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Laws on Adoption of an Unborn Child

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Family is the basic unit of society. The family exists in various set-ups like parents and children, live-in relationships, single parents with adopted children, and many more. Pop culture has introduced the world to different family-set-up like surrogacy, adoption, etc. Adoption is, after all, a personal choice, the responsibility of a new life is a huge decision and needs to be thought of from all different angles. It has become a common practice in today's world. There are several laws governing various types of adoption. In this article, the main focus is on laws regarding the adoption of an unborn child. Adoption laws presently do not exclusively state the adoption of an unborn child, yet it is allowed in certain parts of the world. Let's see in this article what benefits a biological mother, child, and adoptive parents get if laws are formed in the above-said aspect.

Keywords: *adoption, unborn, law.*

INTRODUCTION

Family is a very old social setup, and this has been the framework that has been the backbone of society since civilization. This familial and social framework has been in existence for a long time. It is older than society and as old as human life itself. But despite all this, it is not a static institution. The framework of the family has been changing for a long time and it has been defining our lives for the longest time. The family setup has changed from community living to

husband, wife, and children. The definition of the family continues to change repeatedly. Today, the family setup is inclusive of live-in relations, single parents with adoptive kids, kids born of surrogacy, or families with parents belonging to the LGBT+ community.

CHANGING ASPECTS OF FAMILY SET-UP

The constant change in society's fabric is the reason for the changing family setup. With single parents and single kids, the fabric of the family setup has changed and expanded to become more welcoming to other family setups. Pop culture has been depicting different family fabrics for a long time, and with that, the world has also witnessed many changes in the fabric. The first introduction of a non-traditional family setup for Indians in the public eye was the introduction of single-parent adopting children, which was initiated by Indian actress Sushmita Sen. We have witnessed that there is a facility for the adoption of children from the orphanage, or the adoption of children that do not have any guardians. We have also witnessed the fabric of families without any kids have been able to either adopt children or can give birth to children via surrogacy. The latest example of celeb couples with children born of surrogacy are Priyanka Chopra and Nick Jonas, and single parents with surrogate kids are also a normal occurrence today.

The first public figure that we were able to witness this was Karan Johar and Ekta Kapoor. Pop culture has also been very open in discussing these topics and has suggested newer family dynamics and with it, we have all appreciated all the different dynamics in the family. For example, in the 90's classic show Friends, we can witness that Phoebe willingly becomes a surrogate for her half-brother and his much older wife, and when two of the main characters (Monica and Chandler) are unable to conceive naturally, they seek for adoption and then apply for adoption before the child is born. They get selected by the biological mother to give up her child because she wanted to give up her child for adoption. This form of giving up one's biological child for adoption before the birth of the child is a popular form of adoption accepted and practised in many parts of the western world, but there are no laws binding it, or either declaring it legally acceptable or illegal. Western pop culture has actively supported this kind of adoption by showcasing many examples and advantages of this kind of adoption. And the focus of this paper is this particular form of adoption, and whether should it be made into a law;

weighing in the pros and cons of this form of adoption being made into a law and how helpful or not it will prove to be for the child, the adoptive parents, and the biological parents as well.

NEED FOR LAWS ON THE ADOPTION OF AN UNBORN CHILD

Adoption of orphan and abandoned children is a relatively easier process for traditional couples when it comes to Indian laws, and these laws are designed to protect the child's interest. Single parents can adopt children in different ways, including financial guardians of a child, but when it comes to the adoption of an unborn child, the agreement between the biological parent and the adoptive families, the laws are not concrete in this case and hence, there is a chance of people misusing it. With the changing lifestyle and the fast-paced world that we are a part of today, the number of couples that are facing infertility issues is gradually increasing and they are opting for varied avenues to complete their families.

While the laws surrounding surrogacy, adoption of children, and single-parent adoption, are evolving, there are laws in place to look after the interests of the adopted child and the parents involved. However, when it comes to the adoption of an unborn child, most countries view it as a part of the blanket adoption umbrella, and yet few countries neither support nor oppose this particular type of adoption and in some other countries, adoption is only possible after the birth of the child since it is required for the child to be declared legally free, and that process itself is a long process of months. Before dwelling any further, let us try and understand why one would prefer to opt for this kind of adoption, and is any better than regular adoption. In the adoption of an unborn child, you as a couple can be involved in the process of your legal child's birth. You will be more than just a guardian and be able to experience the process involved in the journey of pregnancy and will be able to share a bond with the baby when the baby is still in the womb.¹

It has been proven in many studies that an unborn child can also build a bond with the world around it, and when involved with the entire process and journey of the pregnancy, you can

¹ 'Prenatal care: How to bond with your baby in the womb' (*Indian Express*, 17 May 2019) <<https://indianexpress.com/article/parenting/health-fitness/prenatal-care-how-to-bond-with-baby-in-womb-5731225/>> accessed 15 November 2022

bond with the child at a deeper level, a bond almost mimicking the biological bond². It is also like your foster bond between the foster parents of the child. This is just one of the reasons couples could decide to opt for the adoption of an unborn child, and legally taking responsibility for a child is a big step and requires excessive planning and thinking before agreeing to take up the responsibility of another person, especially when this responsibility is going to be a lifelong responsibility.

