

VIRTUAL NATURE IN ADOPTION OF CHILDREN: TRANSPARENCY IN THE SYSTEM

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ABSTRACT

The paper is exploring the virtual nature of system in adoption of children. The laws are implemented for protection, safety and security of the child. Law is an effective tool for the people want to adopt a child as well as for the children staying in orphanage. The paper is qualitative in nature. The data for the paper is collected by interviewing people. The paper is about understanding the system which is virtual in nature. For the parents adopting a child is like bringing home a new member, whereas for the child there is huge change in his/her identity, existence and survival of the child.

Keywords: Effective, Orphanage, Identity.

INTRODUCTION

Social change in adoption of children is purposive and initiated, guided and supported by law. The essence of function of law is to satisfy the wants, claims and demands involved in the existence of civilized society. Law is often used as a method of social change a way of bringing about planned social change by the government. Social Change is a prominent feature of modern welfare states. Law provides a fact based approach for a livelihood which is righteous in nature. Social order is considered as permanent and individuals can best achieve their interests through cooperation. Social conflict is viewed as the needless struggle among individuals and groups who have not yet attained sufficient understanding of their common interest and basic interdependence.

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The cohesion, solidarity, integration, cooperation and stability of society which is seen as united by a shared culture and by agreement on fundamental norms and values. Social conflict is considered as intrinsic to the interaction between individuals and groups. Roscoe Pound (1913) views society as composed of diverse groups whose interests often conflict with one another but are in basic harmony. He considers certain interests as essential for the well-being of society and maintain that the reconciliation between the conflicting interests of the diverse groups in society is essential to secure and maintain social order. A fundamental assumption of this perspective is that the political system is pluralistic, that society is composed of a number of interest's groups of more or less equal power. Sociological analysis of law and society are generally based on two ideal views of society consensus and conflict perspective. The former considers society as a functionally integrated, relatively stable system held together by basic consensus of values. The latter conceives of society as consisting of groups characterized by conflict and dissension on values and held together by some members who coerce others. Adoption was not an easy process. There are norms and customs which are followed while adopting a child. The laws provide a parent legal and social sanction to make the child member in the family so that they can introduce the child with customs and rituals which are followed from generation to generation. The social sanctions are pluralistic in nature and law provide a uniformity in the system and this is a reason law is important when it comes to adoption of children.

In context of this the researcher has taken interviews of people, involved in the process of adoption of children.

To understand the concern of people having an adopted child, the virtual nature of adoption has made the interaction formal. Agencies organize workshop to make parents understand about upbringing of a child. In the workshop the parents are taught for a child, parents are a source of love, adoption is about Love, Care and Concern. For an adoptive child there are four essential gifts Rights, Privileges, Potential and Environment. The ways to convey reality is done by expressions, which are positive, negative and neutral. Like to convey reality the way it is like conveying in a neutral manner, whereas conveying reality with expressions of happiness, sadness, fear, grief and sorrow is like conveying in positive and negative manner. This is a

parenting act that's where a child gets in a comfort zone to understand his or her identity. It is through the best of the ability of parents, the child is nurtured in the family. The expressions of love and care plays a major part in nurturing and building child's identity. The conveying of these expressions is done by warmth, listening, conversing and speaking.

The attitude of building resilience is important to make a child understand about expanding environment, like for example, children should be made in habit of listening 'NO' and also to develop 'assertiveness' an ability to stand for one self. The wanting to be in discipline, like being 'Flexible and Rigid', the want to be aware and to be pleased. Talking to child in a delightful way plays a major role in upbringing of the child. Upbringing is very important than the genes. Despite guiding or ordering a child, a child needs a direction to be shown. Positive parenting is about well-being of parent and well-being of child. Progressive and Positive parenting is about knowing, engaging and understanding. There is a need to have guided involvement to make a child understand 'When to say yes and When to say no. Parents are most significant in expressing emotions like how you maintain and carry yourself, there is a need for careful expressions that is specific for child's growth like sharing about environment and sphere in which child is staying. There should be consistency in praising the child and when we start regular ordering this develops a feeling of rebel in them. The development of fear is there when a child is ridiculed, neglected, anger and rejected. When talking about adoption, there is a need to be mental and emotional openness about adoption and it should be revealed to child without having fear about how child will feel about adoption. To be a proper adoptive parent you need to have attitude for understanding the child and people.

