

A CRITICAL ANALYSIS OF LAWS ON ADOPTION OF CHILDREN

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ABSTRACT

The paper is about laws on adoption of children. The paper is based on Qualitative research study. The paper is exploring the phenomena of adoption from a legal domain. The analysis of the laws is done from field view of the study. The study is relevant to understand the modifications required in the process of adoption from a layman's perspective. The paper consists of case studies of agency functioning in the process of adoption of children.

INTRODUCTION

Adoption is a process legal by nature, the present system is governed by the Juvenile Justice Care and Protection of Children Act 2015, is the primary legislation for ensuring the safety, security, dignity and well being of children. The Act provides for the protection of children in need of care and protection including minor victims and those in conflict with the law. The objectives of Juvenile Justice Act 2015, is an act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection. The JJ Act 2015, tries to cater to their basic needs through care, protection, development, treatment and social re-integration. The law recommends adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established. Some of the key provisions include the change in nomenclature from 'juvenile' to 'child in conflict with law, across the Act to remove the negative connotation associated with the word juvenile, inclusion of several new definitions such as orphaned, abandoned and surrendered children and petty serious and heinous offenses committed by children, clarity in powers, functions and

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responsibilities of Juvenile Justice Board and Child Welfare Committee. Special provision for heinous offences committed by children above age of sixteen years, a new section on adoption to streamline adoption of orphan, abandoned and surrendered children, inclusion of new offences committed against children and mandatory registration of child care institutions. To streamline adoption procedures for an orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority is given the status of a statutory body to enable it to perform its function effectively.

Several rehabilitation and social-reintegration measures have been provided for children in conflict with the law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling and so on to help them assume a constructive role in society. All child care institutions, whether run by state government or by voluntary or non-governmental organisations, which are meant, either partially or wholly for housing children, regardless of whether they receive grants from the government, are to be mandatorily registered under the Act. Courts in India consider the JJ Act as, reformatory and not retributive.

There is structural difference within the juvenile justice system, status offense cases includes three processing stages: court referral, adjudication and judicial disposition. Historical patterns of gender bias continue. The entire philosophy of juvenile jurisprudence is centred on the quality of restoration, rehabilitation and reform rather than incarceration and retribution.

The legal theory is compelled to question the relationship between basic socio-cultural structures and the derivative structures of legal institutions. The key function of Child Adoption and Regulation Authority, as given in Juvenile Justice and Care Act 2015 is as follows:

- a. Promote in-country adoptions and to facilitate inter-state adoptions in co-ordination with state agency.
- b. Regulate inter-country adoptions.
- c. Frame regulations on adoptions and related matters from time to time as may be necessary.
- d. Carry out the functions of Central Authority under the Hague Convention on protection of children and cooperation in respect of inter-country adoptions.

State Adoption Resource Agency was set up by the state governments, deals with adoption issues at the state level under the guidance of Child Adoption Resource Authority (CARA).

Specialised Adoption Agency was set up by the government for voluntary and non-governmental organizations, Specialised adoption agency is meant for housing orphan, abandoned and surrendered children for the purpose of adoption.

Authorised Foreign Adoption Agency refers to a social or child welfare agency of another country that is authorised by child adoption regulation authority on the recommendation of their central authority or government development of the country for sponsoring the application of non-resident Indian or Overseas citizen of India or persons of Indian origin or foreign Prospective Adoptive Parents for adoption of a child from India.

