

REVISITING THE ADOPTION LAW. CASE STUDY WITH REFERENCE TO ILLEGAL ADOPTIONS IN INDIA

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Abstract:

Adoption is the legal deed of permanently placing a child with a parents other than the biological parents. Adoption is process which separating of the parental responsibilities, duties and rights of the biological parents and the assigning of those responsibilities and rights onto the adoptive parents. It is a worldwide institution. Almost every religion in the world contain some reference or other to adoption. Practice of adoption is being followed since many decades but the law for adoption came in the 19th Century. in India, law governing adoption that is Hindu Adoption and Maintenance Act, 1956, and Guardians and Wards Act,1890. In contemporary world, the concept of adoption has changed from providing child to childless to providing home to homeless. The Government of India have taken steps to make a uniform law for adoption but it gets failed due to hue and cry in masses.

This paper focuses on the adoption laws which are governing the adoption in India while referring the illegal adoption issues prevailing in India and how uniform civil code is necessary in the area of adoption.

Keywords: Adoption, illegal adoption, children

Introduction:

“Every child has a right to a family and there is no better a therapy for parentless and homeless children than adoption”.

Deepak Kumar Varma¹

Child is the greatest gift of god on the earth for the couple blessed with. A married couple are expecting the birth of a new generation that will bring happiness in the home and it complete

¹ Deepak Kumar Varma: Hindu Adoption Laws & Interpretation By Different High Courts.p1
<http://www.nja.nic.in/2.%20Hindu%20Adoption%20Law%20and%20Judicial%20interpretation-%20Deepak%20KR.Verma.pdf>

the family. Even Kids are expected to be successor to his family. Unfortunately, there are some couples who are not blessed with child of their own. Such kind of parent can too experience the parenthood by the way of adoption of a child. childless couple can also shower their love affection and raise the children as parent by adopting the orphan. Adoption is such a noble and generous deed it fills the gap in both orphan and childless couples in each other life. Adoption is the legal process of permanently giving a child to a parents other than the biological parents. Adoption results in the separating of the parental responsibilities, duties and rights of the parents and the placing of those responsibilities and rights onto the adoptive parents. Adoption is a worldwide institution. Almost all religions in the world contain some reference or other to adoption.

In India it is seen in last thirty decades Adoption turn into a cruel act. Nowadays adoption become a one of form of children trafficking. After 1980s There is unbelievable increase in child trafficking under cover of adoption and the sensitization that the human rights and legal framework for adoption was wholly inadequate to avoid children being “*illegally adopted*” as a outcome of illegalities at various stages in the adoption process.²

Research Methodology:

This research study is doctrinal which contain review of literature and information collected from various sources. The material or data related for this research is taken from both primary as well as secondary sources.

History of Indian adoption:

In India, adoption has been practiced for thousand years. Historically, when there is lack of male offspring occurred, couples went for adoption of a male child to title him as a lawful heir after the death of the adoptive parents. According to Hindu tradition if person has a son to light the funeral fire then salvation will be easily achieved through sons who offer ancestral worship. In ancient systems of law only Romans and Hindus provided for an organized institution of adoption. Under both these systems primary objective of adoption was to provide a child to childless and continue the line.³

² Nigel Cantwell, The sale of children and illegal adoption, Terre des Hommes Netherlands,8 (2017)

³ Piyush Kakkar, Adoption in India –The Past, Present and Future Trends, VOLUME 6 I ISSUE 2 E ISSN 2348 –1269, 718i, 2019 http://ijrar.com/upload_issue/ijrar_issue_20543814.pdf

*According to Manu: "An adopted son is not liable to take the family name and estate of his natural father, the funeral cake follows the family name and the estate the funeral offerings of him who gives the son in adoption cease as far as that son is concerned"*⁴

Adoption law in India:

In India there is no general law for adoption, it is regulated by the personal laws of the community. Among Hindus adoptions are regulated through the Hindu Adoptions and Maintenance Act, 1956. The Act does not cover adoptions for Muslims, Christians, Parsees, and Jews. These communities do not have personal laws for adoptions except a section of Muslims. The other communities indirectly invoke The Guardian and Wards Act, 1890 to obtain guardianship of the child during minority, but do not deal with adoption as such.

