



Child rights and protection relate to family law

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Abstract

“Children are not considered to be anyone's property, including that of their parents or even society. They are solely their own freedom's to belong to”

Children are not legally allowed to make decisions on their own because they are minors. Instead, their parents, caregivers, social workers, teachers, youth workers, and others who have been given such power make these decisions. Most people agree that the state leaves them defenseless and provides them too little control over their own life.

Numerous government programs have sought to conceal the manner in which adult abuse and exploit children, which has resulted in a deterioration of children's integrity and a subsequent rise in child poverty and educational deprivation. According to this perspective, society should reevaluate how it treats children because they represent a minority population. Welfare measures were given to children. The idea of children's rights first appeared in the 20th century. In a technical sense, rights are replacing welfare. Which was a very important tactic? Rights are privileges with objectives and duties. The main components of these include a great deal of social justice, non-discrimination, safety, equity, and empowerment. The 1989 United Nations Conventions on the Rights of the Child, a foundational piece of international human rights law, embodies the rights approach.

Keywords: Psychologically, humanity, vulnerable, constitution

Introduction

Most cultures hold the fundamental belief that children are more physically and psychologically vulnerable the younger they are. The majority of children's activities are governed by their age restrictions, including when they start school, when they can marry, when they are considered adults by the criminal justice system, when they can start working, when they can join the armed forces, etc. However, the minimum age varies by activity as well as by nation. A "child" is defined as a person under the age of 14 in the Constitution of India and the Child Labor (Prohibition and Regulation) Act of 1986. According to the recently revised Juvenile Justice Act 2015, children (16 to 18 years old) who commit serious crimes including rape, acid attacks, murder, etc. may be treated as adults. Children are the nation's promises, and the future of India rests in their capable hands, as the framers of the Constitution were aware. They were worried about including provisions for the kids' safety. By protection, they meant defense of the body, defense of the mind, defense of the dignity, defense of the rights, etc. Numerous clauses of the Constitution related to children's life were established. Numerous laws, plans, projects, etc. have been introduced in an effort to improve the constitution's provisions.

Under family law adoption

As a social institution, adoption has undergone significant changes over time. Adoption as a concept and its objectives has regularly undergone major change. Adoption in Hindu law previously had a religious motivation. The only personal law in India that enables adoption is Hindu Law. Other personal laws, such as Muslim Law and Christian Law, do not have adoption provisions, so if someone who is not Hindu wants to adopt, he must petition to the court for adoption in accordance with the Guardians and Wards Act of 1890.

An act by which a person adopts a child from his biological family, his natural parents, or an orphan into his family and treats him as his own is known as adoption. The idea of adoption has been used in many legal and personal laws since the beginning of humanity.

Advanced Hindu Law

Adoption was regarded as a sacrament by the ancient Hindu Law. The male members' ability to achieve moksha depended on the presence of a son. As a result, males could only be adopted under ancient Hindu law.

Hindu Adoption and Maintenance Act, 1956 now governs adoption under Hindu law. All Hindus as described by Section 2 of this act are covered by it. This Act outlines the requirements for a legal adoption

1. Adoptive person is capable of adoption
2. The adoptive parent is competent to make an adoption.
3. The adoptable individual has the capacity to be adopted

If a Hindu man is of sound mind, educated, and capable of adopting a son or daughter, he is qualified to do so. If he is married, the wife's approval is crucial for adoption. However, if the wife is mentally ill, has abandoned the world, or has abandoned Hinduism as a religion, her agreement is not necessary.

If a Hindu woman is unmarried, she can adopt under the same circumstances as a Hindu man. She cannot, however, adopt if she is married; only her spouse is allowed to do so. As an exemption, a married woman may adopt a kid if her husband is mentally ill, has abandoned the world, or has abandoned Hinduism as a religion.

A child may be given up for adoption by his or her mother, father, or guardian. Unless one parent is psychologically unstable, has abandoned the world, or has abandoned Hinduism as a faith, the other cannot put the child up for adoption without their mutual consent.

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The court will guarantee that there is no financial gain in exchange for adoption when granting approval for it.

Nobody can be adopted unless they are one of the following

1. Hindus;
2. Has not yet been adopted
3. He or she has never been married, unless the parties are bound by a custom or usage that permits the adoption of married individuals;
4. The child has not turned fifteen years old unless there is a custom or usage that applies to all parties and permits those who have achieved that age to be adopted through adoption.

