

## **Can Divorced Couples Replace Name Of Biological Parent With Step Parent In Children's Passport?**

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**Date: 13/04/2020**

In our world of legal practice, and with changes in our modern living, the need to make necessary changes in our laws, to make lives easy for our citizens and further help our Courts to resolve and expediate the cases in hand has become a necessity. Couples with children, who have gone through a divorce, need the assistance of the law and government authorities in making changes in their documents, for example in case of the child's passport. Usually, a passport bears the name of the biological parents, and after remarriage, there is a need in replacing the name of the biological parent with that of the step parent.

USA for example have made certain changes in the format of their Passport applications, as a lot of cases were faced where parents of the same sex have adopted a child and there was a need for them to make provisions for the same by adding an additional column. The new form in the US asks in two identical fields, for the name of 'mother/father/parent' purportedly recognizing the diversity in family formations. The result is that the passport of a minor (in the United States) may reflect the names of two males or the names of two females as the parents of the child. It is not even necessary now that those, whose names are mentioned as parents in the passport of a minor in the United States, should have been married.

In India when considering this issue, certain questions need to be answered. Has a valid divorce as per the requirements of personal law taken place? And in case of a remarriage, whether the child has been adopted by the step parent as recognized by law? Whether the Court has appointed the step parent as a legal guardian?

There are certain ways in which a step parent's name can be added and as the Passport Manuel clearly states, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such a step-parent can be written as legal guardian only.

One may consider to obtain a valid deed of adoption wherein biological parents give a child in adoption to the step father, and then his name can be added in birth certificate. A valid adoption is wherein a biological father gives his consent for adoption, as this is mandatory.

**Clause 4.4 of the Passport Manual**, which reads as follows:-

"4.4 In the case of (b) above, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. In such cases, the column of father or mother in the passport cannot also be left blank. Therefore, such applicants must apply with the names of their biological parents. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such a step-parent can be written as legal guardian."

Also to mention **para 4(III) of Chapter 8 of the Passport Manual**, which permitted the parties to have the name of the biological parent replaced by the name of the step-parent, in the event of death of the biological parent.

The aforesaid Clause 4.4 of Passport Manuel came for interpretation in the Courts of Laws in cases of children of divorced couples..... toad

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3)1) In Babu Thomas Vs. Regional Passport Officer [W.P.(Civil) No.29842 of 2012 decided on 19.12.2012], the Kerala High Court was concerned with a case where the Regional Passport Officer refused to issue a passport for the minor child of a lady working in London, for want of an order granting custody of the child to the mother. In the writ petition filed by the maternal uncle of the minor girl, the biological father was impleaded as a party. He was served with notice, but, he did not appear. Therefore, the Kerala High Court passed an order on the basis of an agreement signed by the biological father stating no objection to the biological mother taking the child out of India.

4)2) Another judgement that needs to be referred to is Mohit vs Union Of India And Ors decided on 16 November, 2016 Punjab-Haryana High Court. The brief facts of the case are, the petitioner's natural parent's marriage was dissolved by a decree of divorce. The custody of both the children being the petitioner and his sister were handed over to their mother Nirmal Arora by an order of the Court. After the re-marriage of their mother, the petitioner was about 7 years of age and his elder sister was about 9 years of age, have been brought up by their mother and step-father Ujjal Singh. Step-father Ujjal Singh's name is recorded as father of the petitioner in the Ration Card, Aadhar Card, PAN card, Voter Identity card, School Certificate and even in the Passport of her sister Gurpreet. The petitioner also applied for passport with the father's name of his step-father but he has been informed that it can be issued in the name of his biological father in view of Para 4.4 of Chapter 8 of the Passport Manual Act, 2010 (hereinafter referred to as the "Act"). The petitioner has, thus, filed this petition seeking a mandamus declaring the action of the respondents as illegal in not issuing him passport in the name of his step-father Ujjal Singh.

According to the aforesaid provision of the passport Manuel, the name of the step- father cannot be mentioned in the passport even on re-marriage after divorce because relationship of the child to his biological parents subsists, even after divorce by parents. However, name of the step-father can be mentioned after he is appointed by the Court as a legal guardian.

Thus, the question would arise as to whether in the given facts and circumstances, the step-father who is acting as a legal guardian of the petitioner since when he was about 7 years of age, requires a declaration by the Court for the purpose of recording his name as his father/legal guardian in the passport?

