

 <p>ISSN NO. 2320-5407</p>	<p>Journal Homepage: - www.journalijar.com</p> <p>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)</p> <p>Article DOI: 10.21474/IJAR01/11401 DOI URL: http://dx.doi.org/10.21474/IJAR01/11401</p>	 <p>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR) ISSN 2320-5407 Journal Homepage: http://www.journalijar.com Journal DOI: 10.21474/IJAR01</p>
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RESEARCH ARTICLE

THE PERSPECTIVES OF DATTAKA (ADOPTION) IN HINDUISM - AN OVERVIEW

Dr. Dipankar Patra

Assistant Professor of Sanskrit, Acharya Prafulla Chandra College (WBSU) New Barrackpore, Kolkata-700131, West Bengal, India.

Manuscript Info

Manuscript History

Received: 25 May 2020

Final Accepted: 28 June 2020

Published: July 2020

Key words:-

Ancient Law, Dattaka, Hindu Culture, Mythology, Provisions.

Abstract

Principles of law of adoption play an important and sensitive role in our society from very ancient time. In ancient India, the adoption referred as “Dattaka” or “Poshya” had many laws of adoption as well as we have certain laws prepared by the society and government in modern India. The subject needs a deeper analysis. The objective of the paper was to study the diverse aspects of adoptions prevalent over the years in Hindu culture. A number of case records where it is clearly found that widows and single women were not allowed to adopt on their own. Though in course of time, the rules of adoption and social attitude regarding adoption particularly in respect of women had undergone substantial changes, still there is a long way to go to achieve a balanced and unbiased view on the part of society. This work is proposed to focus chronology and continuation in the process on the changes (attitude, laws etc.) not done so far methodically and systematically. There are some wonderful and startling features that I found out on this matter doing preliminary study. In this context, laws and provisions regarding adoption of son by women is equally essential and has to be clearly defined, especially at the backdrop of Traditional Indian mythology and other Hindu cultural matrix.

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Introduction:-

‘Manusmriti’ or ‘Manu-Smriti’, ‘Dattaka-Chandrikā’, ‘Dattaka-Mimāṃsā’ and other Dharmasāstra etc. are the text books that are referred to in cases of adoption under the Hindu laws. Both of these texts lay down the rules that the wife cannot adopt, except with the consent of the husband. With various arguments it has been proved that women have no authority on herself to adopt. It follows, consequently that a widow can also not adopt under the Hindu law. Dattaka-homam is essential for adoption of child and women have no right to utter homa-mantra.

Already a number of case records have been come across where it is clearly found that widows and single women were not allowed to adopt on their own. Though in course of time, the rules of adoption and social attitude regarding adoption particularly in respect of women had undergone substantial changes, still there is a long way to go to achieve a balanced and unbiased view on the part of society. This work is proposed to focus chronology and continuation and various challenges in the process on the changes (attitude, laws etc.) not done so far methodically and systematically.

Corresponding Author: - Dr. Dipankar Patra

Address:- Assistant Professor of Sanskrit, Acharya Prafulla Chandra College (WBSU) New Barrackpore, Kolkata-700131, West Bengal, India.

The modern law (present law), relating to adoption by women is a complete departure from the Hindu law of adoption. This was necessary on account of full ownership of property, conferred on female Hindus by section 14 of the Hindu succession Act 1956, and coupled with the policy of creating equality between men and women. The outcome of the proposed work is expected to throw light upon a comparative analysis of ancient and modern and the future.

According to Manu-Smriti (40-48), there are 12 kinds of sons. Among them six kinds of sons are entitled to inherit the ancestral property. They are: (1) Auras, (2) Kshetraraja, (3) Dattaka, (4) Kritrima, (5) Goodhotpann and (6) Apaviddha. The remaining six kinds of sons are not entitled to inherit the ancestral property. They are: (1) Kaaneen, (2) Sahodha, (3) Kreet, (4) Paunarbhava, (5) Swayamdatta and (6) Saudra. They can be categorized according to the following qualifications:

(1) Auras Putra: A son who is born of a regular marriage in one's own field, i.e., between the person of the same caste or Varna. For example, Brihaspati took Utathya's (Brihaspati's brother) wife Mamataa and produced a son named Bharadwaja. Thus Bharadwaja was Brihaspati's Auras son.