Other conditions that must be satisfied for an adoption to be considered legal are

- A Hindu son, a son's son, or a son who was living at the time of the adoption of the son is not permitted for the adoptive parent to have.
- In the case of a female adoption, neither the adoptive mother nor the adoptive father may at the time of the adoption be the daughter of a Hindu son or the daughter of that son.
- The adoptive father is at least 21 years older than the adopted if both the adoptive father and the adoptee are men;
- If a female and a man are adopting, the adoptive mother must be at least twenty-one years older than the adoptee;
- A child cannot be adopted by more than one parent simultaneously.

Islamic law

Adoption is not recognized in any way by Muslim law. Under Islamic Law, there is simply the idea of acknowledgment. However, under the Guardians and Wards Act of 1890, Muslims may adopt a kid from the orphanage with the court's approval.

The Guardian and Wards 1890, Act

Muslims, Christians, Parsis, and Jews who are not Hindus are covered by this secular statute. This action establishes a Guardian-Ward relationship between the child and them rather than giving the child up for adoption. Once the child reaches the age of 21, this relationship is no longer valid. Contrary to the Hindu Adoption and Maintenance Act of 1956, this law does not consider the adopted child to be a biological member of the adoptive family. This implies that the child has no right to inherit anything or adopt the family name. This law also permits foreigners to adopt Indian children. Under the terms of this act, they take on the legal guardianship of the kid with the understanding that they will formally adopt the child in accordance with local law within two years of guardianship.

Christian law and parsi

These religions also do not accept adoption in their systems of personal law. The Guardians and Wards Act of 1890 also governs adoption under these religions.

Adoption related international law

- The Massachusetts Adoption of Children Act was passed in 1851.
- The Adoption of Children Act of New Zealand from 1881.
- The United Nations Convention on the Protection of Children and on Inter-Country Adoption Cooperation.
- These are some of the earliest laws that addressed adoption in various nations.

Advancements related to adoption in recent year

The necessity of a uniform adoption law has lately been emphasized by India's National Commission on Women. The Guardians and Wards Act of 1890 stipulates that the father's right in guardianship takes precedence over the mother's, hence the panel concentrated on this particular problem. A secular law is also required, one that will permit the adoption of all children, regardless of their religion, under all major religions. Adoption is covered by the Juvenile Justice Care and Protection Act of 2000, but it does so in a different setting than the Hindu Adoption and Maintenance Act of 1956.

Shabnam hashmi vs union of India

The Supreme Court of India ruled in the case that no national laws or religious rules would affect a person's right to adopt a child in accordance with the terms of the Juvenile Justice Act. The three-judge panel, which was made up of Chief Justice P. Sathasivam, Justice Ranjan Gogoi, and Shiv Kirti Singh, stated that anyone who chooses to submit himself would be subject to personal laws up till the goal of a Uniform Civil Code is realized. The Honorable Court further stated that adoption was a personal choice and that no one was obliged to adopt or adopt a child. Adoption is described under section 2(aa) of the Juvenile Justice Act of 2002^[1] as it is currently written. The rights, benefits, and obligations associated with a regular parent-child relationship are granted to the adoptive parents and child under this statute^[2].

Childs successions rights in India

A law governing property succession and inheritance is the Hindu Succession Act, 1956. This Act establishes a thorough and consistent structure that takes both succession and inheritance into account. Intestate or unwilled (testamentary) succession is likewise covered by this Act. Thus, this Act unifies all facets of Hindu succession and includes them under its purview. This article will delve deeper into the laws for succession for males and females, as well as the applicability, fundamental words and definitions.

The Hindu Succession Act of 1956 governs how a father's estate is divided in India after his passing. This rule regulates the disposal of property in the event of intestate succession, or when the father passes away without leaving a will, and it is applicable to Hindus, Buddhists, Jains, and Sikhs.

According to the Hindu Succession Act, a Hindu father's property is initially divided equally among his Class I heirs,

which comprise his mother, widow, and children (including daughters). If the father's mother is not still alive, his widow and children will each receive an equal share of the property.

If any of the Class I heirs are deceased or no longer alive, their share will be distributed to their own legitimate heirs. For instance, the children of a daughter who predeceased the father would be entitled to her portion of the estate.

The land will pass to Class II heirs, which includes the father's father, brothers, and sisters, if there are no Class I heirs. If any of the Class II heirs are deceased or no longer alive, their share will be distributed to their own legitimate heirs.

It's vital to keep in mind that, if the father left a Will, the provisions of the Will will control how his assets are distributed.

Son's Legal Rights to Father's Property

According to the Hindu Succession Law, property used for succession has been separated into ancestral and self-acquired property, with varying rights attached to each.