1. Hindu Adoption and Maintenance Act 1956:

Adoption according to Indian law is a matter of personal laws and hence is governed by various legislations. The adoptions in Hindu Law are governed by the Hindu Adoption and Maintenance Act, 1956. The Act applies to all who are by religion Hindus, including Buddhists, Jains, and Sikhs and any person who is not a Muslim, Paris, Jew or Christian. Under this Act, following persons can make adoptions:

- i) **Section 7:** Any male Hindu, who is of sound mind, not a minor and is eligible to adopt a son or daughter, but if the male has a living spouse at the time of adoption, the consent of his spouse is mandatory.
- ii) **Section 8:** Any female Hindu, who is not married or if married, her marriage has been dissolved or whose husband is not alive or her husband has been declared incompetent can adopt a son or a daughter.
- iii) **Section 11:** In case a biological child already exists in the family, then the adoption of the child of opposite sex is allowed. Where there is an adoption of male child by female, then the female shall be at least 21 years older than the son. Where there is an adoption of a female child by male, then the male shall be at

⁴ G. Buhler, Laws Of Manu, Published By Library Of Alexendria,(2008) Retrieved on 3rd April 2020 from <https://books.google.co.in/books?id=rmLJtLYnKY0C&printsec=frontcover&dq=the+law+of+manu+publisher&hl=en&sa=X&ved=0ahUKEwiXi8zTnMzoAhWXbisKHfZgAIMQ6AEIOTAC#v=onepage&q&f=false>

least 21 years older than the daughter. The adopted child has the same rights as the biological child. Adoption under this Act is irrevocable.⁵

2. Guardians and Wards Act, 1890:

As there is no general law for adoption and the personal laws of Muslims, Christians, Parses and Jews does not recognise the concept of complete adoption. Under this Act who is desirous of a child can become a guardian of the child until it comes to 21 years of age. This Act however does not provide any adoptive rights to the guardian and the only relationship which exists is of Guardian-Ward between the parents and the child. Unlike the Hindu Adoption and Maintenance Act, 1956, this Act does not confer the status of the biological child on the child so adopted.

3. The Juvenile Justice Act, 2000:

In 2000, the parliament of India passed the Juvenile Justice (care and protection) Act, 2000 to protect and safeguard the interests and welfare of the children in need of care and protection. Amendments have been made in the existing Act, 2000 to show greater sensitivity to the needs and rights of child. The Juvenile Justice (care and protection) Act, 2006 has been introduced with the objective to give adoptions a child friendly approach. It widened the definition of 'child in need of care and protection' by including 'abandoned' and 'surrendered children' and 'a juvenile found begging', 'a street child' or 'a working child'. Under this Act, there is no bar to religion for adoption. The provisions of this Act apply to all Indian citizens.

4. Central Adoption Resource Authority:

CARA is an autonomous and statutory body under the Ministry of Social Justice and Empowerment, Government of India. It was established on 20th June 1990, to deal with all the matters concerning adoption in India. Its function is to mandate and regulate both in-country and inter-country adoption of children in India. CARA is designated to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by Government of India in 2003. CARA mainly deals with adoption of orphan,

⁵ Hindu Adoption and Maintenance Act 1956

abandoned and surrendered children through its associated /recognised adoption agencies⁶

Children Adoption Trafficking in India:

Adoption trafficking is basically buying or abducting infants from their biological parents and selling them too eager childless adoptive couples. Similarly, major motive is financial gain is closely associated with child trafficking where children are reduced to commodities and exchanged at illicit black markets. The buying and selling of babies is not peculiar in world such type of incidents has been recorded in many parts of the world at different points in time. India, Spain, China, Chad, Ethiopia, Guatemala, and United States of America are examples of countries where issues bordering on the buying and selling of babies have been discovered in the past. Children have been considered as commodities to be bought and sold. It is generally contended that children are among the most precious resources, and like all other precious assets, they are being traded across borders.⁷

