



## ADOPTION IN INDIA

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### ABSTRACT:

Adoption as a construction of a family has drawn worldwide research since three decades. India as one of the ancient countries in the Asian continent has gone through major changes in the field of adoption. In ancient period, adopting a male child for performing last rites after the death of adopted parents. Now a day's India focused on finding home for abandoned, orphan and surrendered children. These children were institutionalized and eventually placed for domestic and inter-country adoption. In India child is adopted in two ways i. e. under Hindu Adoption and Maintenance Act 1956 and under Juvenile Justice (Care and Protection of Children) Act, 2015. Now a days, important changes have happened in the field of adoption. There are two types of adoption i. e. In-country adoption (Domestic adoption) and Inter-country adoption. After brief history on adoption we focused on procedure of adoption and how the child welfare committee play major role in adoption and what are the CARA guidelines regarding adoption.

**Key words:** - In-country adoption, CARA guidelines, Indian Adoption,

### INTRODUCTION :

"Adoption is the foundation of a parent-child relationship through a lawful and social process other than the birth procedure. It is a process by which a child of one set of parents becomes the child of another set of parents or parent. Indian adoption policies are sculpted, by several years of ongoing efforts by social reform lobbyists and child welfare organizations. This is evident from the laws and policies set forth by the Government of India. Earlier there was policy in Chapter IV of Juvenile Justice Act of 2000 implemented the concept of secular adoption whereby, without any reference to the community or religious persuasions of the parents or the child concerned, a right appears to be granted to all citizens to adopt, and all children to be adopted. But in this process there is lacuna that adoption did not give the legal and legitimate status to the child equal to that of a biological, legitimate child. Later, the Juvenile Justice (Care and Protection of Children Act of 2006) cleared the issue, where the adoption was defined as the process through which the adopted child is permanently

separated from the biological parents and becomes the legitimate child of the adoptive parents with all rights, privileges and responsibilities that are attached to the relationship. This act introduced the expression child in need of care and protection. Through this paper, our purpose is to guide the people how to adopt the child and what is the procedure for adoption of child and what are the changes occurred regarding adoption in India. For that, one should first understand more about the historical perspective of Indian adoption.

### HISTORICAL PERSPECTIVE OF INDIAN ADOPTION

In India, adoption has been practiced for thousands of years. Hinduism being the major religion practiced in India, epics and history has records of saints and royals who were adopted and who did adopt. Ramayana and Mahabharata are the two such great epics of Hinduism which bear references to adoption. Historically, where a lack of male offspring happened, couples went in for embracing a male child to assign him as legal beneficiary. As per

Hindu convention, children are vital and a dead parent's spirit can just accomplish paradise on the off chance that individual has a child to light the memorial service fire, and salvation can be accomplished through children who offer tribal love. To see more, a concise portrayal on adoption practices of two old civic establishments in the historical backdrop of mankind is thought about in the following area to discover the purposes behind adoption.

### **SOCIAL CHANGES IN INDIAN ADOPTION**

Children who became orphans due to abandonment, poverty and wars created a reason for the authorities to look into their wellbeing. Initially such children were automatically included into their families by the next kin, from either side of the family. But when there were no relatives to take care for these children's giving them for adoption was considered to be next best choice. In our country there are large numbers of orphan's with abandoned, surrendered and handicapped children. The adoption of such children may serve important social objects. The child should be protected from exploitation, hazardous jobs and anti-social activities. In developing countries like India adoption need to be accelerated because cores of children are living in inhuman and degraded conditions. In our country the institution of adoption can definitely serve a good social purpose by providing homes to the destitute and the orphan children.

### **ADOPTION LAWS IN INDIA**

The practice and custom of adoption in India dates back to the ancient time. There has been an acute controversy not only among the writer but also among the judges where adoption is having a secular motive which predominates or the religious motive predominates. Under the old Hindu Law, there were many rules relating to adoption which could be supported only on the basis that adoption was a sacramental act, in the presence of submission Hindu Adoption and

Maintenance Act, 1956 has starred of clearly from all the religious and sacramental aspects of adoption and has made adoption a secular institution. All adoption after 1956 are secular and valid and for the validity must confirm the requisite of the act. Moreover, adoption is not permitted in the personal laws of Muslim, Christian, Parsi's, and Jews in India. Perhaps, they usually opt for guardianship and Wards Act, 1890. In Chapter VIII of the Juvenile Justice ( Care and Protection of Children ) Act, 2015 all the citizens of India who are Hindus, Jains, Sikhs, Buddhist, Muslim, Christian, Parsi's and Jews are allowed to adopt a child. And for that the adoption process is monitored by Central Adoption Resource Authority (CARA) which is the nodal agency to monitor and regulate in-country and inter-country adoption and is a part of Ministry of women and child care.