The Juvenile Justice (Care and Protection of Children) Act 2015, the act is secular in nature, in this a single, married, un-married, divorcee and widow parent can adopt an orphan, abandoned or surrendered child. The children found missing are kept in child welfare committees and child care institutions. An investigation is done by police and social workers for legally free for adoption. The notice is for social security of the child. Children up to the age of eighteen years are adopted in this act. The provision of Central Adoption Resource Authority (CARA) was made under Juvenile Justice and Care Act 2015. The adoptive parents should be physically fit, financially capable, mentally alert and motivated to adopt a child for providing healthy and good upbringing to a child. The consent of both the spouses for adoption is taken by the adoption agency. An unmarried, divorce or widower is not eligible to adopt a child. A stable marital relationship is considered for married people keen to adopt a child. The age of both father and mother is counted when registered for adoption of a child. The age difference of twenty-five years is required among parent and child for adoption. In JJ Act rehabilitation of Orphan, Surrendered and Abandoned children is done by State Adoption Agency or Child Care institutions and these children have to be placed in adoption under this act. The scientific and the technological ingenuity has brought confidence in adoption, anticipating the decline of hereditarianism and the unprecedented rise of adoption's cultural visibility (Herman 2001). The adoption is a right based discourse, thus all rights and interests of the parents and agency are carefully articulated and fairly considered in every stage of decision-making process (Harris 2008). The Hague convention on protection of children and cooperation in respect of

intercountry adoption considers that when there is emergency, disaster or calamity, adoption can be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin. The convention on rights of child seeks to ensure a. the use of the 'best interests of the child standards', b. safeguarding of the process in parents relinquish children for adoption, through a requirement of government approval. c. government safeguards against improper financial gain in inter-country adoption (Mezmur 2008).

In modern traditional or native society infers values and practices deprived from the past. It was difficult to organize traditional society by means and communication. Adaptation in some areas is necessary to exist and grow (Bigler 2018). The Hague convention on protection of children and co-operation in respect of intercountry adoption was developed to enable adoptions to proceed according to the 'best interests of the child with respect for his/her fundamental rights'. The Hague convention serves to protect and promote intercountry adoption by preventing corruption, child trafficking, child sales and abduction from the birth parents. Hague conventions provides solution to many problems associated with intercountry adoption (Schmit 2008). The Indian civil aspects of International child abduction bill 2007, meant to secure the prompt return of children wrongfully retained or removed to India, proposes to ensure that the rights of custody and access under laws of contracting states are respected by providing for prompt removal or wrongfully removed children (Malhotra 2014). When there was reformation in the system, the regulations require only each accrediting entity assign values to individual criteria that are consistent and substantially the same as values assigned by other accrediting entities. A licensing regime that features multiple entities using different formulas to determine what constitute substantial compliance could present significant challenges in consistency, uniformity and predictability (Hamilton 2006). The convention on rights of a child has become an essential tool to improve conditions for children around the world. Countries have incorporated its values into their national plans programs and legislations to secure the rights of children in variety of areas, including education and health care. The principles and values of citizenship are codified and enforced through a legal system. The values of respect for others and the situations characterized by international migration, common security and the protection of natural resources are the platforms that inspire the emergence of global citizenship (Earls 2011). The convention has two provisions related to

culture that affect receiving countries, a. preservation and later access by the adoptee, of records containing identifying information about the adoptee's background and history. B. Preparation of a report by receiving countries of potential parents identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption and ability to undertake an intercountry adoptions as well as the characteristics of children for whom they would be qualified to care. Cultural identity has found elements with self. Differentiation of the self with others of similar characteristics, accepting and being comfortable with oneself, being able to identify and state one's belongingness and distinguish one's own values from those of others (Hollingsworth 2008).

CASE STUDY OF ADOPTION AGENCY

The present process on adoption of children is virtual in nature, where the connection is formulated online, when a parent wants to adopt a child. The director had been working in the field of adoption for past thirty-seven years. The Vishwa Balak Kendra is licensed to have a child between age group of 0-6 years of age. These children are abandoned or surrendered child. There are children in need of temporary care, when parents came to identify children they are given to them and meanwhile abandoned children are kept in temporary care. The children are provided with regular health check-ups. There are children with special needs, like cerebral palsy. Vishwa Balak Kendra has capacity to keep fifty children and started with adoption from Norway, it is operating since 1997. In year 2013-2014 the process of adoption was transformed. In 2010 Child Adoption Regulation Authority started the process, parents in vicinity came to adopt, parents from anywhere can adopt, there is no general confined geographical area. For 0-6 years of age group under 'Janani Ashish Programme' the children are provided health care services. Under the Juvenile Justice Care Act presently the adoption is done. Earlier Hindu adoption and maintenance act use to be there. Between the age group of 0-6 years age group the child is send to us by police and parents came directly to us and surrender the child. There is a duration of sixty days to re-consider the child and if biological child of the parent is there than the child is given to them. When nobody arrives then the child is given freely for adoption. There are several medical check-up. Within 24 hours the child needs to be taken care and to know the parameters of child. People's attitudes towards disability