(2) Kshetraraja Putra: A son born to the wife of a deceased, sickly or an impotent person, in pursuance of a Niyog ceremony, i.e., through an appointed person. For example, Dhritarastra and Pandu were such sons who were born to a widow 'Ambika' of Vichitravirya by an appointed person Vedavyaas.

(3) Dattaka Putra: A son who is given away willingly by parents in time of adversity to another person like them or "Sadrashtys". They are called Adopted son of the person taking that son.

(4) Kritrima Putra: Kritrima means artificial son who is regarded as son by a person of the same caste, of course, after keeping his nature, qualifications and defects in view.

(5) Goodhotpann Putra: 'Goodhotpann' means, 'secretly' born. A son about whom it may be impossible to say with certainty that he was conceived as a result of the union of another's wife and a person of the same caste as that of her husband, but real father cannot be particularly pinpointed, is known as the 'secretly born' son of the husband of such a woman.

(6) Apaviddha Putra: A son who is accepted by another person after being abandoned by his parents. In this case, the condition of the son being the offspring of the persons belonging to the same caste or Varna, does not seem to be applicable.

(7) Kaaneen Putra: A son who is born to an unmarried girl while living with her parents as a result of illicit relation and is regarded to be the Kaaneen son of the person with whom such a girl is ultimately married. For example Karna was a Kaaneen Putra of Kunti.

(8) Sahodha Putra: A son who is born to a girl who is married in the stage of pregnancy and the birth of the son takes place after the marriage. He is regarded to be the son of such girl's husband.

(9) Kreet Putra: A son who is bought for a price, paid to his parents from any Varna.

(10) Paunarbhav Putra: A son who is born to a woman who is either a widow or otherwise deserted by her husband. This birth is the result of contact of a person other than her husband with the widow.

(11) Swayam-datta Putra: A son who himself offers to a parent to be his son is called Swayam-datta Putra. He is a son who has been abandoned by his parents, to be treated as son by another person.

(12) Shaudra Putra or Paarshwa Putra: A son who is born, into a Shoodra woman, from a Brahman. He is regarded as dead even while living.

Among these, Kshetraraja Putra is regarded as the best of all other kinds of sons, excepting Auras Putra.

Modern man will react strongly if he is asked to consider many kind of sons approved by Manu as his own sons. Modern society, thus, appears to be morally far superior to the one referred to by Manu-Smriti. Manu's society, in another sense, could also be said to have been ultra modern in the matter of tolerating so much of nonsense, promiscuity, illegal contacts and adulterous behavior on the part of both men and women.

The enactment of detailed provisions regarding various kinds of sons discussed above, implies that the situations giving rise to birth of such sons were so common that a regular law, to be operated in the name of Dharma, had to be considered inevitable by the author of Manu-Smriti. The manner, in which Kshetrajña Putra, Kaaneen Putra were born, also is an indicator of the unenviable position of woman during the relevant times. Did it speak of her greater freedom?

Ancient Rules of Adoption:

The first Vedas of Hindu society "Rigveda" defined the laws of adoption as the wealth of the debtless suffices and may we be the possessors of such offspring. This derives that possession of offspring is considered to be more valuable than that of real wealth. For example Visvamitra was possessed of many sons, but they have been degraded on account of some acts, he adopts a son Sunahsepa as his degraded sons were unfit to fulfill and discharge the duties of a son. From the Vedic period, we next come to the period of "Dharmasāstra". One of the most important and earliest book called "Dharmasāstra" where the laws of adoption were clearly stated is the *Manu-Smriti* an administrative demigod (the "ruler of mankind") and the first law-giver. It is believed that it was written between 300 and 600 BC. This "Dharmasāstra" has been still consulted in Indian law. The Manu-Smriti has twelve chapters with 2,700 verses, where ninth chapter was devoted to the laws of adoption.