The system of interaction among prospective adoptive parents and agency is virtual in nature there are implication by acts which provide regular and continuous meeting is maintained with the agency. This is important for the agency as well as for the parents having a child by legal provision to have an effective functioning of the system, as the prospective adoptive parents also become part of the system.

In a research study by Mary Watkins (1993), Concern about the impact of the child's biological heritage may mask jealousy of the 'other' mother for her role in the child's life and frightening fantasies about her coming to take the baby back-if not literally then through the unfolding of the child's genetic heritage. There is always genuine and powerful gratitude to the birth mother for giving this baby to the adoptive family directly or indirectly.

Adoption is a phenomenon associated with a private domain often lead to conflict when not openly spoken therefore by openly speaking about adoption is a way to curb the conflict. The advancement in reproductive technology has challenged the idea of procreation. Certain social sanctions are not in favour of technological means to procreate (Czarnecki, 2014). An adopted child lives in a dual zone where his/her acceptance in social world depends on the family they have been adopted. Adoption is seen as salvation that rests on relationships. The psychological culture of an adopted child stand or fall on our own, we have no responsibility for the exercise of another person's will and no one has responsibility for our (Brown, 2013). Inter-country adoption is seen as culturally not acceptable as it leads to change in environment that is not sensitive and acceptable by a child. The function of adoption is divided in three ways first, to provide homes for orphans, second, to provide childless couples with social progeny and third, to provide an individual or couple with an heir to their property. The cultural understandings of relatedness vary between social environment and change over time (Howell, 2009). Children have become the objects of huge emotional investment. Parenting itself is associated with duties, the ideals of good parenting and the value of children are reflected in adoptive parents, experiences and actions (Hogbacks, 2008). The process of getting child has become economic in nature as adoption involves investment to get the child. The differing legislation from country to country creates difficulty preventing problems such as abducting children, exchanging a child for financial or material rewards to the birth family, child buying, deliberately providing misleading information to birth parents to obtain their consent, providing false information to prospective adopters, falsifying documents and obtaining favourable adoption decisions from corrupt local or central government officials. The development of Hague Convention was an outgrowth of globalization and acceptance of the treaty is necessary to encourage global, societal interests in protecting children. The Hague Convention is an international protection measure in inter-country adoption (Schmidt, 2008). The structural openness of children with their birth families and communicative openness of

adoptive parents when it comes to thinking and talking about adoption. The dynamics of openness within adoptive kinship networks operate differently with children who have experienced trauma in past. For some children, in order to feel safe and feel that they belong in their adoptive family, they need adoptive parents to draw a clear, impermeable boundary between the adoptive family and the birth family (Neil, 2007).

LEGAL NATURE OF LAWS FOCUSING IN PROCESS OF ADOPTION OF CHILDREN

Hague Convention For Inter-Country Adoptions

The Hague Convention of 29th May 1993 on Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention) protects children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. This convention which operates through a system of national Central Authorities, reinforces the UN convention on the Rights of the Child (Art.21) and seeks to ensure that Inter-Country adoptions are made in the best interests of the child and with respect for his or her fundamental rights. It also seeks to prevent the abduction, the sale of, or traffic in children. India became signatory to this convention in the year 2003.