needs to be opened. The agency provides Medical care and government support, there is a requirement to deal with people's attitude. Adoption in general, there is no issue. There is Issue with 'Kisi Aur ka Bacha-Apna Bacha Nahi hai'. There is no issue in adopting a healthy child, adopting a disable child should come from within. The system of online application has opened up to diverse people. When it was not online then people had been in money making. Waiting period is not reduced, more and more people are there with access to internet.

Adoption in rural areas has increased. Organization across are facing when and where there are children, cross-section of people has increased. For Example, there is an agency in Delhi will do the study and home study report will be send via email. Language is an issue. Standardization of pattern is there. When parents have to get the approval. A meeting with person in charge and child welfare committee members is done. The approval process happens in written as well as in a form of discussion. A document is shared with parents in this confirmation of adoption is mentioned in the document. Recommendation is given by the Child Welfare Committee members. There is a right to adoption for every parent who are willing to adopt they should be open to adoption. There is a duration of follow up after the adoption. Adoption comes up with certain responsibilities, even if it is important, there is a cost involved part goes to the parent. The fees is forty thousand rupees by law. There is an insurance policy in name of child. Home study report is not just a document. Following things are considered in the document. a. Economic status, b. Letters from Relatives, c, Care for the Child, d. Document from the parent. The question comes in how rigorously the work in done in rural areas, then older children are given to parents for adoption and in the process the legal clearance is required for the child.

In today's time modern parents, children in adoption agency works both ways. When parents want to have child, they usually change themselves according to the desire of child. It requires attitude of parents with the commitment for the child. It helps them to develop emotional support. Like you do for biological child. The medical health services are available for 24 hours. Health, Medical, Hygiene are essential for the children, It creates some form of health trauma when child is neglected from families. Due respect and concern is shown to children. The license to keep children of particular age group is certain in every state. Whole premise is organized by looking at the facilities provided for the child. There is a requirement for funding, care-givers, health and day to day requirement is provided. There is a requirement to maintain

centre and standard of the centre is maintained by the dietician who looks after the food for the children. The infant of Neo-natal age like 0-3 months, 3-6 months and 6 months to 1 years are provided with incubator facility. The special need of the child is looked after by age of the child. The particular policy is formulated by the agency. There is Corporate Social Responsibility for getting the funds. Health and Nutrition specifically plays a major role for children. There are care givers salaries for retaining the person. Funding is the key concern area. Organisation working with child area in the field of adoption. Managing children is the main focus of our adoption. The child care is important so that healthy child is provided to family coming here to adopt a child. Vishwa Balak Kendra accept donation or in kind. Inter-country adoption is open in this agency. The desire is child should go in happy family, their should be updates on status of child.

Children are given for adoption under Juvenile Justice Care And Act. The children who are lost, orphaned, abandoned or suffering or left the home destitute children are the ones send to the agency. There is a diligence in the search of the children. There is certain stigma attached to the adoption as they want to have child through legal and social domain. A concept or pre-conceived notion of 'Apna Khoon Comes in' when adoption is being done. There is a difficult scenario when talking about adoption as grand parent health in joint families, parents are working as well as there is child abuse in families. So these are the reasons considered when parents wants to adopt a child. In Bal Anand there are children above six years of age. There is a pattern of staff on selective days doctors are send for check up. There is a Umang Project, this is an initiative by Bal Anand orphanage here children with disability are kept and taken care off. The children with special needs are taken care by social workers. The essential needs of the children are covered by Child Welfare Committees by providing fund to the adoption agency.

