the 1993 Hague Convention on Intercountry Adoption, ratified by the government of India in 2003. It is formed to regulate and monitor in-country and inter-country adoptions of abandoned, orphaned and surrendered children through its

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<sup>6</sup> Juvenile Justice Act, 2000, S. 23, Acts of Parliament, 2000 (India).

<sup>7</sup> Juvenile Justice Model Rules, 2016, S.28, Acts of Parliament, 2016 (India).

<sup>8</sup> Juvenile Justice Act, 2015, Acts of Parliament, 2015 (India).

recognised adoption agencies.

CARA primarily deals with the adoption of "orphaned, abandoned and surrendered" children through recognised adoption agencies. In 2018, CARA has allowed individuals in a live-in relationship to adopt children from and within India.

### **Who can adopt a child?**

The eligibility of parents for adoption of children has been defined under the rules of CARA. The rule 2(b) and 2(c) of the CARA specifies that a single female can adopt a child of any gender and a single male shall not be eligible to adopt a girl child.

The age of the prospective parents is also counted on the registration in CARA. In the cases of single parents the age is prescribed as follows:

- If the age of child is Upto 4 years then the maximum age of prospective adoptive parent should be 45 years.
- Between 4 and 8 years, then the age of the prospective age of the single parent shall be not more than 50 years.
- Between 8 and 18 years, then the age of the prospective single parent shall be not more than 55 years.
- The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.
- In India, the minimum age requirement for single mother adoption has been lowered from 30 to 25. The adopting single man must be at least 25 years old.
- A child under the age of four can be adopted by prospective single male and female parents up to the age of 45, while children between the ages of five and eight can be adopted by individuals up to the age of 50.
- Adopting children between the ages of 9 and 18 is permitted for people under the age of 55.
- After this age, adoption is not permitted.

## **LEGAL PROVISIONS**

The National Commission for Women (NCW) thought guardianship rights needed to be reviewed and changed to end longstanding patriarchy. The National Commission of Women recommended

that the Ministry of Women Empowerment and Children Development amend the guardianship law.

The Hindu Minority and Guardianship Act, 1956 (HMGA), and the Guardianship and Wards Act, 1890<sup>9</sup>, are two significant statutes that govern a parent's or a third party's rights (guardian). In a marriage, the father is the child's natural guardian, and the mother's rights are only acknowledged after the father's, according to Section 6 of the HMGA<sup>10</sup>, 1956. But in the event of illegitimate children, the mother takes on the role of the natural guardian, and the father is exempt from any legal obligations. Due to the apparent discrepancy between Section 6 of the Hindu Minority and Guardianship Act (HMGA) and Articles 14 and 15 of the Indian Constitution, which provide equal rights, the National Commission for Women is attempting to give parents the same guardianship rights as children.

The Supreme Court, in *ABC v State (NCT, Delhi)*<sup>11</sup> case, held that unmarried mothers are the legal guardians of their children, so unmarried mothers do not need to disclose the identity of their child's father detail and name. In this case, a woman gave birth to her son in 2010 and raised her son without her father's support or assistance. When she wanted to make her son nominee for all her savings and other insurance, the authorities asked her to disclose the father's name to obtain a birth or adoption/guardianship certificate. Therefore, in this case, the judge ruled that the child's best interests would be served if the applicant (the mother) were appointed guardian. Moreover, if she is forced to reveal the child's paternity's name and personal information, her fundamental right to privacy is violated. This allowed a single mother to claim sole custody of her child without revealing her father's name or seeking his consent. The court determined that we now live in a society where more and more women consider raising their children an essential factor in the child's best interests. It was agreed that the child's best interests would not be affected if the mother did not reveal the child's father's identity.

In *Mathumitha Ramesh v. The Chief Health Officer*<sup>12</sup> case, the petitioner was a divorced woman who had undergone intrauterine infertility treatment and had been fertilized by a donor. The complainant then gave birth to a baby. The surname of the baby was mistakenly registered with

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<sup>9</sup> Guardianships and Wards Act, 1890, Acts of Parliament, 1956 (India).

<sup>10</sup> Hindu Minority and Guardianship Act, 1956, S. 6, Acts of Parliament, 1956 (India).

<sup>11</sup> *ABC vs. State (NCT of Delhi)* 2015 SC 609.

<sup>12</sup> *Mathumitha Ramesh v. Chief Health Officer*, 2018 Mad 2153.

the name of the person who helped her at the hospital. It was compulsory that the father's name had to be registered to obtain the birth certificate. The man named as her baby's father is neither her husband nor the child's father. The complainant attempted to correct this error, but the authority had denied it. Therefore appealed, the matter to the Madras High Court. The court made a historic ruling that it was not mandatory to register the father's name to obtain a birth certificate.

## ANALYSIS

After going through all the available sources it has been found that there are many ways in which individual can become parents but the statutes in India relating to this are at a nascent stage. Also the laws for adoption differs as per religion of the parent. Usually, mothers are given the custody of female child and fathers should take care of boys as per personal laws. In 2015, SC favoured application of UCC (Uniform Civil Code) in a case where the right to privacy of single christian mother was raised. But recently the courts are focusing to answer the questions regarding the rights of single parents and their children. Right to privacy of single mothers is currently a prominent issue raised before the court. In this case the court gave a judgement which is appropriate for the recent times. It can be concluded since single parenting is a foreign concept, current Indian legislations regarding this are not sufficient.

## SUGGESTIONS AND CONCLUSION

Even though there are many landmark judgements addressing the concerns of single parents still there are many problems faced by single parents while adopting a child, as most of the legislations are preferring couples as the society consider support from both the parents is better for the development of the child. Sociological problems related to single parenting are also restricting the authorities while giving a child to an individual. The laws are also discriminatory towards men as most of the options for becoming a single parent are not available to them. This should be considered by the courts and a proper law should be made. Commercial surrogacy, malpractices in the labs and issues of human trafficking are continuing even now, which calls for the strict implementation of the existing provisions.

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