**A CRITICAL ANALYSIS ON ADOPTION UNDER THE JUVENILE JUSTICE Act , 2015**

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**Abstract**

Adoption has been practiced for thousands of years in India, Ramayana and Mahabharata, the two great epics, bearing references to it. Not only to a child who is without home but also to a couple who cannot conceive a child, adoption gives them a ray of hope. Moreover, seeing adoption as an effective solution to overpopulation, many couples are making it their first choice.

India as one of the ancient countries in the Asian continent has gone through major changes in the field of adoption. From an informally adopting male child for performing last rites after the death of the adopted parents, India has shown progressive changes. During the social reform in the 1950’s, India focused on finding home for abandoned, destitute, illegitimate and surrendered children. These children were institutionalized and eventually placed for domestic and inter-country adoption. The domestic adoption in India gained its momentum only in late 1980’s. Since then, important changes have happened in the field of adoption.

To have a kid is a parent’s biggest happiness. Adoption seems to be the most effective way of achieving this joy. It arises as to the universal cure to those who dream of children’s plight. Adoption can be the loveliest option not only for single parent and childless couples but also for homeless kids. It enables a parent child relationship to be established between people not biologically related. In India, there is only one personal law pertaining to adoption which is the Hindu Adoption and Maintenance Act 1956. Other personal laws like Muslim, Parsi, and Christian do not have provisions for Adoption. This paper throws light on provisions of law under the Juvenile Justice Act, 2015 with respect to adoption and also the advantages and disadvantages of adoption.

Keyword words: Inter-country, parent-child, Child welfare, domestic 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 procedure by which a child of one arrangement of guardians turns into the child of another arrangement of guardians or parent. According to Richard Bach “The bond that links your true family is not one of blood, but of respect and joy in each other’s life”. It is observed by many that for the utmost development and betterment of a child, adoption is the best option.

Adoption has an impact on more than just the adopting family. Adoption is an act that not only impacts the child who is being adopted, but their family, extended family, and community. It is also generational, as it will impact the future generations of the family. Adoption consists of the origination of the relationship between the parent and the child who aren’t naturally related to each other. The adopted child is able to enjoy the rights, privileges, and duties of a child through the help of the adoptive family.

In the past, adoption was viewed primarily as a means for a childless married couple to “normalize” their relationship. The focus has switched; however now, adoption is ordinarily seen as an institution that exists to support to place children into improved environments. As times have changed so has adoption during the recent years with the arrival of judicial activism and proper enactment of laws, adoption is no longer seen as a tool for a couple to “normalize” marriage but to give a homeless and parentless child his right to have a parent and standard of living.

Indian adoption approaches are engraved by quite a long while of continuous attempts by social change activists and child welfare associations. This is clear from the laws and approaches put forward by the Government of India. A later policy in the Section IV of the Juvenile Justice Act of 2000 executed the idea of mainstream adoption. To effortlessness, the process of adoption of orphaned children and bring in greater clarity in the process, the Government of India has issued amended guidelines for adoption of children in August 2015. In agreement with the provisions of the constitution and international commitments the Indian government formulated National Policy on Children, enacted Juvenile Justice Act, 2015 and ratified the UN Convention on the rights of the child and the national plan of action on children to ensure that childhood is protected against exploitation and against moral and material abandonment.

**Review Of Literature**

In the book, “Adoption in India: Policies & Experiences‟ by Vinita Bhargava, it researches child adoption in India and challenges prevalent in theories of adoption. In the book, “Sociology of Adoption” by Elfreeda Momin, it states that Cultural Norms and practices related to adoption vary from society to society. The book, “Child Rights in India Challenges and Social Action” by Geeta Chopra, is a comprehensive compendium on child rights in India from a child development perspective.

**Research Methology**

The research paper uses the descriptive method of study the secondary sources are given more importance in this paper. The secondary sources of information used are the articles of research journals working papers thesis and books of famous sociologist and e-sources are referred

**Objective**

1. To study policies and legal guidelines adoption under Juvenile Justice Act, 2015

2. To study adoption scenario in Domestic as well as Inter Country Adoption.

3. To study Merits and Demerits of Adoption.

**What Is Adoption?**

Adoption comes from the Old French word adoptare, meaning "to choose for one.” Adoption is the noun form of adopt, so it not only refers to legally taking another person into your family, it can be any time you take something on as your own.

