



INSTITUTIONAL LEGAL FRAMEWORK AND TRENDS OF ADOPTION IN INDIA: A STUDY WITH SPECIAL REFERENCE TO THE PROVISIONS AND SAFEGUARDS FOR CHILDREN UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

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ABSTRACT- This paper primarily focuses to study Laws, regulations and Rules framed for the adoption of children and trends in adoption and challenges faced by the prospective adoptive parents undergoing the process of adoption inter alia, the preferences of the Prospective Adoptive Parents while adopting orphaned, surrendered, abandoned and relative child. The study is a sincere endeavour to analyse and examine the role of various statutory and non-statutory intuitions involved in the process of adoption in India and those institutions which are instrumental in protecting and safeguarding the interests of children in need of care and protection. The paper also analysed the adoption trends in various countries and International laws, Conventions, Rules governing and framed for the protection, welfare and safeguarding the interests of children in general and children declared legally free for adoption.

Keywords: Child Welfare Committee, District Child Protection Unit, Specialised Adoption Agency, Central Adoption Authority, State Adoption and Resource Agency, Child Care Institutions, Shelter Home, Home Study Report, Child Study Report, Medical Examination Report

I. INTRODUCTION

Child is the most vulnerable section of any society who needs care and protection by way of various laws enacted for the purpose and furthermore, it is the moral responsibility of every person to integrate the neglected children with the society and provides them with the right to own family which is the basic right of the every child as laid down in the international convention on protection of child rights. In developing country like India the problems of disowned children have assumed staggering proportions especially children of special need who in spite of the fact that they are declared legally free for adoption, however, the prospective adoptive parents restrain themselves from adopting such children. It is the inherent right of these children to be part of a family as they are deprived of this right for the reason which is beyond the control of the human being. The fact that these children fails to become the part of family set up, therefore, the state has to come forward in owning them and playing a proactive role by placing them in State/NGO run child care institutions where although the children did not find the family environment, however, their other basic social, economic health and education needs are fulfilled by the State. The placement of these children in the Child Care Institutions are resorted to as a last resort when it is not possible to provide them the permanent or foster family.

The adoption is defined in the Juvenile Justice (Care and Protection) Act of 2015¹ under Section 2 (2) and is defined as means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the biological parents. The adopted child severs all the ties with his/her biological parents after the adoption process is over and inherit all the rights which in case of natural borne child by the adoptive parents. In India the adoption proceedings either took place under the Hindu Adoption and Maintenance Act 1956 by way of adoption deeds between the biological parents of child and adoptive parents but such provision is confined to Hindu family only. However, by the enactments of the Juvenile Justice (Care and Protection) Act of 2015 which is a secular law any person

¹The Juvenile Justice (Care and Protection of Children) Act 2015(ACT, 2 OF 2015)

irrespective of religious affiliations can adopt child in India under the this Act. The Muslims are prohibited by sharia law to adopt child, however, no such bar is placed even on Muslim in India to adopt under the Juvenile Justice (Care and Protection) Act of 2015. The adoption process can be effected by three ways either through signing the adoption deeds between the parties or through the order passed by the Judicial Court under the statutory provisions like in case of the J.J. Act 2015 in India or by way of administrative orders. The order passed under the second category is non-adversarial in nature as there is single party in the adoption proceedings. The administrative authority have not been conferred any power to pass adoption order in India, however, keeping in view the engagements of judicial officers in adjudicating other types of disputes, it has been proposed to amend such provision to entrust the District Magistrate to pass adoption order so that the adoption process be simplified and adoption cases be disposed of expeditiously in the interest of the adoptive parents and child in need of protection.