The petitioner has been looked after by his step-father when he was only 7 years of age and has been consistently recorded in various government records as the son of his step-father and not the son of his biological father and his elder sister is having the passport with the name of his step-father, therefore, the step-father of the petitioner is his legal guardian for all intents and purposes for which there is no need to obtain an order from the Court for his appointment as legal guardian until and unless the capacity of the step-father, acting as a legal guardian, is challenged by the biological father especially in a case where the custody is handed over by the Court to the mother.

5)3) \_\_\_\_\_ Let us now analyze and understand the facts of another judgement<sub>2</sub> in the matter of<sub>5</sub> Madras High Court Mrs.B.S.Deepa vs The Regional Passport Officer, Writ Petition No.29105 of 2014, delivered on : 23-01-2015.

This case filed by the petitioner, who is the mother of a minor girl by name Sruthi, has come up with the above writ petition seeking the issue of a writ of mandamus to direct the respondents to issue a passport for her daughter, mentioning the name of the adoptive father of the minor girl.

The petitioner was married to one M.Irudayaraj and the marriage was registered. A baby girl was born in the wedlock. The marriage was short-lived and it was dissolved by a decree of divorce granted. The petitioner has been having the custody of the minor child for the past about 13 years, without any claim by her former husband. The petitioner remarried one R.Lakshmanan according to Hindu Customary rites and practices and the marriage was registered. The petitioner gave her minor daughter in adoption to her new husband R.Lakshmanan and the same was also evidenced by a registered deed of adoption.

The petitioner as well as her husband are employed in the software industry and they are liable to travel abroad frequently. The petitioner wanted to take her minor daughter out of India, whenever she is obliged to go out. Therefore, she applied for a passport for her daughter, on 10.07.2014. The passport application was taken on record and assigned a File Number. Though the respondents would normally process an application within 30 days, they did not do in the instant case. Therefore, the petitioner made enquiries and she found out that the application was kept pending on account of the discrepancy between the name of the biological father and the name of the father indicated in the application form. Hence, the petitioner has come up with the above writ petition, seeking the issue of a writ of mandamus to direct the respondents to issue passport to her daughter indicating the name of the adoptive father.

As per the learned Central Government Standing Counsel, though there could be a divorce between the husband and the wife, there cannot be a severance of the relationship between the parents and a child. Hence, the learned Central Government Standing Counsel contended that it may not be possible to change the name of the father of the minor child, as the same may conflict with the name indicated in the birth certificate of the child.

The Court referred to another judgement In Jigna Mahesh Dedhia Vs Union of India, Bombay High Court where a lady, whose marriage with one Mr. Jayesh was dissolved by a decree of divorce and who got re-married to one Mahesh, came up with a writ petition seeking a direction to the Regional Passport Officer to accept the name of the son as indicated by them. Even in that case, the biological mother claimed to have given the son in adoption to the person whom she re-married. The Union of India opposed the prayer on the ground that the relationship of the child to its biological parents continues even after divorce. It was held that since the biological father gave up all the rights in favour of the biological mother at the time of divorce and also since there was a deed of adoption executed by the biological father himself in favour of the person, who married the biological mother, the Division Bench held that there was severance of ties between the biological father and the child.

But, the said decision of Bombay High Court was not be of any assistance to the petitioner in Madras case, since the biological father of the minor child did not join in the execution of the deed of adoption in favour of the petitioner's husband. Wherever there is a valid adoption, which satisfies the requirement of the Hindu Adoption and Maintenance Act, 1956, there would be no difficulty in replacing the name of the biological parents with that of the adoptive parents.

Madras high court observed if one goes strictly by law, the prayer in the writ petition cannot be allowed. But that will leave the future of a minor girl completely in dark. Cases of this nature are going to increase in the coming days and hence when the Government had failed to take note of the societal changes to modify the law suitably, the Court is duty bound to issue appropriate directions, without encroaching into the territory of the legislature.

In Conclusion and in so far as the case on hand is concerned, the Madras H C directs the respondents to issue a passport to the daughter of the petitioner, by indicating the name of R.Lakshmanan as the stepfather, in the column reserved for filling up the name of the father.

As per the views expressed in this judgement, the Ministry of External Affairs is obliged to come up with innovative steps and measures to resolve problems of this nature. The Passport Manual may perhaps have to be amended suitably to incorporate additional columns in the applications for the issue of passports. Apart from the columns where the names of the biological parents are to be indicated, the application form may also contain additional columns where the names of the step-parents could be indicated, wherever applicable. This will reduce or even eliminate the possibility of any discrepancy between the entries in the Birth Register and the School Records or other records.