



JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015: A GLOBAL PERSPECTIVE OF CHILD WELFARE THROUGH ADOPTION

**Dr. Sonia Dutt
Sharma**

KEYWORDS :

According to Indian culture children are the blessings of the almighty and one gets the child by good fortune. But it is unfortunate to say that over 60,000 children being abandoned per year in India. There are 50,000 children are orphan among 20 million child population of India. Surprisingly 3% of these orphans are children whose parents have actually died; there is 90% girl child among the 11 million orphans. It is heights of inhumanity.

Since the end of the 20th century, infertile couples and single people have increasingly turned to Tran's racial and international adoptions, as well as new medical techniques for treating infertility and providing alternative methods of reproduction. Meanwhile, the number of older special-needs children awaiting adoption has skyrocketed. These children often come from backgrounds of abuse and negligence, and finding appropriate placements for them is one of the most effective concerns in child welfare today.

U.N.O. & Child Welfare : Great concern for the welfare of children at the international level culminating in the declaration of the Rights of Child adopted by tile General Assembly of United National on 2nd of November; 1959. The declaration in its preamble points out that "a child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth" and that mankind Owe to the child the best it has to give and proceeds to formulate several principles of which the following are material for our present purpose. The relevant provisions are contained in Principles 2nd, 3rd, 6th, 9th and 10th. These run as under:

Principle 2nd : The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.

Principle 3rd : The child shall be entitled from his, birth to a name and a nationality.

Principle 6th : The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 9th : The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

Principle 10th : The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

Enactment of Juvenile Justice (care and protection of children) Act, 2015:

More than 250 cases in the Delhi High Court over 160 domestic and 80

inter-country Adoption cases are waiting to be cleared. In a country with an estimated 12.4 million orphans and only 5,000 adoptions per year the inevitable question seems to be- must India's adoption laws be so intimidating and so tough?

As an answer reformatting Juvenile Justice Act provides strengthened provisions for both children in need of care and children in conflict with law. Some of the key provisions are amended in nomenclature, included several new definitions such as Orphaned, Abandoned and Surrendered children; Clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC) ;separate new chapter on Adoption to streamline Adoption of Orphan, Abandoned and Surrendered children. Thus all the new amendments and prescribed provisions are trying to fulfill the ultimate goal of child welfare as per UNO guidelines stated above.

Legislation for Adoption in India: The Hindu Adoptions and Maintenance Act 1956 (HAMA), Provides for adoption of Hindu children by the adoptive parents belonging to Hinduism. This is not applicable to other communities like Muslims, Christians and Paris. They have to recourse to Guardians and Wards Act, 1890 where they become guardians of children.

Definition of Adoption under sec.2 (2) of juvenile justice (Care & Protection of Children) Act 2015. "Adoption" 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 right, privileges and responsibilities that are attached to a biological child.

Types of adoption by location and origin

Domestic adoption or In country Adoption: U/S 58 of JJ Act, 2015, it will be govern by Court and CWC both. A *domestic adoption* is the placement of a child for adoption within the country in which he or she was born and normally resides. A special case is an *interstate* adoption - where an adoption occurs across state lines in the U.S., or within different Canadian provinces. In such cases, additional regulations may apply. In India state of Maharashtra has the highest ratio of in country Adoption on other hand Meghalaya and Arunachal Pradesh has the lowest.

Foster care adoption: *Foster care adoption* is a type of domestic adoption where the child is initially placed into a foster care system and is subsequently placed for adoption. Children may be placed into foster care for a variety of reasons, including removal from the home by a governmental agency because of maltreatment.

Intra-family adoption : Not all adoptions are from outside of the family. An *intra-family* adoption occurs when a child is adopted by an existing close family member and/or his or her partner. A common example is a "stepparent adoption", where the new partner of a parent may legally adopt a child from the parent's previous relationship. Intra-family adoption can also occur through surrender, as a result of parental death, or when the child cannot otherwise be cared for and a family member agrees to take over.

International adoption or Inter-country Adoption : International adoption is the placing of a child for adoption outside that child's country of birth. The laws of different countries vary in their willingness to allow international adoptions. Some countries, such as China and Vietnam, have relatively well-established rules and procedures for foreign adopters to follow, while others, the United

Arab Emirates (UAE) for example, expressly forbid it. Some countries, notably many African nations, have extended residency requirements that in effect rule out most international adoptions. US have adopted 672 children in last five years.