II. Adoption of Children Under Juvenile Justice (Care and Protection) Act 2015

The Juvenile Justice (Care and Protection) Act 2015 is the most comprehensive legislation in India addressing the issue of the children in need of care of protection and is a sincere attempt to resolve all the problems confronting and involving the children. An Indian who is a Hindu can adopt a child either under Hindu Adoption and Maintenance Act 1956 or by complying to the provisions of Juvenile Justice (Care and Protection) Act 2015. The main difference of adoption under the HAMA 1956 is that it is personal law of Hindu based on the customs, usage and religious views of Hindus which revolves around and focuses on the childless parents and is enacted with the object to caters to the needs of adoptive parents, however, the J J Act is a secular enactment and any person can adopt under the provisions of this act irrespective of their religious affiliations subject to complying with the provision as contemplated in the Act. The HAMA is a parent oriented law, however, the J.J. Act is child centric law. The J.J. Act is a gender biased legislation as the male single parent is prohibited from adopting a girl child and this provision is deliberately incorporated in the act so that the child be safeguarded against the sexual exploitation and abuses. The female single parents can adopt any child irrespective of their sexual orientations subject to the age gap of male adopted child and female adoptive parent is 25 years minimum, however such distinction is made under HAMA. The parents under HAMA cannot adopt a male child if the parents have already a male child and such restrictions are not imposed by the J J Act .The Section 56 of J J Act 2015 made it mandatory to do every inter-country adoption not in any other law than this Act and therefore, this act is compliant to Hague convention on inter country adoption of 1993. The adoption of orphans, abandoned and surrendered children mainly takes place under the J J Act, none the less, there is a provision in the Act for relative adoption ,however, there is no mention of step parents adoption in the Act and the J J Model Rules despite the fact that there is a mention of step parents adoption under the CARA regulations.

The rehabilitation of children within the society comes in to force through adoption, foster care or by way of sponsorship. The adoption of children in case of Hindus which includes Hindus, Sikh, Jain and Buddhist is legally effected either through provisions made under Hindu Adoption and Maintenance Act 1956 which is a personal law of Hindus. The adoption of children who are related to the adoptive parents may takes place either under HAMA or Juvenile Justice Act, 2015 and in such case parents may prefer to adopt such children under HAMA as there is no need to have court order in such cases, however, in case of adoption of relative child under J J Act, the family court of jurisdiction shall pass adoption order before the custody of a child is handed over to the prospective adoptive parents .In case of adoption through the HAMA, the adoption process is completed after registering the Adoption deeds, however, the adoption through J J Act, takes much longer time before the final order to this effect is passed by the family court. The J J Act prescribed maximum period of two months for the passing of adoption order, however, it is invariably taking much more time than two months to pass such an order.

III. LANDMARK JUDICIAL PRONOUNCEMENTS IN ADOPTION

1. **Laxmi Kant Pandey vs Union of India and others: 1984 (2) SCC 244** ²

The Supreme Court of India issued guidelines for inter country adoption on the basis of judgment delivered in this case and the Central Adoption and Resource Agency was established as an outcome of

²Laxmi Kant Pandey vs Union of India and others, (1984) SCC 244

this judgment which was later renamed as Central Adoption and Resource Authority .It was initially constituted to control and regulate inter country adoption, however, subsequently, adoptions regulation whether domestic or international were entrusted to the CARA.

2. Hubert Pournow and Kirsten Rasmussen vs. Indian Council for Child Welfare, 2005.³

It was held in this case that all cases under inter country adoption shall be dealt under Juvenile Justice (Care and Protection) Act

3. ABC vs. State of Maharashtra, 2019⁴

The Hon'ble Apex Court held in this case that the victim child of rape can conceive her child and latter can give her child to adoption as per the provision of Juvenile Justice Act (Care and Protection) 2015 and in doing so her identity shall be kept confidential.

4. Karina Jane Creed vs. Union of India and others⁵

The Hon'ble Apex Court of India held in this case that the No Objection Certificate from the diplomatic mission is a mandatory condition for adoption of child as laid down as an essential requirement under section 59 (12) of the Juvenile Justice Act of 2015

5. Shabnam Hashmi Vs. Union of India Ors. 2005⁶: The Supreme Court of India declared that the right to adopt a child by a person as per the provisions of the Juvenile Justice Act would prevail over all personal Laws and religious codes in the country.

A COMPARATIVE STUDY OF PROVISIONS UNDER HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 AND JUVENILE JUSTICE ACT, 2015.

Sr. No.	Hindu Adoptions and Maintenance Act 1956	Juvenile Justice (Care and Protection of Children) 2015
1.	It is a personal law of adoption and maintenance of Hindu children	It is a secular law of adoption and is applicable to any person wishes to adopt Indian children in need of care and protection
2.	The children who are in relation to adoptive parents can be adopted now by way this statute.	The orphans, abandoned and surrendered children, declared legally free for adoption and living in Child Care Institutions or in a Specialised Adoption Agency can be adopted, only under this act irrespective of religious affiliations. The adoptive children can also be adopted under this act, however, there is no provision for step child adoption under this Act.
3.	The adoptive parents having a male child cannot adopt another male child under this act. Similarly, parents having girl child cannot adopt another girl child.	There is no such restrictions under the J J Act, notwithstanding, a single male cannot adopt a girl child at all.
4.	The father is given right to adopt a child and the role of wife is confined to giving consent.	Both the spouses have equal role in the adoption without any playing second fiddle
5.	The maximum age of the child who can be adopted under this act is 15 years	The maximum age of the child who can be adopted under this act is 18 years
6.	The minimum age gap between the child adopted and the parents must be 21 years	The minimum age gap between the child adopted and the parents must be 25 years

