

TRENDS AND CHANGES IN THE PROCESS OF ADOPTION OF CHILDREN: A HISTORICAL ANALYSIS

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ABSTRACT

The paper is about the laws on Adoption of Children, prevalent in India. The paper is based on primary and secondary data. The source of primary data is from the people involved in the process of adoption of children. The secondary data is from research paper, journal articles and chapter from the book. The paper is Qualitative in nature and provides analysis of laws on adoption of children.

INTRODUCTION

The Hindu Adoption Maintenance Act, (1956), is applicable only to Hindus, A parent can adopt a male child, if he does not have a male child or can adopt a female child, if he does not have any female child. The adoption takes place with the consent of the wife, any female belongs to Hindu religion is either divorcee or widow has legally permitted to adopt a son or a daughter. In this act, a person has to be married for adopting a child. They must be above age of fifteen years; The age difference should be of twenty-one years than the person to be adopted. Adoption is concluded by a registered adoption deed by a court. In this Act a child is perceived as an Orphan when both the parents are dead. Both the father and mother have abandoned the child. Both the father and mother have been declared to be of unsound mind by the court concerned and where parentage of the child is not known. The Act was secular in nature and applies to all citizens equally. It provides for adoption by means of an order from court which has to be granted by the district court.

The Act seeks to enlarge the meaning of guardian so as to include a person having the custody of child, to enable the managers of institutions having the custody of children to give them in adoption (Sivaramayya, 1962) The law provides support to the people belonging to various religion, adoption act governs and provides for the procedure and supervision of adoption. The main features of Hindu Adoption and Maintenance Act were, father was the natural guardian of the minor, the natural guardian could mortgage, sell or transfer property of the minor without prior sanction of the court, the father could nominate a guardian, through execution of a deed, the mother had no right to appoint testamentary guardian even if the father expired (Sinha, 2007). Custom has played a predominant part in influencing the development of legal institutions. When a child was adopted, there are rituals by family members to make the child a member in the family and these rituals are traditional by nature followed from generation to generation. The law has radical changes in the customs, the capacity to adopt, the capacity to be adopted, the capacity to give in adoption and the effect of adoption. An unknown person has given a legitimate right of maintenance for a parent and thereof estates in the hands of heirs (Menon, 1975).

The key function of Child Adoption and Resource 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, unmarried, 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).

The Guardian and Wards Act was implemented in year 1890 and provided power to district court to appoint guardian for minor children belonging to any community. A guardian is a person who has rights and duties with respect to care and control of a minor's person or property. The word 'Care' indicates 'looking after' a child. (Bajpai, 2005).

The person seeking to be appointed guardian begins the guardianship proceeding by filing a petition or application for appointment of guardianship with the court. The application identifies a type of guardianship is necessary to best protect the person or assets of the prospective ward. (Gravin, 2008). Matching a child with similar racial and ethical background seems to be a priority to ensure well-being of the child. In some cases, adoption was

inappropriate because of its drastic effect in terminating the legal relationship of parent and child and transplanting parentage to the adopters. This requires procedure in court and several hearing from counsellors & district magistrate to provide an emotional secure environment to the child (Bainham, 2007). It is difficult for a child to develop a sense of emotional security with parents, by several discussions among counsellor and district magistrate the relation of parent and child is made. When a parent gets permission from the court, the substitute parent enjoys the dignity of being in law as well as in fact a substitute parent subject only to the control of the court appointing him. He is not a foster parent whose role is contingent upon continuous supervision by a child welfare agency or juvenile court probation officer. His sense of responsibility for the child is stronger and the child's respect for him is formal and settled one. (Taylor, 1966). These procedures are important for the people working in the process of adoption as well as for the parent to stabilise the relation of parent and child in documents.

The focus here is to describe the significance of law for the society or to describe its internal processes or both, 2nd aims to facilitate the law's performance of its functions. The function of law is the orderly resolution of conflict and resolution. As this implies law is brought into operation after there has been conflict. There is always difference between actual social behaviour and the behaviour demanded by legal norm, the existence of certain tension between actual behaviour and legally desired behaviour belongs to the characteristics of law in all forms of society and does not signify change between law and social change. A lag appears when there is more than a certain tension, when the law does not in fact answer the needs arising from major social changes or when social behaviour and sense of obligation felt towards legal norms significantly differs from major social changes or when social behaviour and sense of obligation, felt towards legal norms significantly differs from the behaviour required by law. A certain difference between actual behaviour and legally required behaviour can be found in all societies, the concept of lag applies to law and social change in dynamic situation, after either social changes or changes in the law occur and no parallel changes and adjustment processes takes place in law and society respectively organized social action directed towards achieving social change seems to be one of the characteristics of modern society which is need of a complex society.

