



LEGAL FRAMEWORK OF CHILD ADOPTION IN INDIA

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ABSTRACT

This research focuses on a comprehensive examination of Indian adoption law and how adoption laws from other countries have little impact on Indian adoption law. Although adoption has been practised for decades, it was only made legal in the nineteenth century. Although there are many different religions in India, no single adoption legislation applies to them all. The Hindu Adoption and Maintenance Act of 1956 is the sole personal legislation in India that regulates adoption. Because Indian religions such as Muslims, Christians, Jews, and Parsis do not have their own adoption laws, they are unable to adopt a child and give him or her their surname. They can only become the child's guardian under the Guardians and Wards Act of 1890. Hindus, Sikhs, Buddhists, and Jains all obey the Hindu Adoption and Maintenance Act of 1956. The Indian government attempted but failed to establish a national adoption law. The adoption laws in India are discussed in this article, as well as the necessity for a common civil code in the field of adoption.

KEYWORDS: Adoption, Legal, Child, Guardian

INTRODUCTION:

Adoption is permitted under Hindu law and by tradition among a few numerically minor groups of people, despite the fact that there is no broad rule prohibiting it. Because it is a legal affiliation of a child, adoption is a personal law issue. Muslims, Christians, and Parsis do not have adoption laws, so they must go to court under the Guardians and Wards Act of 1890. Muslims, Christians, and Parsis can only take a child into foster care under the stated Act. When a foster child reaches the age of majority, he is free to cut all ties with his foster family. Aside from that, such a child is not entitled to inherit under the law. Foreigners interested in adopting Indian children must file an application with the court under the aforementioned Act. If the court has granted permission for the child to be taken out of the country, adoption under foreign law, i.e. legislation applicable to guardians, takes place outside the country.

OVERVIEW OF THE LAW:

Adoption in India is governed by the Hindu Adoption and Maintenance Act of 1956 and the Juvenile Justice (Care and Protection of Children) Act of 2000. Both pieces of law have their own set of provisions and objectives. Hindu adoption and marriage are governed by the Hindu Adoption and Marriage Act (HAMA). The term "Hindus" is used in this context in a broad sense, as it includes Buddhists, Jains, and Sikhs. It gives an adopted child all of the same rights as a biological child, including the right to inherit. While Islamic religion does not prohibit adoption, Muslim personal law does not treat adopted children in the same way as natural-born children. Under the Muslim Personal Law (Shariat) Application Act of 1937, Muslim couples can only be legal guardians of adoptive children. Adopted children do not have the right to inherit the belongings of their adoptive parents. These rules are based on Shariat, an Islamic law that states that a child's biological parents are never separated from them. As a result, adoptive parents are just trustees for their children, not biological parents (Sodha 2018), and once the child reaches maturity, the guardian-ward relationship ceases.

Until the Juvenile Justice Act of 2000, the Guardians and Ward Act of 1980 [GWA] was the only way for non-Hindus to become guardians of children from their community. Because the GWA chooses legal guardians rather than natural parents, guardianship ceases when the ward achieves the age of 21 and independent status is established. Foreigners interested in adopting an Indian child would have to go through a lengthy process under the GWA, which would be unregulated. Many of the preceding laws' contradictions were addressed by the secular JJ Act, which was enacted in 2000 and updated in 2006, 2011, and 2015. People of all faiths can adopt children without being constrained by their personal rules, giving the adoptive child the same rights and privileges as a natural-born child. According to Muslim Personal Law, the JJ Act welcomes Muslim prospective parents who were previously merely legal guardians. While the Act rectified previous legislation's inconsistencies, it nevertheless left succession and inheritance loopholes unfilled in practise.

It's worth noting that the introduction of CARINGS (Child Adoption Resource Information and Guidance System) in 2015 marked a turning point in the adoption process. The system acts as a centralised digital database of adoptable children and potential adoptive parents. CARINGS wishes to help as many people adopt as possible by making the process as simple and quick as feasible. It is expected to improve the transparency and efficiency of the current adoption sys-

tem. Under the new guidelines, PAPs can also register online, add papers, assess their eligibility, and track the status of their applications, among other things (Bajpai 2017).