While describing the illegal baby adoption scandal in Andhra Pradesh, India, Smolin (2004) states that illegal orphanages usually send scouts to purchase infants from their impoverished birth parents in rural areas. These orphanages, place such children for adoption to a family in the United States, and then, receive an adoption fees that is more than ten times higher than what they had paid for them.⁸ There is no estimation of how big the illicit market for adoption is, officials say. “*every year a large number of children go missing in India, and the number of infants is huge,*” said Bhuwan Ribhu, an activist in child rights “It shows that there is a big illicit adoption market.”

There are number of instances where it is seen Traffickers easy targets are poor families, to keep up with the demand of children on the illegal black-market and to make money out of

⁶ Press Information Bureau Government Of India Ministry Of Women And Child Development, Central Adoption Resource Authority (CARA), 22-March-2013, retrived on 3rd april 2020 from <https://pib.gov.in/newsite/PrintRelease.aspx?relid=94192>

⁷ USMAN ADEKUNLE OJEDOKUN and EWERE NELSON ATOI: BABY FACTORY SYNDICATES: AN EMERGING CHILD ADOPTION RACKET IN NIGERIA , Vol.19 No.1 AJPSI 47, 49-50 (2016)https://pdfs.semanticscholar.org/75f6/eb51491ca852130babe45f7dadd4f5399712.pdf?_ga=2.19728824.1406594857.1580654907-1165261278.1579684718

⁸ David M. Smolin, The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals Vol. 35 *SETON HALL LAW REVIEW* 403 ,450-456 (2004).

it. Another 'easy target' for traffickers are those mothers, who are unwed or became pregnant after an unlawful affair. Those single mothers can often not provide their new-born with needed resources and therefore choose to sell their child in the fastest way, namely illegally. When a single mother decides not to sell her baby, the family will step in to prevent a shame on the family name by selling the new born. However, it can also occur that the father or other close family member sell a child without the approval of the mother. Often in such cases, the mother did not even know about the adoption up until the point in which her child was gone. There are number of instances found where children are either stolen, abducted or sold and these illicit activity lead to manufacturing the orphan⁹ and This happened to "Sunama, mother of Akil and Sabila in Chennai India, in 1996"¹⁰. Her husband sold their two children aged 2 and 3 to child traffickers. Sunama had no idea her children whereabouts whether they are alive or dead. Sunama's children Akil and Sabila were trafficked, and sold to an orphanage, which was run by a charity. The children were adopted by a loving Austrian couple, the Julia Rollings, adoptive mother which been told that the biological parents of Akil and Sabila abandoned them due to illness. After a few years in Australia, the Julia Rollings found out that the orphanage where Akil and Sabila came from, was linked to a kidnapping scandal. They imminently became suspicious and took action into their own hands. After a long time of research, they found the biological mother of their two children and contacted her. They eventually told the truth to their children and arranged a trip with Akil and Sabila to India to reunite with their birth mother. As you can see, this story ended well. But sadly, not all incidents regarding illegal adoption do¹¹.

Arun Dohle, who runs Against Child Trafficking, NGO said":

"You can buy a baby from a nursing home, with birth certificate containing your name as the parent and everything is fine."

⁹ Gita Aravamudan ,*Child trafficking, 'manufactured orphans': The dark underbelly of inter-country adoption in India* Firstpost(Sep 03,2017) <https://www.firstpost.com/india/child-trafficking-manufactured-orphans-the-dark-underbelly-of-inter-country-adoption-in-india-4000837.html>

¹⁰ Exposing India's Illegal Baby Trade [Video file]. Retrieved on February 19, 2019, from <https://www.youtube.com/watch?v=-pFG91aGX8>

¹¹ <http://globalasiablog.com/2019/03/01/the-desire-of-many-prospective-parents-fuels-the-black-market-in-india/>