The verse 137 of chapter 9 states:

*putreṇalokāñjayatipautreṇānanyamaśnute
athaputrasyapautreṇabradhnasyāpnotiviṣṭapam*

which means that 'Through a son he conquers the worlds, through a son's he obtains immortality, but through his son's grandson he gains the world of the sun'.

The verse 138 of chapter 9 states:

*punnāmnōnarakādyaśmātrāyatepitaraṃsutaḥ
tasmātputraitiproktaḥsvayamevaswayambhuvā*

Which means that "Because a son delivers (trayate) his father from the hell called Put, he was therefore called putra (a deliverer from Put) by the Self-existent (Swayambhu) himself".

The verse 141 of chapter 9 states:

*upapannogūṇaiḥsarvaiḥputroyasyatudatrimaḥ
saharetaivatadrikthaṃsamprāpto:pyanyagotrataḥ*

Which means that "Of the man who has an adopted (Datrima) son possessing all good qualities that same (son) shall take the inheritance, though brought from another family".

The verse 142 of chapter 9 states:

*gotrarikthejanayiturnaharedatrimaḥkvacit
gotrarikthānugahpiṇḍovyapaitidadataḥsvadhā*

Which means that "An adopted son shall never take the family (name) and the estate of his natural father; the funeral cake follows the family (name) and the estate, the funeral offerings of him who gives (his son in adoption) cease (as far as that son is concerned)".

The verse 159 of chapter 9 states:

*aurasaḥkṣetrajñaścaivadattaḥkṛtrimaeva ca
gūḍhotpanno: 'paviddhaścadāyādābāndhavāścaṣaṭ*

Which means that "The legitimate son of the body, the son begotten on a wife, the son adopted, the son made, the son secretly born, and the son cast off, (are) the six heirs and kinsmen".

The verse 160 of chapter 9 states:

*kānīnaścasahoḍhaścakrītaḥpaunarbhavastathā
svayamdattaścaśaudraścaṣaḍadāyādābāndhavāḥ*

Which means that “The son of an unmarried damsel, the son received with the, the son bought, the son begotten on are-married woman, the son self-given, and the son of a Sudra female, (are) the six (who are) not heirs, (but) kinsmen”.

The verse 166 of chapter 9 states:

*svakṣetresamskṛtāyāntusvayamutpādayeddhi yam
tamaurasamvijānīyātpuṭramprathamakalpitam*

Which means that “Him whom a man begets on his own wedded wife, let him know to be a legitimate son of the body (Aurasa) the first in rank”.

The verse 168 of chapter 9 states:

*mātāpitāvādadyātāmyamadbhihputramāpadi
sadrśamprītisamyuktamsajñeyodatrimaḥsutaḥ*

Which means that “That (boy) equal (by caste) whom his mother or his father affectionately give, (confirming the gift) with (a libation of) water, in times of distress (to a man) as his son must be considered as an adopted son (Datrima)”.

Baudhayana discussed some rules of adoption in his Dharmasutra named ‘**Baudhāyanadharmasutra**’. The rules are following :

1. An adopted son is received in the place of a son.

‘.....yo patyārthe parigrhyate sa dattah’ II.2.3.20

2. The world which is to be told by both the parties to each other at the time of adoption. One should go to the giver of the child and ask him saying, ‘give me the son’. The other answers, ‘I give him’ with these words, ‘I take thee for the fulfillment of my religious duties. I take thee to continue the line of my ancestors.’

3. Through a son one conquers the world, through a grandson one obtains the immortality and through a great grandson one attains the highest heaven.

‘putrena lokāñjayati pautrenā’ mrtamasnute.

atha putrasya pautrena nākamevādhirohatiti II.9.16.6

Vasisthadharmasutra, written by Vasistha has discussed few laws of adoption, as stated below:

1. As the son is to continue the line of their ancestors, so an only son should never be given or taken.’

‘na tvekam putram dadyāt pratigrhñiyādvā: sa hi santānāya purvesam:’ XV.3,4

2. A woman should neither give nor accept a son except with the permission of her husband.

‘na stri putram dadyātpatigrhñiyādvā’ nyatrānujñānādbhartuh’ XV.5

3. Both parents can give the adopted son to another in distress.

‘tasya pradānavikrayatyāgesu mātāpitaraū prabhavatah’ XV.2.