³Hubert Pournow and Kirsten Rasmussen Vs. Indian Council for Child Welfare,(2005)

⁴ABC Vs. State of Maharashtra,(2019)

⁵Karina Jane Creed vs. Union of India and others, (2019)

⁶ShabnamHashmi vs. Union of India Ors., (2005)

First Three State in terms of Largest Adoption in India from 2013-14 to 2018-19

chart I

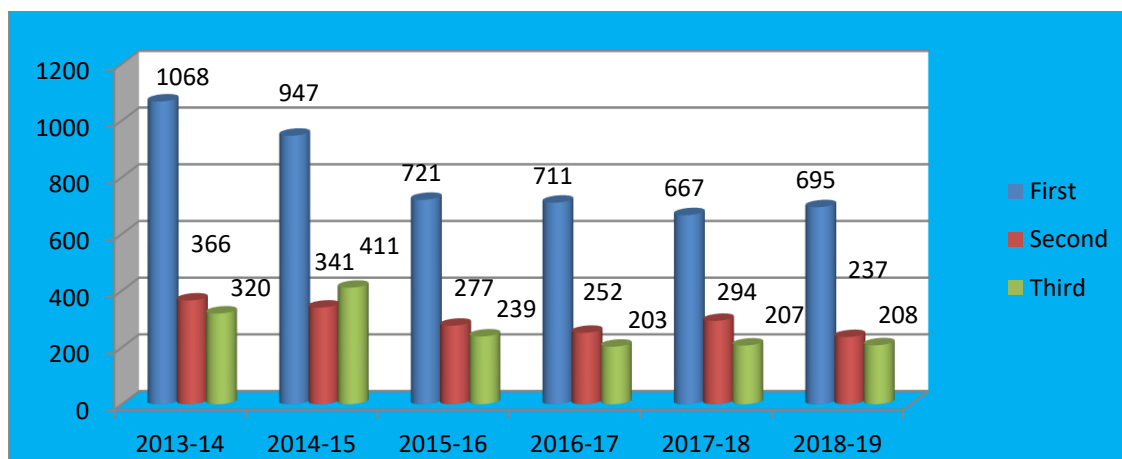


Chart I above depicts the first three State in India which is largest state in terms of total adopted child. Maharashtra topped the list and in the second slot it is invariably Karnataka, however the third position is shared between Andhra Pradesh, Telangana, West Bengal and Orissa. One third of total adoption in India takes place in Maharashtra itself which may attributed to the fad among celebrities to adopt the child. The trends amongst the single unwevd male/female is witnessing trends in the State.

Gender wise Adoption Trends in India:

CHART II

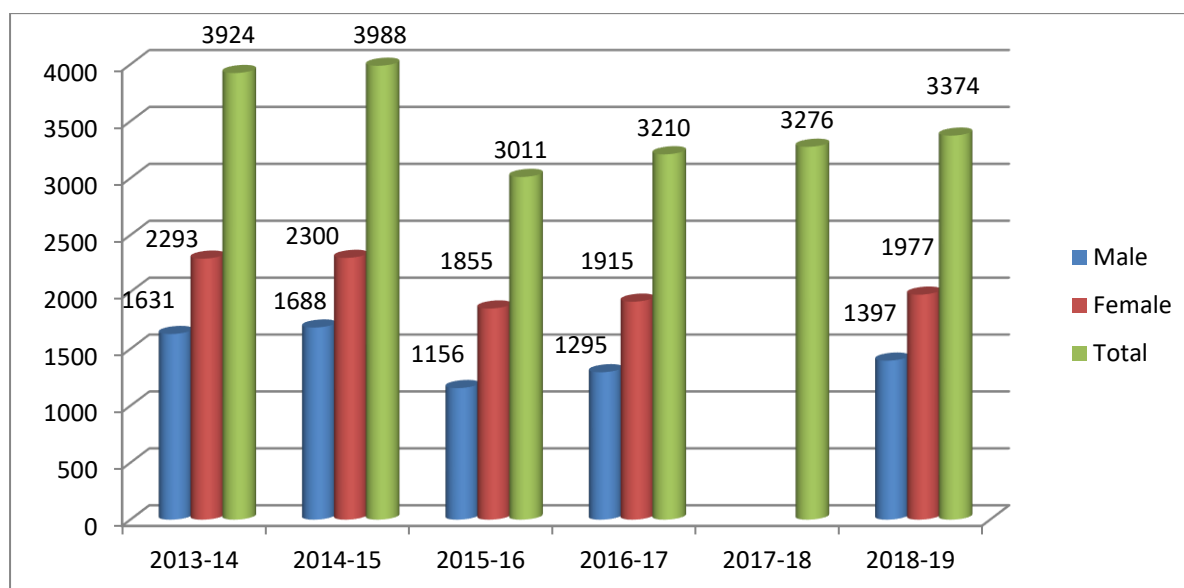


Chart II illustrates the total number of girl child adopted from 2013-14 to 2018-19 outnumbered the male child and it may be concluded that the girl child are abandoned and surrendered more by the parents and therefore, the girls child are adopted more in comparisons to the male child, however, it would not be safe to conclude that the adoptive parents are preferring to adopt a girl child than male child despite male child is also legally available for adoption. It is almost certain from the chart that the number of girls child available for adoption is outnumbered due to surrender and abandonment than male counterpart and hence, large number of girl child adopted. The attitude of the Indian society towards girl child is not very encouraging as is evident from the statistics that the number of female child adopted is 30% more than the male child adopted. The year 2015-16 was the year when the total children adopted bottomed out and 2016-17 up to 2018-19 there was marginal increase in the number of children adopted.

IV. FINDINGS AND SUGGESTIONS FOR STREAMLINING THE ADOPTION SYSTEM IN INDIA

The Centralised system of in country adoption is beyond the comprehension of common man of India. The main object of constitution of Centralised Adoption Resource Authority was to regulate and administer the inter country adoptions per Hague convention and to comply to the directions of Supreme Court in Laxmi Kant Pandey case, however, to assign the task of administering in country adoption to the CARA by applying in CARINGS portal seems to be highly centralised and this work is required to be assigned to respective State Adoption Resource Agency (SARA) and Prospective Adoptive Parents be at liberty to apply for child adoption in their respective State or any of the State in India. The Step Child adoption is alien to Indian society, therefore, it is to be incorporated in the Indian statute by way of enactment for this purpose as the Juvenile Justice (Care and Protection) 2015 has no provision in it for addressing Step Child Adoption, despite the fact that the CARA regulation has made provision for it without amending the J J Act. The adoption order are generally taking more than 2 months of time for disposing by the District Court/City Civil Court/Family Court, therefore, for prompt and speedy disposal of adoption cases, the District Magistrate may be assigned/entrusted the task of disposing of adoption cases keeping in view the best interest of child. The confidentiality is required not to disclose the identity of the child and even the parents surrendering child. However, it is observed unintentionally the identity of the Child are disclosed which is the violation of the right to have privacy. It is with this object in mind that the adoption proceedings are held in camera and the disclosing of identity of child under the Act has been made penal offence. The institution of Specialised Adoption Agency is very weak in the country. The number of SAA institutions are very less in the country notwithstanding there should a Specialised Adoption Agency in each District. In Himachal Pradesh, there is only one State Specialised Adoption Agency catering for adoption requirement and therefore, this work is to be performed by the Child Care Institution/District Child Protection Unit in the Country. The specially abled children who are declared legally free for adoption are almost half of total children available and declared legally free for adoption, however, the in country hardly exercise their choice to adopt these specially abled children and therefore, these children remained deprived to be part of family. Between 2017-2019, there were 6650 children adopted in in country and inter country adoption from India and out of which 278 children were handed back to State Adoption Agency by the adoptive parents. 275 rejected adoption cases were from in country adoption and 3 cases were from inter country adoption, therefore, almost there was failure of 4% adoption. The reason may be varied which may be attributed to adoption of old children, specially abled children, and adoption of siblings without preparation.

The J J Act is a very comprehensive legislation which is addressing inter alia the adoption issue, however what is required is the enforcement and execution of its provisions in a earnest manner in the best interest of child and which confirms to the wishes of child in need of rehabilitation.

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