Rights of a son in cases where the property is inherited

When the property is ancestral, sons' inheritance rights begin to accrue at birth because they are co-owners of the land. A son also has the legal right to sue for his fair share of the property through a partition lawsuit while his father is still alive.

Son: The word "son" can refer to either a son who was born naturally or a son who was adopted; however, it cannot refer to a stepson or an illegitimate kid. The appellants in *Kanagavalli v. Saroja* ^[3], were Natarajan's legitimate heirs. First respondent was a previous spouse of Natarajan, second respondent was a son, and third respondent was Natarajan's mother. A decree of restitution of conjugal rights was obtained by the first respondent, but they were never reunited. The appellants 2 to 5 were allegedly born through the marriage of the first appellant and Natarajan in 1976. Later, Natarajan passed away. The lawsuit was brought to establish that the appellants, along with respondents 1 through 3, were Natarajan's legitimate heirs and were therefore entitled to the money owed to them by the corporation where he worked. The Court decided that a son born of a null or nullable marriage that the Court declared to be annulled would be a legitimate kid and would thus inherit his father's property. A son has a birthright to the property, but his son cannot assert any other rights to it. Therefore, a posthumous son is included but not a grandson when the term "son" is used.

According to Section 3 of the Indian Majority Act of 1875, a person who is over the age of 18 but is regarded to not have reached his or her majority is referred to as a "minor." Under Section 125 of the Criminal Procedure Code, a Minor Son (Legitimate or Illegitimate) is entitled to maintenance.

Daughter: A natural or adoptive daughter is included when we use the term "daughter," but a stepdaughter or an illegitimate daughter is not. The daughter of a null or nullable marriage that the court has decided to annul is a legitimate daughter and is therefore qualified to inherit the father's assets. The daughter's marital status, financial situation, and other factors are not taken into account. The daughter's portion is the same as the son's.

If a Minor Daughter (Legitimate or Illegitimate) is single, she has a right to maintenance from her father. If she is married, she also has a right to maintenance from her husband's father, but the magistrate must be convinced that he lacks the necessary resources to support his minor wife. In *Shahbuddin v. State of Uttar Pradesh* ^[4], it was determined that a minor daughter who attained majority while the claim for maintenance was pending was entitled to support until the date of majority.

A majority-age aberrant child, whether legitimate or not

The father of any significant kid, whether legal or not, who is abnormal (mentally or physically unfit) must support him and may make a maintenance claim on the basis of abnormality.

Maintenance under Section 125 of the CrPC

The ability to request maintenance is a statutory entitlement in India that cannot be relinquished through a contract. When legal processes are ongoing, maintenance may be granted; but, maintenance final—permanent maintenance—may also be granted once the proceedings are over. Parents, spouses, and kids can all ask for maintenance. Even husbands who are unable to support themselves are eligible to request maintenance under special personal laws. The financial support provided by one ex-spouse to the other after a formal separation or divorce is referred to as maintenance in law. This money is given to the wife or divorced wife so that she can support herself, her children, maintain the family home, and in some cases, so that she can be properly represented in the legal issue. Distinct laws have distinct rules about upkeep. However, there is a secular law of maintenance in Section 125 of the Code of Criminal Procedure, 1973. Hindus' personal laws contain their maintenance laws, whereas Muslims' personal laws contain their maintenance laws.

According to Section 125, a magistrate may order someone to pay maintenance if, despite having sufficient resources, that individual neglects or declines to maintain the following people:

1. Whether they are married or not, have a young child, and are unable to support themselves,
2. His or her child, whether genuine or not (and not a married daughter), who is of legal age. Such a child is incapable of providing for itself because of a physical or mental injury,
3. If her husband is unable to support her, the married daughter until she turns majority.
4. His or her parent's inability to provide for themselves.

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If the property is self-acquired, a son's legal rights

When it comes to self-acquired property, the father has the right to give it away or include it in his will, and the

daughter cannot object to the transfer. Therefore, a right to the property cannot be asserted if it was acquired by the father his own and was given to someone of his own free will, without the use of coercion, undue influence, fraud, or deception.