4. No man should give or accept an only son, as he must remain for the obsequies of his ancestors.

na tvekam putram dadyātpatigrhñiyādvā: sa hi santānāya purvesam’ XV.3,4

5. If an aurasa son is born after a boy is adopted, the dattaka son takes a fourth share.

‘tasmimsctpratigrhita aurasah putra utpatdyeta, caturthabhāgabhazi syāddattakah’ XV.9

Saunaka in **Saunakasmṛti**, said that by one having an only son the gift of a son should not be made; by one having many Sons the gift of a son should anxiously be made and comments since the masculine gender is used in the compound word ‘by one having many Sons’ the gift of a son, by a woman is prohibited. Saunaka also prohibited adoption outside the caste.

In early 17th Century **Dattaka-mimāṃsā** by Nanda-Pandita was considered to be the classical work on the topic of Adoption. It was named as **Dattaka-Chandrikā** in Bengal. This was the only work that is referred to in cases of adoption under the Hindu law.

The main points, according to the **Dattaka-Chandrikā**, are as follows:

a) There are two motives in adopting a son; viz.

i) To perform obsequial rites in honour of the adoptive father and his ancestors.

ii) To be the successor of the adoptive father. Any sonless man may adopt a son; ‘sonless’ implies the absence of son, grandson and great-grandson.

- b) Except for a Sudra, one cannot adopt a daughter's son or a sister's son. A person's single son cannot be given in adoption.
- c) A woman cannot give away a son without the permission of her living husband. If the husband is dead, she can do so in the absence of prohibition by the husband.
- d) An adopted son is placed on equal footing with a natural son. In the Commentaries and Digests, while the father's power of giving in adoption is universally recognized, the same power is denied or doubted to the mother.

The writer of the Dattaka-Mīmāṃsā also prohibited adoption outside caste and, therefore, such adoption was regarded as invalid. But adoption of a person from a sub-caste of the same primary caste was valid. Nanda Pandit in Dattaka - Mīmāṃsā denies the power of taking in adoption to a widow, but gives the power of giving in adoption to a widow. The religious ordinances of the Hindus, inculcate the indispensable necessity, that, a man should be survived by male offspring for performing his obsequial rites and other purposes. In consequence, on defect of real legitimate issue, the affiliation, under prescribed rules of a Kinsman or other person is enjoined and an individual, thus regularly adopted acquires the filial rights which attach to the real son. This law, peculiar perhaps to the Hindu code, must often operate harshly towards relatives connected by the nearest ties of kindred and it is not surprising that cases of great importance involving questions as to the legality of an adoption should (and they frequently do), arise.

During the **British rule** in India, in the initial years, it is found the widow, single wives, forsaken by husbands were not allowed to adopt any child. Some of the general rules of that time are presented:

1. A widow could adopt a son with her husband's prior concern or her relatives – *Ranee Sevagamy Nachira* 5. *Strtemathoo Haraniah Gurba*. – Case No. 18 of 1841. – 1. Dec. of M.S.U. 101.- Scott, Greenway and Stratton.
2. If the husband, at the time of his death, refers to an agreement entered into with his wife to adopt a child, the wife is authorized thereby to adopt the child mentioned in such agreement.
3. If a widow adopted a son, without authority from her husband, (the Anumuti – patra, or deed of permission, exhibited by her, as granted by her husband, appearing to have been fabricated) will be declared to be of no effect against a testamentary deed executed by the husband in favour of his younger brothers. Also, his share of the joint estate was bequeathed to them after the death of the widow, with a declaration that she had not given her permission to adopt a son. *Musst. Jankee Dibeh versus Suda Sheo Rai* and another, 17th July 1807, S.D.A.V.I.p.197.
4. Moreover, if a widow made an adoption without authority of her husband then it will be an illegal work, though she may have obtained the consent of her husband's heirs. The adopted person will not be entitled to the succession to the husband's estate. *Raja Shumshere Mull versus Ranee Dilraj Koor*, 31st January 1816, S.D.A. VII.p. 169.
5. If a widow adopted a son with the permission of her late husband, he has the rights of a posthumous son; so that a sale made by her, to his prejudice, of her late husband's property, unless under circumstances of inevitable necessity, will not be valid. *Ranee Kishen Munee versus Raj Odwunt Singh* and another, 24th June 1823, S.D.A. V.III.p. 228.
6. If a widow adopted a person, without her husband's consent and in which the adopted son has been delivered by his brother not by either of her parents, the court will not hold the adoption valid. *Musst. Tara Munee Dibeh versus Deb Narain Rai* and others, 10th July, S.D.A V.III p. 387.
7. A Hindu widow can not adopt another son, with the death of a adopted son, without special permission. *Gournauth Chowdhree and others versus Arnopoorna Chowdrain*, 27th April 1852, S.D.A.p 332.
8. Adoption may be made, either by a man in his life time, or by his widow after his death with the power conferred on her for that purpose by her husband. *Haradhan Mukherjee v. Mothuranath Mukherjee* 15th February 1849 (*Moore's Indian appeals* p414).
9. If a Hindu woman takes no steps to adopt until the death of the last male member of her husband's family, she forfeits her claim to adopt. *Gobind Soondaree Debia versus Joggo Dumba Debia*. 29th May 1865 (W.R.) (H.C.D.) V.III, p 66.

A well-known adoption made during this period is Rani Laxmibai, famous queen of Jhansi adopted a son named Damodar Rao only after she had obtained permission of her husband Gangadhar Rao during his life-time.

Present adoption law:

With the change of time and advance of society, many restrictions were gradually withdrawn especially on woman. For example, male and female children both were given equal rights to inherit ancestral property. In a same way, suitable provision was made enable Hindu woman to adopt a son or a daughter freely where her husband's permission is not necessary. Necessary laws were framed and promulgated. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Hindu have no such specific law of adoption. Foreigners, who want to adopt Indian children have to approach the court under this Act. Where the court has given permission for the child to be taken out of the country, adoption takes place according to a foreign law, i.e., law applicable to

guardian. The Hindu Law looked at adoption more as a sacramental than secular act. Some judges think that the object of adoption is twofold: to secure one's funeral rites and 2) to preserve the continuance of one's lineage. Hindus believed that one who died without having a son would go to hell called *puta* and it was only a son who could save the father from going to *Putra*. This was one of the reasons to beget a son. In the Hindu Sastras, it was said that the adopted son can be taken as the mature son. This ensures the protection and care for the adopted son. He not only have got adoptive parents, but all relatives on the paternal and maternal side in the adoptive family also came into existence. This means he cannot marry the daughter of his adoptive parents, whether the daughter was natural-born or adopted. In the modern adoption laws, the main purpose is considered to be to provide consolation and relief to a childless person, and on the other hand, rescue the helpless, the unwanted, the destitute or the orphan child by providing it with parents. Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956. It came into effect from 21st December, 1956. The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act and include any person, who is a Hindu by religion, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj. Prior to this Hindu Adoption and Maintenance Act, 1956 only a male could be adopted, but the Act makes a provision that a female may also be adopted. This Act is applicable to the whole of India except the state of Jammu and Kashmir. It applies to Hindus, Buddhists, Jains and Sikhs and to any other person who is not a Muslim, Christian, Parsi by religion.

Any male Hindu, who is with sound mind and is not a minor, can adopt a son or daughter provided that if he has a wife living, he shall not adopt except with the consent of his wife. If a person has more than one wife living at the time of adoption the consent of all the wives is necessary unless the consent of one of them is unnecessary with unsound mind. Any female Hindu, who is with sound mind and is not a minor, and who is not married, or if married, whose marriage has been dissolved or whose husband is dead, is able to adopt a son or daughter. Where the woman is married it is the husband who has the right to adopt with the consent of the wife. The person giving a child in adoption has the capacity/right to do so:

- a. No person except the father or mother or guardian of the child shall have the authority to give the child in adoption.
- b. The father alone shall have the right to give in adoption, with the consent of the mother unless she has been declared by a court of competent jurisdiction to be of unsound mind.
- c. The mother may give the child in adoption if the father is dead or has been declared by a court of competent jurisdiction to be of unsound mind.
- d. Where both the father and mother are dead or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is unknown – the guardian of the child may give the child in adoption with the previous permission of the court. The court while granting permission shall be satisfied that the adoption is for the welfare of the child and no payment or reward in consideration of the adoption has been given or taken except as the court may sanction.