### **IN-COUNTRY ADOPTION**

An individual or a couple who are willing and capable of taking a child in Adoption, who are the residents of India and who have the citizenship of India are called as the prospective adoptive parents of in country. Any such parents/parent/couple who takes a child in adoption through the special child adoption agencies called as CARA and CARINGS is called as In-Country adoption. In-country adoption also called as Domestic Adoption. It also includes Relative Adoption and Step-parent Adoption.

### **INTER-COUNTRY ADOPTION**

Inter –country adoption has added a new social aspect to the institution of adoption more and more people from different countries have started adopting child from rising countries like India but these adoptions are not free from misuse. The existing Indian law for adoption is silent in this regard. The provisions of guardian and wards act 1890 are applied in the context of inter country adoption. The foreigner who wants

to adopt a child have to apply to court for the guardianship of the child. Absence of a uniform law in India and caste prejudices made inter-country adoption more popular than domestic adoption. An individual or parent or couple who are willing and capable of taking a child in Adoption, who are the residents of India or either the Non-residents of Indian Origin and who have the citizenship of India and have also acquired the Foreign citizenship are staying abroad, the process of these citizens adopting an Indian Child is called as Inter country Adoption.

#### **Structuring of inter-country adoption policies in India:-**

The Hague convention of 1993 states that the child, for the full and harmonious development of his or her personality should grow up in a family environment. India signed this Hague convention on inter-country adoption in 2003 and ratified the same with a view to strengthen international cooperation and protection of Indian children placed in inter-country adoption. To restructure the process of inter-country adoption, the (center adoption resource agency) was formed in India in 1986. The role of CARA is to observe and regulate the adoption process which leads to an association of placement agencies (Adoption coordinating Agency) which provide sufficient opportunity to every child to find home within India.

#### **Adoption Rules in India:-**

In India, an Indian, Non Resident Indian (NRI), or a foreign citizen may adopt a child. There are specific guidelines and documentation for each group of prospective adoptive parents. A single female or a married couple can adopt a child. In India, a single male is usually not eligible to be an adoptive parent.

Conditions to be fulfilled by an adoptive parent are as follows:-

1) The prospective adoptive parents shall be physically, mentally, emotionally and financially capable, they shall not have any life threatening

medical condition and they should not have been convicted in criminal act of any nature or accused in any case of child rights violation.

2) Any prospective adoptive parents, irrespective of their marital status and whether or not they have biological son or daughter, can adopt a child.

3) A single female can adopt a child of any gender.

4) A single male shall not be eligible to adopt a girl child.

5) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

6) A minimum age difference between the child and either of the prospective adoptive parents shall not be less than 25 years.

7) The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility of prospective adoptive parents for children of different age groups.

8) The age criteria for composite age of the prospective adoptive parents shall not be applicable in case of relative adoption and adoption by step-parent.

#### **Procedure of Adoption:-**

The new guidelines simplify the entire process of adoption and bring in greater transparency and clarity in the process. The following is broadly the process followed by the Adoptive parents:-

1) The Indian prospective adoptive parents if interested to adopt a child may apply by filling up the online application form and uploading the relevant documents within thirty days on CARA (Child Adoption Resource Authority).

2) After registration, the prospective adoptive parents shall apply to a Specialised Adoption Agency or District Child Protection Unit for conducting the Home Study.

3) The Home Study Report shall be completed within 60 days from the date of submission of requisite documents and such Home study Report shall be posted on the designated portal

within a period of three days from the date of completion of Home Study Report.

4) On the basis of seniority, the prospective adoptive parents shall be referred maximum three referral with one month interval in between two consecutive referrals subject to availability of children through the designated portal.

5) After viewing the profile of the child on the designated portal, the prospective adoptive parents may reserve the child and if they fail the child shall be released by designated portal for other prospective adoptive parents in the waiting list.