The relative novelty of conscious, systematic and large scale use of law as a device of social action and the apparent contradiction and real tension between the ideology of rule of law, which regard law as the stable foundation of social order and the instrumental orientation towards laws associated with the utilization of law as a means of social action, may provide a partial explanation for the lack of attention paid to these crucial evolution in the role of law and law-making in modern society. Law plays an important indirect role in regard to social change by shaping various social institutions, which in turn have a direct impact on society. Thus, a law setting up a compulsory virtual system has a very important direct role in regard to social change, by enabling the operation of virtual system which plays a direct role in the social change. Law interests in many cases directly with basic social institution in a manner constituting a direct relationship between law and social change. The indirect influence of law on social change is closely interwoven with the function of the various social institutions of which, parts of law are an important element. Law exerts and indirect influence on social change by influencing the possibilities of change in the various social institutions, which in turn bring about basic social change. The extent to which contact with other societies is limited or encouraged by law regulates one the basic factors bringing about social change and so on. Here, law as part of the various institutions influence the chances of changes in these social institutions and through them the process of social change in general.

The indirect use of law in organized social action involving social change in the creation of legal duties which in turn enable direct action to bring about social change. Changes in law have more impact on emotionally neutral and instrumental areas of activity. Basic institutions rooted in traditions and values such as the family, seem to be resistant to change impeded by law. Law was an ineffective in the sense that actual conditions of work remained at variance with the norms laid down and also in the sense that even conformity to the legal norms was rarely due to influence from the law. Law is essentially a codification of custom and established practice, rendering effective enforcement inessential.

CASE ANALYSIS OF ORGANIZATION WORKING IN FIELD OF ADOPTION OF CHILDREN

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 Resource 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-ups. 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 is 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 is essential for the children, it creates some form of health trauma when child is neglected from families. Due respect and concern are 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, there should be updates on status of child.

Children are given for adoption under Juvenile Justice Care & Act. The children who are lost, orphaned, abandoned, 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 want 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 Resource 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 adoptions, 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 are given by the Child Adoption Resource Authority. Education and economic criteria are not given by the Child Adoption Resource 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 six 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. 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 Resource 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.

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 do 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

According to Young (1978), the nature of order regularity and confirming behaviour cannot be explained simply by demonstrating the existence of formal or informal, rules or norms. In an interactional sense, understanding conformity depends on orientation to the rules as implied, perceived or used. This depends on knowledge of understanding and recognition of rule,

disposition and attitude to them. The relationship between the normative and interpretive characteristics of rules becomes of significance. Whereas legal rules are normative in the sense they say what one ought, that is what one may, can or should do. They are interpretive, understanding the interpretive characteristics of legal rules requires that research centres on such questions, as why do people obey law, how is legal significance given to their actions by individuals and the related questions of knowledge, understanding and recognition of legal rules. That law is normative but is nevertheless a constituent part of social reality can be understood since legal rules do not simply explain behaviour but may give meaning to individuals for their behaviour. Orientation of legal rules, whereby people interpret their actions in relation to and derive meaning from legal rules, is one of the means which in their interactions, the nature of law as a social phenomenon is constructed by members of a given society. It is the judicial disposition which gives meaning to rule of law, it involves orientation to the rule interpretation of them, determination of legal meaning and attribution of legal consequences. The significance of law as a social phenomenon lies in an equivalent mental activity of members of a given society in the course of everyday life. It is by no means only in legal situation that one finds the judicial dispositions that orientation of legal rules, interpretation of them and determination of legal meanings and attribution of legal consequences. The significance of law as a social phenomenon lies in an equivalence mental activity of members of a given society in the course of everyday life. It is by no means only in legal situation that one finds that judicial disposition that is orientation of legal rules, interpretation, and attributes by one individual to another of legal significance. For that other's action or maybe more importance of legal meaning of one's own actions. This mental activity is law in action, it goes on every day in many situations, it is socially pervasive and significant.

The nature of analyses in the jurisprudence which attempt to relate law and social behaviour, social control, social progress and social change is that they imply consistency between set of social facts and the law such problem arise because law is normative. Law is a theoretical ideal is a norm, it says what ought to not what necessarily does or will, happen or has happened. The social facts to which law is related are considered to be descriptive facts, amenable to cause and effect analysis. According to Homans, jurisprudence is having the value of testability. The

relationship between law and such social facts represents a methodological imbalance. This methodological imbalance is of same order that which has been formulated to critical positivistic explanation in social sciences. According to Silverman, law is an attempt to construct logic by which a relationship between the social factors and the law can be formulated do not satisfy the needs of a coherent methodological base.

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