Rehabilitation & Social Reintegration of orphan, abandoned or surrendered children: The Act introduced an expression "child in need of care and protection" and it has been defined in **Sec. 2 (14)** of the Act. This definition covers what is meant by orphan, abandoned and surrendered children. The **chapter VII** of the Act deals with rehabilitation and social re-integration of children. The primary Aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them rehabilitation within the family where possible, or otherwise, through alternative care programmers and long term institutional care shall be of last resort.

Process of Rehabilitation & Social Integration: chapter VII of the Act:

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (I) adoption, (according to provisions of chapter VIII) (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization. For all matters relating to adoption, the guidelines issued by the **Specialized Adoption Agency, the State or Central Adoption Resource Authority, CARA (constituted in 1984 after Hon'ble Supreme Court's Directions)** and SARA under **section 65, 67 and 68** of the Act, shall apply. Act has the primary responsibility for providing care and protection to children. Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribe.

Assistance to Homes for Infants and Young Children for Promoting for Adoption The State Govt. shall recognize one or more of its institutions or voluntary organization in each district as specialized adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines under **section 65 & 66 of JJ Act.**

Guidelines for Adoption of orphan abandoned or surrendered children: The recommended legislation, guidelines or directives are to be complied with in respect of adoption of orphan, abandoned or surrendered children. Guidelines issued by **Central Adoption Resource Authority** time to time based on the judgment of the Supreme Court on inter-country adoption in **Laxmi Kant Pandey v. Union of India & others [W.P. (Cr.) No. 1171/1982]** and subsequent judgments. Hague Convention on Inter-country adoption ratified by India in 2003. Juvenile Justice (Care & Protection of Children) Act, 2015 and Central Model Rules promulgated under this Act.

Child Welfare Committee:

Sec. 27 of the Act, That Committee has the sole authority to declare the child in need of care and protection who are orphan, abandoned or surrendered free for adoption. CWC shall determine legal status of all orphans, abandoned and surrendered children. Functions and powers of the Committee, production of child before committee, procedure for inquiry related to orphan, surrendered and abandoned children shall be governed as laid down in the **chapter V & VI of the Act**. On clearance from CWC a particular child is free for adoption; there will be termination of parental right.

The court may allow a child to be given in adoption:-

Children Court shall entertain the adoption matters defined U/S 2(20) including the court of District Judge or Family Court. Court may allow to adopt a declared child to a single person or a spouse who is mentally and physically fit, financially sound and highly motivated to adopt a child for providing a good upbringing to him. But a single male cannot adopt a girl child. Act has no contradiction with any religion and personal Law, so it is a secular Law with the supreme virtue of child welfare.

Criteria for the Child to be adopted: Act provides that a child shall be offered for adoption on fulfillment of the following requirements: In case of abandoned child, if three members of the Committee declare the child legally free for placement. In case of surrendered child, if the period two months for reconsideration by the parents is lapsed. In case of a child who can understand and express his consent, if his/her consent is obtained in this regard, be considered in preference.

"In country Adoption": U/S 58 of JJ Act, it will be govern by Court and CWC both. Under this adoption financial assistance is provided to non-governmental organizations which are maintaining destitute and orphan children with a view to rehabilitating them through In-country Adoptions. Grant-in-aid is provided up to Rs. 6 lacs per year to each Shishu Greh which covers costs for maintaining the children such as Staff, Medicines and other necessities.

Basic Indian Policy for Inter country Adoption

*At the International level, India has ratified the convention on the Rights of Child and the Hague Convention on inter-country adoption of children. At national level, India has prepared a National Policy for children in 1974 under which Ministry of Social Justice and Empowerment (now known as Ministry of Women and Child Development) has got the mandate to enact laws regarding welfare of children. The Juvenile Justice (Care and Protection of Children) Act 2000 amended in 2006 and reformatted in 2015 is a landmark in this regard. This Act has incorporated the provision of adoption and Inter-country, Adoption of child as an alternative to institutional care. Previously there is no express provision regarding adoption by foreigners. The rules and procedure for inter-country adoption are summarized with leading decisions of Supreme Court ; **Laxmi Kant Pandey v/s Union of India**¹ In this case Supreme Court of India decided Inter Country Adoption - normative and procedural safe-guards to be followed by Constitution of India under Articles 15, 39, 24).*

The Adoption of Children Bill, 1980 : an excellent legislative proposal for Inter Country Adoption.