The Juvenile Justice Act, 2002 defines adoption in Section 2 (aa). It confers upon the adoptive parents and the child all rights, privileges and responsibilities that are attached to a normal parent child relationship. The Supreme Court of India in 2005 has decreed that prospective parents irrespective of their religious background are free to adopt children after the prescribed procedure. The court in its order said that 'personal beliefs and faiths, enough must be honoured, cannot dictate the operation of the provisions of an enabling statute. In this notable judgment, the Supreme Court of India declared that the right to adopt a child by a person as per the provisions of the Juvenile Justice Act would prevail over all personal laws and religious codes in the country. The Supreme Court of India in 2015 directed the Central and the State Governments to frame regulations under the Juvenile Justice (Care and Protection) Act, 2015 to implement the new guidelines for in-country and inter-country adoption to make the process transparent, friendly and fool-proof where the interest of the child should be supreme with no compromise whatsoever. The new juvenile law defines "adoption" as the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities as a biological child. As per Supreme Court of India's direction, specific guidelines have been laid down by the Central Adoption Resource Authority (CARA), the apex controlling body in matter relating to adoption in India under the Ministry of Women and Child Development for legal adoption of Indian Children. It is the nodal body for adoption of Indian children and responsible for monitoring and regulating in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by

Government of India in 2003. Any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee is eligible for adoption.

Guidelines for prospective adoptive parents:

- (a) The prospective parents should be physically, mentally and emotionally stable; financially capable; motivated to adopt a child; and should not have any life threatening medical condition.
- (b) Any prospective adoptive parents, irrespective of his marital status and whether or not he has his own biological son or daughter, can adopt a child.
- (c) Single female is eligible to adopt a child of any gender.
- (d) Single male person shall not be eligible to adopt a girl child.
- (e) In case of a couple, the consent of both spouses shall be required.
- (f) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.
- (g) The age of prospective adoptive parents as on the date of registration shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under-

Age of the child	Maximum composite age of Prospective adoptive parents	Maximum age of single Prospective adoptive parents
Upto 4 years	90 years	45 years
Above 4 upto 8 years	100 years	50 years
Above 8 upto 18 years	110 years	55 years

- (h) The minimum age difference between the child and either of the prospective adoptive parents should not be less than twenty five years.
- (i) The age for eligibility will be as on the date of registration of the prospective adoptive parents.
- (j) Couples with more than four children shall not be considered for adoption.

Religious Custom:

In case of any adoption, the Brahmins who are priests in Hinduism make arrange the process of adoption by performing the “homa”. The process should be done in the presence of the Brahmins of the four Vedas, relatives, friends and a representation from gram panchayet. Also the process could be completed if only the parents of the adopted child and the foster parents are present. Some priests say that in case there is no donor parent the foster parents may receive the child by “Nandimukh Karma” and “Bishnu Puja” (with 108 basil leaves).

Conclusion:-

The paper describes the ancient and present laws of adoption in a detailed manner. We have seen that there were twelve types of sons (putras) among which adopted son (Dattaka-putra) is special one. In ancient times a woman had no authority of adopt a child. However, in recent time the modern law gave the authority of adoption to a woman. Also, there was no uniform rule of adoption in India since the introduction of CARA. Supreme Court of India decreed some rules in different time period in recent years. In 2015 the Supreme Court of India directed both the Central and State Governments to frame regulations under the Juvenile Justice (Care and Protection) Act, 2015 which will be uniform across the whole country to implement new guidelines for in-country and inter-country adoption to make the process transparent, friendly and fool-proof. In that way the Central Adoption Resource Authority (CARA) had been developed under the Ministry of Women and Child Development as per direction of Supreme Court of India.

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