Conclusions And Recommendations For 1993 Hague Convention

1. Private and Independent Adoptions

- a. **Para 22:** Adoptions which are arranged directly between birth parents and adoptive parents (i.e. private adoptions) are not compatible with the convention.
- b. **Para 23:** Independent adoptions, in which the adoptive parent is approved to adopt in the receiving state and, in the state of origin, locates a child without the intervention of a Central Authority or accredited body in the state of origin, are also not compatible with the convention.
- c. **Para 24:** It was strongly recommended that training be provided for judges and other authorities or persons exercising functions under the Convention. This training should address in particular the problems surrounding private and

independent adoptions, as well as other possible ways in which the procedures and safeguards of the Convention are circumvented.

2. NOC for Inter-Country Adoptions

1. All Inter-country adoption shall only be under the provisions of JJ Act and AR 2017 (Section 56(4) of the JJ Act).
2. NOC is mandatory for all Inter-Country adoption under Hague Convention.
3. It is issued by the Central Authority of sending countries (CARA, in case India) after receipt of Article 5 & 17 from the receiving country as per the format given at Schedule X of Adoption Regulations (Reg 16 (1) of Adoption Regulations 2017).

3. Article 5 & 17 of Hague Convention

4. Article 5: An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving state:

- a. Have determined that the prospective adoptive parents are eligible and suited to adopt.
- b. Have ensured that the prospective adoptive parents have been counselled as may be necessary.
- c. Have determined that the child is or will be authorised to enter and reside permanently in that state.

5. Article 17: Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made of:

- a. The Central Authority of that state has ensured that the prospective adoptive parents agree.
- b. The Central Authority of the receiving state has approved such decision, where such approval is required by the law of that state or by the Central authority of the state of origin.
- c. The Central Authorities of both states have agreed that the adoption may proceed,
- d. It has been determined, in accordance with Article 05, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving states.

Guardianship And Wards Act (GAWA)

- a. This is not an Adoption Law as it does not establish a parent child relationship; it only establishes a Guardian and Ward relationship only till the child attains 18 years of age (Sec 41 (c) read with Sec 4 (1)).
- b. The cases applicable under GAWA are admissible under Civil Miscellaneous Applications (CMA) or Miscellaneous Judicial Case (MJC).
- c. The eligibility for applying for guardianship order and the court procedure as per CPC, 1908 is defined under Sec 07 to 26 of GAWA, 1890.
- d. Guardianship petitions can only be filed by a person entitled as defined in Sec 8 of GAWA.
- e. PAPs are resorting to filing an application under GAWA for taking custody of OAS children with a view to undertake adoption under HAMA through a deed.
- f. Rehabilitation of OAS children has to be as per the JJ Act 2015 and such petitions shall not to be entertained.
- g. In case of applicant being given guardianship under GAWA, the interest of the child cannot be ensured in the absence of proper eligibility check and follow up.
- h. The Guardian and the Ward have no legal rights and responsibilities towards each other as soon as the child attains majority (18years).

The judgement was an intervention as well as change in the process of adoption of children. This was important to provide safety and security to children and also brought transparency in the process of adoption of children.

- a. Establishing an Adoption cell by Ministry of Welfare to handle all related matters.
- b. Setting a Central Adoption Resource Agency (CARA)
- c. Recognising the role of Voluntary Co-Ordination Agencies (VCAs) in facilitating Co-Ordination among Indian placement agencies to promote domestic adoptions.
- d. Organising periodic meeting with the VCAs adoption agencies and scrutinizing agencies for discussing relevant issues.
- e. The main function of Voluntary Co-Ordinating Agency is to co-ordinate the activities of Indian placement agencies in order to promote domestic adoption.

Efforts are being made by Voluntary Coordinating Agency to evolve uniform norms, criteria and placement procedure and to compile adoption statistics.

The Supreme Court has recognized the Indian Council of Child Welfare and Indian Council of Social Welfare as the agencies for the purposes of scrutiny of adoption cases. Whether the giving institution is re-cognized by the government Of India to place children in foreign countries. Whether the institution processing the case in the receiving country has recognized from the government of India Whether the child is legally free for adoption.