6) If the child is selected by the adoptive parents the entire process shall be completed within thirty days from the date of reserving the child.

7) After completing all the process the specialized adoption agency shall file an application with the District Magistrate (Collector) through the District Child Protection Unit where the child is located.

8) The District Magistrate shall hold the adoption proceeding in-camera and dispose of the case within two months from the filing of the application.

9) The Specialised Adoption Agency shall apply to the birth certificate issuing authority for obtaining the birth certificate of the child within five days from the date of issuance of adoption order, with the name of the adoptive parents and same shall be issued by the issuing authority within five days from the date of receipt of the application.

10) In Inter-country adoption, the foreign prospective adoptive parents can approach to the Authorised Foreign Adoption Agency or the Central Authority

11) After registration the profile of the one or two referral with one month interval between two consecutive referrals shall be forwarded to the prospective adoptive parents and the

prospective adoptive parents may reserve the referred child within ninety-six hours.

12) After that the authority shall issue No Objection Certificate in favour of the proposed adoption within ten days from the date of receipt of the acceptance of the child by the prospective adoptive parents and the letter of approval as per the Article 5 and 17 of the Hague Adoption Convention and No Objection Certificate shall be generated online through the Designated Portal. And the legal process same as discussed before.

### **CHALLENGES IN DOMESTIC ADOPTION**

Although state approved agencies are providing adoption, the fact is that private adoptions are still taking place in some hospitals through agents and with unorganized sectors. Most of the times, adoption agencies are perceived to be “money makers” and so they are constantly put under “scanner” by the whistleblowers. There is a lack of consistent and complete data in some states which makes it difficult to conduct research studies. International Journal of Pure and Applied Mathematics Special Issue 4328 If and when there is a budget downturn, many of the agencies who are normally responsible for collecting data may find it difficult to continue their work. As opposed to the Western nations, Indian culture does not empower "open adoption". Since India takes after "shut adoption", classification about the birth parent/s isn't uncovered. Starting today, it is watched both in country and a few families in urban regions, new parents are additionally not open to enlightening their children concerning the adoption status. If a child accumulated this data from others, the trust could turn into a noteworthy issue in parent child relationship. Single parent adoptions are legal, yet there is no study or evidence of any increase in single parents who have adopted children. There are no data available on the success rate of single parent adoption. Clinical experience of the creator is that over liberality and over defense

are two wonders that are normal in assenting child rearing. Despite everything they think about that, these children who have landed because of unique conditions require extraordinary methods for taking care of which may be not the same as organic child raising practices.

#### **FUTURE OF DOMESTIC ADOPTION**

Earlier Family courts should move towards 'child well disposed' arrangements to finish the adoption process and stay away from time slip by. The Judicial Academy should give periodical preparing to the District Court Judges on delicate treatment of adoption cases. But Ministry of Women and Child Development issued notification on 23rd September 2022 and introduce new policy guidelines for inter-country adoption, in- country adoptions and inter-country relative adoption. All the application for order of the adoption should be filed before the District Magistrate and the District Magistrate shall take the decision within two months after filing the application. No Objection Certificate [NOC] from CARA is made mandatory in case of all inter- country adoption, before placement agency process the application before the District Magistrate.

#### **CONCLUSION:**

Adoption in terms of living in society may be the most prosperous way. Adoption is a personal choice, adoptive parents need help with queries regarding parenting, families, dealing with community and school. The chance for a child finding a family is something to have the courage to hope for. Adoption agencies are now functioning as organized sectors closely monitored by the state and central government. Domestic adoption has gained its motion once the government of India got involved in monitoring and regulating inter-country adoption laws. The psychological effects of adoption are challenging in every aspect, but dealing with social workers and counselor will

help families build upon their future. In Juvenile Justice (Care and Protection of Children) amendment Act, 2021 a term “foster care” introduced. Foster care means placement of a child for the purpose of alternate care in the domestic environment of a family other than the child’s biological family. But it is offered on the request of the family.

Post adoption counseling in the form of aftercare is currently available but is offered to the parents only on request. It is recommended that post adoption counseling is mandated to assist and guide parents with the change in their roles and coping with parenthood. Another important component is that the mental health community needs to be sensitized about adoption process and the psychological impact of couple who are childless and who go through adoption. Based on the current trend, it may be implied that there will come a need in future to introduce adoption therapy training.

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