Adoption is the act of taking something on as your own. Adoption usually refers to the legal process of becoming a non-biological parent, but it also refers to the act of embracing ideas, habits, or free kittens.

Section 2(2) of J.J Act[[1]](#footnote-1)“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 the rights, privileges and responsibilities that are attached to a biological child.

CARA[[2]](#footnote-2) defines “adoption” as a legal process that allows someone to become the parent of a child, even though the parent and child are not related by blood. But in every other way, adoptive parents are the child's parents.

**Why Adoption?**

Adoption gives optimistic parents the chance to upraise a child they wouldn’t have otherwise.

For husband and wife struggling with infertility, adoption is a assurance way to add a child to their family, without the emotional and financial risk engrossed in IVF treatments.

Adoption let a couples and single adults to share their life with a child and enjoy the distinctive experience of parenthood.

Adoption constructs pleasing, significant relationships between adoptive families and birth parents.

Adoption comes up with loving, stable homes to children who are in need.

Some parents with disorders or diseases know that there is a high possibility of passing them along to their child, so they opt to adopt instead.

LGBTQ couples cannot have genetically related children naturally. The IVF process will only permit one parent to be genetically relation with the child. So, one good reason to adopt a child is that adoption makes a way for these couples to be the parents they have always dreamed about being.

**Legislations And Authorities Related To Adoption**

The following legislation, Authorities or directives are to be complied with in respect of adoption of orphan, abandoned or surrendered children.Juvenile Justice (Care & Protection of Children) Act, 2015 and Central Model Rules promulgated under this Act.

The Juvenile   Justice (Care & Protection of Children) Act, 2015, aims to focus and change the law related to Juvenile’s i.e. children who are supposed & found to be in conflict with the law & children in need of Care & Protection by fulfilling their basic necessities through proper care & nourishment, protection, treatment, social integration, trainings and also by adopting a child-friendly approach. Sections 56 to 73 of the Act deals with adoption.

CARA shall be facilitating all adoptions under the JJ Act, 2015 through Child Adoption Resource Information & Guidance System (CARINGS) and all kinds of adoptions, including adoptions by relatives shall be reported to CARA which would enable safeguards for all adopted children by maintaining their record and ensuring adoption.Central Adoption Research Authority (CARA)

It is a nodal body of the Ministry of Women and Child development, and it monitors and manages in country and inters country adoptions. It was integral because India was a party to the multilateral Hague Convention and the authority also control orientation programs and training.

Central Social Welfare Board (CSWB) and Rashtriya Mahila Kosh (RMK) are similarly two bodies set up by the same Ministry to certify the protection of the social welfare of women and children.

It is the Central Authority of India, which is mandated to promote & facilitate domestic adoptions, regulate inter-country adoption and frame Adoption Regulations as per Section 68 of JJ Act(C&PC), 2015 State Adoption Resource Agency (SARA). The State Government shall set up a State Adoption Resource Agency for dealing with adoptions and related matters in the State under the guidance of Authority. Hague Convention on Inter-country adoption ratified by India in 2003. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) is an international treaty that provides significant safeguards to protect the top interests of children, birth parents, and adoptive parents in inter country adoptions.

**Who Can Be Adopted?**

Children up to the age of 18 years can be adopted Section 2(12). According to Section 56(1), a couple or a single parent can adopt an orphan/ abandoned/surrendered child. Also, children of relatives can also be adopted by In-country parents (Section 56(2)) and by Inter-country parents as well. (Section 60).Orphan child: a child deprived by death of one or usually both parents

Abandoned child: a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry Surrendered child: a child who has been given up by their biological parents due to physical, emotional and social factors beyond their control and is declared as such by the Child Welfare Committee.