Central Adoption Resource Agency to Act as a clearing house of information in regard to children available for domestic adoption and inter-country adoption to regulate, monitor and develop programme for the rehabilitation of children through adoption and guardianship. The Child Adoption and Resource Authority has to furnish the clearance certificate within the date of the receipt of the application to the concerned placement agency. As per existing agencies guidelines the foreign enlisted agencies are required to forward required application and document to Child Adoption Resource Authority. The judgement brought a change in the process of adoption of children and has made the process transparent and strict.

There are certain branches in family law in which legislation will create a new status. The adoption and legitimation of children respond to a widely felt need and it is overwhelmingly approved by contemporary public opinion. It is only legislative action which can create the status of an adopted or legitimate child for such a status requires a specific regulation of the respective rights and duties as between the various parties concerned and administrative machinery which cannot be affected by judicial adaptation.

The rules of conduct embodied in the civil law were thought to have grown from the habits and customs of the mutual dependence. From which organic solidarity arose. However, the relationship between law and custom was not a simple, very often the law cannot be detached from the customs which are its substratum, nor the customs from the laws which realized and determines them. Legitimacy might be expected to be lower when the legal status of a norm is unknown. However, when the legal status is applied, the legitimacy attributed to it should be high because the civil law is the means by which the diverse independent relations of society are ordered to the benefit of all. It is reasonable to think that beliefs residing in collective

conscience would relate to a sense of justice of those societal members who subscribe to them. In deed regulation to a contrary was seen as forced and could give rise to conflict.

2nd the entrenchment of the rule of law along with the Indianization of the British bureaucracy in India, created an elitist class constitutive of both lawyers and administrators, entirely dependent upon and interested in the perpetuation of the legal system. The system came to acquire further legitimacy through the entire life of the Indian freedom movement which was separated by lawyers who used with effective advantaged their knowledge of law and legality.

Families who adopt believe that adoption provides them with an opportunity to play a meaningful role in the lives of needy children. Adoption enriches the lives of both the adopted child and the adopting family. The fundamental goal of securing the equal rights of all the parties to an adoption, especially the rights of an adopting parents. In an interview with people involved or facilitating the process of adoption of children, the people who want to adopt a child have a perspective or thinking of having a child. They do not have a view about legal or right based livelihood even though they want to know the identity of the child but it is kept private or secret because at times this will create bias views in the mind of people, who are adopting a child. The recent changes in the process of adoption of children was that a respondent was keen to understand not in the process but about the mindset of people, the people adopting a child also become part of the system as this creates a fear in mind of prospective adoptive parents about behaviour and also to make the child member of the family. In this the responsibility of parents as well as the mediator in the process of adoption of children plays an important part in facilitating the adoption of children, like providing family to child or child getting a family. For another respondent the system is responsible for providing home and also to whom we are giving the child. This process goes for two years and this system is based on verification and background of the family. The adoption agency is like a regulating authority for both the parent as well as for the child.

Adoption is a social identity that is devalued in a particular social context. When one looks at actual behaviour regarding adoption and not just at general attitudes, adoption appears to remain a source of stigma by this definition (Fisher, 2003). Adoption is perceived as a restriction and seen as a secondary option for getting a child. The child is seen as a gift the physical movement of a child between persons or nation as placement of the child is a powerful

and persistent image in adoption discourse. The placement of a child conveys a sense of grounding and permanence that is at odds with the experience of being adopted, of giving in adoption, or of adopting, implying a transformation of belonging and identity. (Yngveson, 2002)

CONCLUSION

The implication of various laws to provide safety and security to the child staying in an orphanage and to get them in a family has brought changes in the mindset of people and made them liberal about the process in adoption of child. People have become emotionally sensitive when they understand about adoption of children and this brings emotional support and security to a child when they become member in the family. Adoption has been seen as stigma or taboo in this society where people belong to diverse culture and background. The virtual nature of system and openly speaking about willingness to adopt a child has made the perspective about getting a child by legal procedure. Although, because of laws a child can be a member of across cultures this makes the system cautious for security of the child.

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