Starting from the processes involved in adoption, couples expecting to become parents and couples willing to give up their biological child should contact adoption agencies and apply for either giving up their child for adoption or adopting a child. Legal adoption now is possible only after the court of law gives the couple a go-ahead after a tedious process³ of background checks of the parents, their financial condition, and their social standing. They ensure that the parent choosing to adopt the child can provide for the child in all aspects, financially, emotionally, and socially. The court approves of any adoption only after they are satisfied that the couple is ready to be parents. This is the same process that needs to be adopted by the court even while allowing the adoption of the unborn child.

This adoption format is essentially helpful for combating unwanted pregnancy, teenage pregnancy, abandonment by one partner, financially incapable parents, and religious sentiments of pregnant ladies who are unwilling to abort an unwanted child. Many countries are against abortion and have stringent laws against abortion. In those countries, this law of adopting unborn children is a boon for women who have had to get pregnant against their will, accidentally, at a young age, this law will ensure that the teenage mother, and her unborn child, both get a second lease of life of their choice rather than chance.

² *Ibid*

³ Jagriti Chandra, 'Explained | The tedious process of adoption' (*The Hindu*, 11 September 2022)

<<https://www.thehindu.com/news/national/explained-the-tedious-process-of-adoption/article65879614.ece>>
accessed 15 November 2022

REASONS AND BENEFITS OF ADOPTION OF AN UNBORN CHILD

In case of the adoption of an unborn child, the adoptive parents can meet and understand the circumstances of the biological parents (with the consent of the biological parent) and be involved in the birthing process as well, by supporting the biological mother emotionally and physically in case of abandonment and forceful pregnancy. This option of giving up the child for adoption eases the emotional and mental burden on the mother who is not ready for pregnancy or prepared to support a child in the current situation she is in. But a stringent law surrounding this kind of adoption will also ensure that either the biological or the adoptive parents do not breach the trust of the agreement and try to encroach on each other's space and responsibilities at a later stage.

The biological mother will have all the rights to choose a better life for her child by keeping the process of adoption transparent. When the mother of the unborn child can sift through the files of parents choosing to adopt, she can ensure the safety of her child by meeting the parents in person and ensuring the child gets the life it deserves. In case of fatal risks involved in pregnancies for single mothers as well, this kind of adoption can be a great helping factor to ease the mother's worry for the safety of the child as well. The reasons for giving up a child for adoption can be many, including the fact that in many countries the gender of the child is a major factor in deciding whether the child will be allowed to survive. This form of adoption then will ensure that the child brings joy and happiness to a person or family that is willing to nurture and take care of a child that is otherwise unwanted in a different home.

CONCLUSION

This process of adoption is not new at all. It is quite commonplace in many parts of the world, but there are no stringent laws specifically focused on this particular format of adoption. The blanket adoption laws in many countries can cover the parents and the child in multiple scenarios, but there are loopholes to those laws that need to be covered keeping in light this format of adopting the unborn child. The laws should focus on protecting the best interests of the child, and in the process also protect the biological and adoptive parents from fraudulent

adoption or cheating with pregnancies. It is a natural process for many expecting mothers to go through an emotional roller coaster, and having a sane pragmatic counsellor guide the biological parents through the process of pregnancy and adoption is necessary and should be provided by the law. This will ensure that the child is born safe and that it also receives the best care after birth.

The couple's choice to adopt is also rotating the roulette of chance and choice. There needs to be clear clinical proof that the couple is truly unable to produce their biological offspring or is unwilling to have a biological child of their own. This assurance is sought, even in cases of regular adoption, to ensure that the adopted child does not receive 'stepchild' treatment and protects the interests of the child. Adoption is, after all, a personal choice, but bringing upon oneself, the responsibility of a new life is a huge decision and needs to be thought of from all different angles. While some people take up this challenge without giving it much thought, as time goes by, they realize they are not prepared for this responsibility and learn to wash their hands from this responsibility of a different life that they are not prepared for, leaving the adopted child in jeopardy. While on the other hand, the parent seemed to be unprepared for the responsibility of a child at the given time and gave up their biological child at a time in the past, suddenly realizing the emotional connection they share with the child and either for moral and emotional reasons or practical and financial reasons, reappear into the child's current life, ruining their life on multiple levels.

The split-second decisions made by adults can be a little too difficult on the future life of the child involved, especially when this decision has not been thought through thoroughly and has been taken after repeated considerations of possible situations. Therefore, it is the responsibility of the law to ensure that the child receives the best care and upbringing and is protected from jeopardy and emotional scarring in the future for no fault of its own. With the current fast-paced quickly changing family values and the fabric of family, the law has to be prepared for all different types of hypothetical situations possible as well, including and not limited to the separation of the potential adoptive parents among other things. Hence, a provision for the adoption of an unborn child becomes necessary in the book of the law, protecting the interests

of all the parties involved, including the biological mother, the adoptive parents, and the unborn child. Each country needs to rethink the changes that can be included in the existing abortion and adoption laws to help and take care of their citizen. Especially since these two laws are closely related and coincide in this particular scenario of adopting an unborn child.