In the Child Adoption Regulation Authority the adoption cases are covered. There are three stages in Adoption. 1. Uploading of documents, after uploading of documents there is waiting list and referral list. There is a duration of one and half years to two years for the referral list. Recently, a regulation has come up, where there is no food donation is allowed. Food donation is not allowed because of the mal-practices in food while giving in charity to orphanages.2. When parents are in waiting list then families are counselled by social workers. When the system was not virtual there was transparency as well as better connection with the families as

there will be one on one conversation with the individual and families. There are health issues when talking about children as there are new born kids and middle age kid. The Indian Council of Education parameters are the ones that are followed for education, literacy, development, attitude difference and mindset of people matters in adoption. The hand holding of foreign agency is higher and efficient when it comes to dealing with agencies. In case of cross country adoption the screening is done for one year. In India the agency is not favoured by the government. The child is not allowed to be given according to the age difference. The child is given according to the age difference of the individual. Worry is not a cause of concern when it comes to mindset of the children. The age criteria is given by the Child Adoption Regulation Authority. Education and economic criteria are not given by the Child Adoption Regulation Authority. The sad scenario is it is not child oriented. Often, child has been returned to the agency. In one case a child was given for adoption when they were sex or seven years. The child was not able to open up with the parents and later it has created chaos then the parent has returned the child in the orphanage, then another parent has adopted the child and they have also returned the child in the orphanage, in case of third time the child was not opening up and it has created emotional distress among the child. In case of inter-country adoption, there is social security.

In Bal Anand, adoption is seen through marriage institution, where needs and requirement of child are met. In case of Single parent, child is not given for adoption, In year 1994, overseas adoption was started. Children often come up with question why I've been given to a single parent. There comes the right and wrong doing for the child. As both the individuals have different role to play. When it comes to adoption single parent want to adopt a child so that somebody is there for them to ask for and somebody is there to take care of them. In this case I see the requirement of the child. In single parent they usually say 'Apna hona chiaey', that's why they sense a need of adoption. Following to this the practice of, Transgender people want to adopt. Parents needs to be agreed for adoption as well as open for the adoption. The social acceptance on the adoption depends on the parents. Older children does not make a difference in the case of adoption. In India, there is social stigma it is good to give a child within state. There is change in food, language and psychological trauma when the child is elder. Indian Council of Adoption looks after the family of the adoptive child when the child is given for

adoption. Foreign adoption is fantastic as there is support system, agency in foreign country provides follow up and continuous home study is done.

CONCLUSION

To talk about adoption the child needs to be given space and also they need to be given emotional support to the child. The adoption should be spoken to them when they are in teenage or adult mature enough to understand about family. Otherwise, relation will become falsehood. In 1984 the agencies were opening for adoption in India. In Bal Anand we usually tell parents to speak about adoption with the child, through mythological stories of Krishna or some other stories. The Juvenile Justice Care and Act is for protection of the child. Guardian and Wards Act will always be there for legal guardianship of the child. When it comes to adoption because of diversity, child is given by verifying parents background. Like in Muslim community, polygamy is prominently followed. In Parsi community, child is not acceptable out of birth. In Hindu Community adoption is acceptable by a deed. Hindu Adoption and Maintenance Act is a civil law, where biological child and adoptive child is acceptable. In the Hindu Adoption and Maintenance Act, nobody can take away the property. In Juvenile Justice Care and Act it is criminal in nature, providing security to Juvenile delinquent and for care and protection of children is given. The process of adoption is covered in this Act. However, in Judicial Magistrate to process in Child Welfare Committee, Civil Court and High Court permission is required. There is a regulation and practical implication when it comes to process of adoption. The process legal in nature, where as it is social in nature, when somebody wants to adopt a child. Child Adoption Regulation Authority has never managed the child. They are not facilitating the psychological or counselling needs of the child. Two things are concerned, a. Child's safe environment. b. Agencies funding, this is not facilitated by the government.

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