National Commission for Protection of Child Rights (NCPDR)

Childhood has always been associated with innocence, freedom, joy, and play in all major civilizations. It is a moment when there is no sense of commitment or obligation since the rigors of development have been evaded. Children are vulnerable beings who need to be shielded from the harsh facts of life. As a result, relationships between adults and children, especially those between parents and children, are said to offer "care and protection," promote the "best interests" of the kid, and sustain their "needs of survival and growth" on a daily basis. As the child's guardian, the adult is deemed to be in charge of their upbringing and development. Since its founding in October 1993, the National Human Rights Commission (NHRC) has worked to continuously emphasize the rights of children. Children across the country, especially those from the poor section of society, were vulnerable, and their human rights were frequently violated despite the fact that the Indian Constitution contains significant provisions for the survival, development, and protection of children as well as laws to protect their interests. The Government of India has also ratified the Convention on the Rights of the Child.

Child's rights: No matter their race, creed, or color, all children have the right to live with dignity, be they, and contribute to their communities and countries, which is protected and emphasized by our Constitution. A child has the following fundamental rights:

- A child's right to food, shelter, and medical care are all included in the concept of survival rights.
- **Developmental Rights:** A kid has the right to grow and develop to the fullest extent possible. They have the right to play, relax, learn, and have access to information.
- **Participation Rights:** These include the freedom to express oneself and interact with others from all walks of life in one's community.
- **Protection Rights:** They guarantee that children are protected from antisocial behaviors such as child maltreatment, child labor, and mental and sexual exploitation.

Case laws

M.C Mehta v. State of Tamil Nadu

The petitioner was concerned about the high rate of child labor in dangerous conditions in the Savakis Match factory in the Kamraj region of Tamil Nadu; the judgment delivered expresses the directive to prohibit child labor in hazardous conditions. The ruling outlined the constitutional principles and made a connection between child labor and poverty. It also declared that the state had not effectively eliminated child labor ^[5].

Sanjay Suri v. Delhi administration

The court issued transfers for some guilty officers and established guidelines to safeguard kids in detention. Sanjay

Suri's petition dealt with juvenile under trials. Despite the children's Act's restriction, several youngsters were imprisoned. The juveniles were housed with habitual and other adults, where they were brutalized and forced to perform unwanted chores ^[6].

Gaurav Jain v. Union of India

The Supreme Court ruled that it would not be in the best interests of prostitution victims' children to separate them. The Supreme Court ruled that children of prostitutes have a right to equal opportunity, dignity, care, and protection, as well as a right to rehabilitation so they can participate fully in society without bearing any shame ^[7].

Vishal Jeet v. Union of India

In order to stop the sexual exploitation of youngsters, several directives were established. The court gave the state government instructions to establish houses for rehabilitation for children found begging in the streets as well as homes for protection for young girls who were coerced into the "flesh trade" ^[8].

Sheela Barse v. the Secretary Children's Aid Society & Ors

The Supreme Court ruled that a kid should never be placed in jail and that a national statute must be passed to ensure consistency to the juvenile justice system after receiving a petition about the poorly run childcare facility in Mumbai ^[9].

Kishan Pattanayak v. State of Orissa

People in need were compelled to buy food by selling their children. The Orissan administration was forced to implement a number of welfare measures. In a letter to the Supreme Court of India, the petitioner brought to the court's attention the acute poverty in Kalahandi, Orissa, where hundreds of people were starving to death and being forced to sell their children as a result. This example has incorporated the problem of hunger and poverty. The Supreme Court took major action in this verdict to put irrigation projects into place to lessen the drought, and some actions were made to assure fair selling prices ^[10].

Sarita Sharma v, Sushil Sharma

The court determined that the wellbeing of the children should come first in any decision involving child custody ^[11].

Unnikrishnan J.P &Ors v. State of Andhra Pradesh

According to the ruling of the court, everyone has an inherent right to education. The Decision on The Right to Education was broadened in this case and is now a part of the Right to Life. The right to education was placed within the right to life in 2002 by the 86th Amendment to the Constitution ^[12].

Conclusion

The Hindu Succession Act, 1956's basic terminology and definitions were examined in this article. In the event that a Hindu passes away without leaving behind a will, in which case he becomes intestate, there are four types of heirs to whom property passes. Through these classes, this property deteriorates. The next class takes over if no one from the previous one is present, and so on. The 2005 Amendment to

this Act, which provided much-needed protection for women's property rights, was also covered in this article. Hindu property succession has been successfully brought into line by the Act. By implementing the 2005 amendment, it attempted to close all the gaps that were present. The list of those to whom this statute does not apply remains unclear, nevertheless. One of the main effects of this Act is that it emphasizes gender equality by recognizing daughters' rights as co-parents. Women now enjoy the freedom to marry, inherit property, buy a home outright, and other rights. The Act also eliminated exclusions based on mental and physical depravity and replaced them with reasonable exclusions for murderers and converts.

References

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