The story of Kanon Sarkar confirms the above Arun Dhole statement “July 2014, gave birth of her baby girl named Onya. A few hours after giving birth, a doctor announced that baby Onya had medical problems and needed to be treated in a hospital. The next day, the baby was declared dead without a decent explanation and cause of death. Two and a half year later, a local newspaper announced that a large baby-trafficking network was discovered in India. The family Sarkar read the article and recognized the name of the doctor who had delivered their baby girl Onya as one of the doctors who was arrested for this crime. The family realised their baby girl was not dead, but had been trafficked for adoption” (News Deeply Contributor, 2017)¹²

In 2018, illegal adoption racket uncovered in state of Jharkhand Missionaries of Charity established by Mother Teresa, Shisu Bhawan. Police arrested the heads of an adoption centre that was selling children to foreign couples for between \$12,000 and \$23,000 per child.¹³ Two persons including a nun of the Missionaries of Charity have been arrested for selling children, Police questioned two nuns – Konsilia and Meridian. According to police, they have admitted to their crime. Police have also found 13 pregnant girls staying in the charity home. According to police, six newborn babies have been sold to childless couples in the last one year. The selling of children came to light when the couple, who had taken a newborn baby from the charity home, complained that they had paid Rupees one lakh and twenty-two thousand for medical care and delivery of the child. They brought the newborn baby in May. However, the baby was taken back by the charity home with assurances of returning it back after court procedures. The adoptive couple complained to the Child Welfare Society after they failed to get the child. Police are investigating the case. According to police, the incident is a case of disastrous form human trafficking”.¹⁴

¹² News Deeply Contributor. Black-Market Baby Trade Flourishes in India After Adoption Law Reform. News Deeply. (2017). from <https://www.newsdeeply.com/womenandgirls/articles/2017/06/15/black-market-baby-trade-flourishes-in-india-after-adoption-law-reform>

¹³ India arrests heads of adoption centre over trafficking at least 17 children 22 FEBRUARY, 2017
Read more at <https://www.todayonline.com/chinaindia/india/india-arrests-heads-adoption-centre-over-trafficking-least-17-children>

¹⁴Indrajit Kundu, Jharkhand whistle blower who exposed child selling racket at Missionaries of Charity 4 years back, only to be shunted out, India today, (Sept. 7, 2018)

<https://www.indiatoday.in/india/story/exclusive-meet-the-whistleblower-who-exposed-child-trafficking-at-mother-teresa-s-missionaries-of-charity-1283328-2018-07-12>

Illegal child adoption such heinous and inhuman crime occurring because of international adoptions were largely unregulated until the 1980s and 1990s when several human trafficking stories, including the purchase and sale of babies, made headlines in the international media. Report on illegal adoption by The United Nations Economic and Social Council Commission on Human Rights“ says that international adoption involves a variety of criminal offences, including the buying and selling of children, falsification of documents, kidnapping of children, and housing of babies awaiting private adoption” .¹⁵

India is not only country which facing such heinous illegal activity many countries like Guatemala, “illegal adoptions continue to flourish despite regulations,” and that “the majority of stolen babies are sold for adoptions or for their organs.”¹⁶ In Spain, over 300,000 babies were stolen from their parents and sold into adoption over a period of five decades.¹⁷

Global adoption is a big industry, fraught with loose regulations and profit incentives that made it a target for kidnapers, human traffickers, despite many countries started banning all foreign adoptions, but the problem has continued. Kidnappers continue to fuel the trade, and adoption agencies continue to hide behind the laws.