Clause 17th of the Adoption of Children Bill, 1980 lays down that no institution or organization can make any arrangement for the adoption of an Indian child by foreign parents unless such institution or organization is licensed as social welfare institution and **clause 21st**, it would be unlawful to make or to give to any person any payment or reward for or in consideration of the grant by that person of any arrangement for such adoption. Children given in adoption to foreign parents and what procedural safeguards the Central Government thought, were essential for securing this end. **Clauses 23rd & 24th** of Adoption of children Bill 1980 dealt with the problems of adoption of Indian children by parents domicile aboard.

The Adoption of children Bill 1980 has unfortunately not yet been enacted into Law but **section 59** of JJ Act, 2015 will be useful to implement some of the relevant provisions of the Bill in so far as they indicate what principles and norms are necessary to be observed for securing the welfare of children

Procedure for Inter-Country Adoption section 59 of JJ Act

The application of should be made according to the guidelines of Foreign Adoption Agency or CARA or a concerned department in the Country of the applicant. Once applicant applies to the appropriate authority, they will require certain important details of his/her family in concern of illegibility for Adoption. The concerning body will prepare a report after visiting their family which will be called as **Home Study Report**. The Home Study Report would have details like family background, relationship between the family members, employment status of the couple, health details of the family, economic status, reasons for wanting to adopt an Indian child etc.,

The agency will match a child with such prospective adoptive parents and send the child study report and medical report to such parents. After verification of documents and illegibility, satisfied authority will inform their national agency and obtain a passport & visa for the child and shall ensure the submission of progress report timely.

CONCLUSION

According to **Article 39 and 44 of the Indian Constitution**, calls for the protection of children and youth from material and moral exploitation. In an effort to evolve a uniform civil code but we are still waiting for a staunch step towards real secularism. But enforcement of JJ Act is a beneficial Law to protect abandoned and destitute children, to find a family for as many orphan children as possible and to safeguard their interest as visualized in the UN Convention on child rights and Hague Convention or Inter country adoption ratified by India government, as it will serve larger purposes of reducing inequality and increasing social justice about child welfare.. If the Act will pursue Inter-country adoption speedily, will give thousands of family's joy and satisfaction by fulfilling their dreams of a happy family unit. The enactment and reformation of the Juvenile Justice (Care and Protection of Children) Act, 2015 is definitely a significant

effort of the legislature towards recognition of adoption of orphan, abandoned, and surrendered children by people irrespective of their religious status. It can't be denied that it is a secular legislation only under which any person can adopt a child of orphan, abandoned and surrendered child irrespective of his/her religion. It is more children oriented unlike other legislations. The record shows that 21,736 orphan children were adopted in India in last 5 years while 2156 children were adopted by the foreign nationals. These encouraging results show that Law and society working together and trying to make a protective shield of love and affection through Adoption. We should never forget the thrust of the National Policy for the Welfare of Children (1974) that "The Nation's children are a supremely important asset. Their nurture and solicitude are our responsibility".

1 AiR 1984 S.C. 469

REFERENCES

1. Claudia Nelson: Little Strangers: Portrayals of Adoption 2003
2. Diwan Paras : Law of Adoption, Minority, Guardianship and Custody Allahabad, 2nd ed. (2003)
3. Manchanda: Parsi law in India
4. And Dr. Mohd
5. Mitra :Guardianship and Wards Act, 1890
6. Shaw: Encyclopedia of Laws of Child in India
7. Vinita Bhatnagar : Adoption in India Policies and Experiences (2005)
8. Awasthi: Juvenile Justice Act with judgments.
9. Edwards.L.P: "Improving Implementation of the Federal Adoption Assistance and child welfare Act of 1890" Juvenile and b.Family Court Journal (1994) 1-26.
10. Synder :An Over view of the Indian Child Welfare Act" St. Thomas Law Review 7 (1995):815.
11. Eliezer David Jufle : Inter Country Adoption : Law and Prospective of 'Sending' Countries (1995).
12. Jonette Logan and Corole. : After Adoption : Direct Contact and Smith Smith Relationship
13. Lori Carangel : Statistics of Adoption,
14. Jeffreys, Durya P. : Inter country Adoption : A need for andatory medical screening. Journal of Law and Health 11, no 243
15. Strong Stacie : Children's Rights in inter country adoption : Towards a New Goal, Boston University International Law Journal, 13 : 163
16. All India Reporter Supreme Court.
17. www.lawcommissionofindia.nic.in
18. www.adoptionindia.nic.in
19. www.findlaw.com.
20. www.india.gov.in