CHALLENGES AND UNADDRESSED ISSUES:

A) A Long Wait, Falling Statistics, and Institutional Indifference:

According to data, just 2,317 children are available for adoption, despite the fact that nearly 29,000 potential parents are eager to adopt (Pandit 2020b). This reveals a substantial gap between PAPs and children, potentially lengthening the adoption process. Despite the fact that the CARINGS mechanism's primary purpose is to accelerate the adoption process, the wait time is increasing. Despite the enormous number of orphans in the country, only a small fraction of them are available for adoption. Barely 2,61,000 of the approximately 3 crore abandoned children are in institutional care, accounting for only 0.87 percent of the total (Bhandare 2018). The law does not, however, mandate that all Child Care Institutions [CCI] in India be registered. There are 8,000 CCIs in total, including those that aren't registered (Kalra 2018). It comes at a hefty price not to penalise unregistered CCIs. Children are at risk of inferior care, physical assault, sexual abuse, and human trafficking in unregistered facilities. Because these organisations are not registered, there is no practical process to oversee and hold them accountable.

B) Adoption and Disability:

In January 2020, CARA held a national consensus meeting to discuss the possibility of improving and streamlining the adoption process. CARA said, among other things, that the organisation devised a fourteen-category classification system for children with special needs. As a result of the categorization, PAPs would be better able to understand the children's needs and boost their chances of adoption (Pandit 2020a). The need for such classification arose as a result of a drop in the number of children adopted with special needs. According to the most recent data available from CARA, just 40 children with disabilities were adopted between 2018 and 2019, accounting for around 1% of the total number of children adopted in the year (Ministry of Women and Child Development 2020). Annual trends show that domestic adoptions of children with special needs are falling year after year. Simultaneously, the number of foreigners adopting children with special needs is steadily increasing. Kumar believes that when faced with a long wait for a "healthy" baby, Indian PAPs turn to adopting children with impairments as a last resort (Chandra 2018). The majority of children with special needs are referred to PAPs in other nations due to a cultural antipathy to them. In this situation, the children are at risk of being permanently transported to another country, making them even more vulnerable than before.

C) Child Trafficking and Manufactured Orphans:

In 2018, Mother Teresa's Missionaries of Charity in Ranchi came under fire for their "baby-selling ring" after a nun from the shelter confessed to selling four children. (Indian Press Trust, 2018). Similar situations are becoming more common as the pool of children available for adoption shrinks and waitlisted parents become frustrated. According to CARA's chief, Deepak Kumar, traffickers try to gain hold of children before their parents—often unwed mothers—arrive at government departments to relinquish the child. Unwed mothers are frequently enticed or persuaded into delivering their

children to trafficking organisations, and youngsters are typically sourced from poor or marginalised families. After that, the organisations create legal documents allowing the 'orphaned' child to be sold. "Made orphans" or "paper orphans" are the terms used to describe these children (Yeh, Ng, and Prasanna 2020). Experiencing the anguish of waiting, prospective parents pay lakhs of rupees for the manufactured orphans. Two organisations in Maharashtra were shut down in 2016 for selling children for anywhere from INR 2,000 and INR 6,000,000. Srivastava (Srivastava, 2016). In the absence of strict adoption regulations and CCIs, child trafficking thrives in the Indian adoption system's underbelly.

CONCLUSION:

Throughout the pandemic, social media was inundated with inappropriate photo and contact information sharing in order to facilitate the adoption of COVID orphans, particularly children from low-income families. COVID orphans were thus placed outside the legal framework of secure institutional care, limiting their chances of genuine adoption and exposing them to illegal flesh trade, human trafficking, and forced labour. Indian officials must engage in a dialogue about adoption in general, not just COVID orphans, in this atmosphere.

As mentioned previously, several different laws protect children in India, but their low enforcement, combined with delays in resolving issues, contributes to institutional inefficiencies. Despite the CARINGS system's deployment, there remain unsolved problems within existing regulations. Additionally, the absence of a socio-legal framework continues to inform adoption proceedings in the country, resulting in adverse effects for children whose welfare is simply ignored. This is especially true for abandoned, surrendered, or unlawfully trafficked children. Along with strengthening institutional regulations, the adoption ecosystem must shift from a parent-centric to a child-centric strategy. Adoption is considered as a solution for parents to fulfil their goal to build a family that surpasses biological kinship requirements and fits the parents' needs and expectations under the existing legislative framework and popular discourse (Kumar 2013). As a result, the child's perspective and interests are ignored throughout the adoption process. On the contrary, an inclusive strategy that prioritises a child's needs is necessary to create an atmosphere conducive to acceptance, growth, and well-being, thereby recognising children as equal participants in the adoption process.

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