

PERSONAL LAW UPDATE

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■ [Redevelopment Of Housing Society And Objection By Minuscule Minority](#)

Your View

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By The Way

The devil visited a lawyer's office and made him an offer. "I can arrange some things for you," the devil said. "I'll increase your income five-fold. Your partners will love you; your clients will respect you; you'll have four months of vacation each year and live to be a hundred.

All I require in return is that your wife's soul, your children's souls, and their children's

Legal Aspects of Adoptions

Adoption can be a most beautiful solution, not only for childless couples and single people, but also for the homeless children. It enables a parent-child relationship to be established between persons, though not biologically related. It is defined as a process by which people take a child not born to them and raise the child as a member of their family.

Adoption as a legal concept was available only among the members of the Hindu community. Only Hindus were allowed to legally adopt the children and the other communities could only act as legal guardians of the children. The religion-specific nature of adoption laws was a very retrograde step as its reinforced practices which were unjust to children and hindered the formation of a Uniform Civil Code.

The Hindu Adoptions and Maintenance Act ("**the Act**"), 1956, provides for adoption of Hindu children by the adoptive Hindu parents. However, the Act is not applicable to other communities like Muslims, Christians and Parsis. The other communities have to recourse to Guardians and Wards Act, 1890, wherein they become guardians of the children.

Section 7 of the Act lays down as to who is permitted to adopt a child;

"Section 7: Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption;

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

However, Section 11 of the Act lays down prohibition whereby a person already having say a daughter, cannot adopt another girl child. Once a person has a child of one gender, according to the section, cannot adopt another child of the same gender. This was a cause of dispute and agony to many adoptive parents.

This anomaly was put to rest in a landmark judgment of the Hon'ble Bombay High Court, whereby the laws and concept of adoption of a child by a Hindu (which is governed by the Hindu Adoptions and Maintenance Act, 1956 as mentioned above) would now have to be read in a new light. The Bombay High

souls rot in hell for eternity."

The lawyer thought for a moment. "So what's the catch?" he asked.

Court by this judgment has thrown open the legal doors allowing Hindus to adopt a child of the same gender and to treat the same in law as their existing biological child.

The Hon'ble Justice Mr. D. Y. Chandrachud stated that the Courts must harmonise personal laws with secular legislation, and thus held that the Juvenile Justice (Care and Protection of Children) Act of 2000 - a secular law enabling rehabilitation of abandoned children through adoption - would prevail over the Hindu Adoption and Maintenance Act 1956, a personal law that has placed certain restrictions on adoption.

The High Court further held that : *"Right to life includes rights of parents and of individuals, women and men, who wish to adopt to give meaning to their lives on the one hand and, on the other hand, is the right of abandoned children who are in need of special care and protection."*

The Juvenile Justice Act, a countrywide beneficial social law, came in the year 2000 and introduced a 'child-friendly' approach towards adoption "in the interest of ultimate rehabilitation of a narrow sub-class of children who are orphaned, abandoned or surrendered".

The primary aim of the Juvenile Justice (Care and Protection of Children) Act, 2000 is to provide for the welfare and benefit of abandoned, surrendered and orphaned children who can't be cared for by its biological parents with a permanent substitute family. The family of a child has the primary responsibility to give it care and protection. The act provides for the welfare and adoption of such children and ensures that they live a full and healthy life.

This judgment of the Bombay High Court has now provided clarity to the Juvenile Justice Act, 2000 and the Hindu Adoption and Maintenance Act, 1956 and has enabled people of all religions and especially Hindus to adopt any child irrespective of its gender if it needs to be cared for and nurtured.

It is hoped that this judgment will lead to the rehabilitation of various unfortunate children who have been abandoned, surrendered or orphaned and will provide all of them with a brighter future and a family life.

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We at Hariani & Co. wish you a happy New Year!

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