Findings: Reason behind Children Adoption Trafficking in India:

India is a big market in illegal adoptions because of the high demand for adoptive children in which a lot of money can be made. India is an overpopulated country with many unwanted children and poverty, impoverishment. According to The Indian Society of Assisted Reproduction, presently infertility rate is about ten to fourteen percent of the Indian population, with higher rates in urban areas 27.5 million are those couples whose actively trying to conceive suffer from infertility in the country. Those aspects contribute to the power

¹⁵ United Nations Rights of the Child, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 34th Human Rights Council, (2017)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/24/PDF/G1644024.pdf?OpenElement>

¹⁶ Erin Siegal McIntyre: "The U.S. Embassy Cables: Adoption Fraud in Guatemala, 1987-2010" The Schuster Institute for Investigative Journalism, Brandeis University' <https://www.brandeis.edu/investigate/adoption/us-embassy-cables-reveal-adoption-fraud-in-guatemala.html>

¹⁷ P Dunbar, 300,000 Babies Stolen from their Parents - and Sold for Adoption: Haunting BBC Documentary Expose, 50-year Scandal of Baby Trafficking by the Catholic Church in Spain. *BBC*, (16 October 2011).

<https://www.dailymail.co.uk/news/article-2049647/BBC-documentary-exposes-50-year-scandal-baby-trafficking-Catholic-church-Spain.html>

of black market adoptions The government's Central Adoption Resource Authority (CARA) adoption statistics show that while in 2018-2019, there were only 3374 in-country adoptions and 653 Inter-country¹⁸ where as 20,000 parents in line waiting to adopt. According to CARA annual report approximately 50,000 orphans across India, according to NGOs, and about 30 million infertile couples.¹⁹

Adoption experts say India's exhaustive adoption laws coupled with long waiting lists, corruption and are fuelling black market of adoptions. Similarly, the inadequate child adoption law in India is also a strong driver in the issue of child adoption trafficking. Currently, apart from the fact that there is no unified adoption legal system, there is principal agency CARA specifically charged with the responsibility of regulating child adoption process in India but it's not working efficiently. As a result of this, criminally minded individuals are capitalizing on the existing lapses in the process to operate illicit child adoption centres. Currently, there is no uniform child adoption law in India.

Suggestion:

- **Need of uniform adoption law:** It is high time to India to make a uniform adoption law. A uniform law adoption which run on every religion. In las few years we have seen tremendous improvements in the adoption laws but lack of uniform code has resulted in many childless couples who really very keen to raise orphan children as same as their own biological children not being able to adopt a child. If these couples were to be permitted to adopt a child then it's unimaginable the number of children that would have a window to a better life including a bright future without any gender bias in the adoption of a child. this will also lower number of orphans living in oranges. There is around 30 million abundant or orphan children's in country in 2017²⁰

¹⁸ CARA Annual report 2018-2019,

[http://cara.nic.in/PDF/annual/Annual%20Report%20of%20CARA%20for%202018-2019\(English\).pdf](http://cara.nic.in/PDF/annual/Annual%20Report%20of%20CARA%20for%202018-2019(English).pdf)

¹⁹ Rama Lakshmi, India moves to speed up adoption, The Guardian, Mon 30 Mar 2015

<https://www.theguardian.com/world/2015/mar/30/india-delhi-speed-adoption-orphans>

²⁰ Shreya kalra, Why India's adoption rate is abysmal despite its 30 million abandoned kids, Business standard report, October 30, 2018 https://www.business-standard.com/article/current-affairs/why-india-s-adoption-rate-is-abysmal-despite-its-30-million-abandoned-kids-118103000218_1.html

- **CARA need to take measures:** CARA need to adopt a unique format through which agency can keep eye on children so that issues of missing of several orphan children from orphanages will some point be solved. Government should regularize the orphanages to maintain the attendance of orphan children biometrically on daily basis and updates the same attendance report to the authorised agency who will monitored data the children as well as orphanages too.

Conclusion:

Trafficking among children is a grave and heinous crime. It is persistently being an international and national issue. Eventually, child illegal adoption one of the different forms of trafficking influence every single country of this universe. It requires integrated and multidisciplinary techniques and strategies to address the complexity of the trafficking in persons.

National and state governments, non-government organizations, and civil society organizations have to play an important and significant role together to eradicate the most abusive and vulnerable form of trafficking exploitation. In fight against child trafficking, need of proper and timely monitoring and evaluation of policies & legislations to combat this offence. Other side, stringent punishment must be given to pimps and traffickers.

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