**Who May Adopt?**

Eligibility of the Prospective Adoptive Parents (PAPs) According to Section 57 of the Act:

Must be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him. In case of a couple, consent of both the spouses necessary for the adoption.A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.A single male is not eligible to adopt a girl child. No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:

|  |  |  |
| --- | --- | --- |
| Age of the Child | Maximum composite age of PAPs (Couple) | Maximum age of the single PAP |
| Up to 4 years | 90 years | 45 years |
| Above 4 years and below 8 years | 100 years | 50 years |
| Above 8 years and up to 18 years | 110 years | 55 years |

The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

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

Couples with three or more children shall not be considered for adoption except in case of special need children, hard to place children and in case of relative adoption and adoption by step-parent.

**Process Of Adoption In India**

Step 1 – Registration

Prospective adoptive parents require to get registered with an authorized agency. Recognized Indian Placement Agencies (RIPA) and Special Adoption Agency (SPA) are the agencies which are permitted to make such registrations in India

Step 2 – Home Study and Counseling

A social workman for the registration agency will go to see the home of the prospective adoptive parent in series to do a home study. The agency might also require the parents to go to see counseling sessions. As per CARA regulation, the home studies are required to be completed within 3 months from the date of registration. The closure from the home study and counseling sessions is then reported to the honorable court.

Step 3 – Referral of the Child

The agency shall be familiar to the interested couple whenever there is a child ready for adoption. The agency will share medical reports, physical examination reports and other relevant information with the couple and also permit them to spend time with the child once they are comfortable with the details shared.

Step 4 – Acceptance of the Child

Once the parents are agreeable with a child, they will have to sign a few legal papers Concern to acceptance of the child.

Step 5 – Filing of Petition

All necessary documents are presented to a lawyer who draws up a petition to be presented to the court. Once the petition is completed, the adoptive parents will have to go to the court and sign the petition in front of the court officer.

Step 6 – Pre-Adoption Foster Care

Once the petition is signed in the court, the adoptive parents can take the child to a pre-adoption foster care centre and recognized the habits of the child from the nursing staff before taking the child.

Step 7 – Court Hearing

The parents have to attend a court hearing along with the child. The judge may ask a few questions and will mention the amount which needs to be invested in the name of the child.

Step 8 – Court Order

Once the receipt of investment made is shown, the judge shall pass the adoption orders.

Step 9 - Adoption order and birth certificate

A certified copy of adoption order is forwarded to the prospective adoptive parents and request for the birth certificate of the child is filled to the issuing authority, with the name of adoptive parents as parents, and date of birth as recorded in the adoption order.

Step 10 - Follow Up

Post completion of the adoption, the agency needs to submit follow up reports to the court on the child’s well-being. This may continue for 1-2 years.

**Inter Country Adoption**

The issue of Inter-Country adoption was first uplifted after the Korean War when hundreds of children faced ostracization in Korean society for having being fathered by Americans. In this situation, many Americans stepped in and adopted many babies to allow protection and bring them up with the love and care every child deserves. India had always been regarded as a state that was inter-country adoption friendly. However, a report published by THE Mail (London) which disclosure that hundreds of not needed babies were being transported from the slums of Calcutta to the U.S.A. opened the eyes of all Indians to the horrors of Inter-Country adoption without any reasonable rules. The paper also reported the death of Nathan, a two-month old baby who died of dehydration on arriving in New York. Based on these events a lawyer sent a letter to the Supreme Court which the Court serves as a petition and issued many guidelines related to foreign adoptions in India.

Thus, the petition of Laxmi Kant Pandey v. Union of India[[3]](#footnote-3) came about. In this case, the Court issued the following guidelines:

Only governmental acknowledged agencies should be given responsibility with the task of examine carefully applications by foreign parents who want to adopt Indian children.

Antecedents of the application should be verified, viz., their family background, financial status, health, etc.

Preferably, the child should be given for adoption before he or she completes the age of three, though there can be no hard and fast rule on this.

A progress report of the child along with a recent photograph, quarterly during the first two years, and half yearly during the next three years, should be provided.

The parents should either deposit or enter into a bond for a certain amount, to enable the child to be repatriated, if needed.

The entire proceedings on the application should be kept in private and as soon as the order is made on the application, the papers and documents should be sealed.

Payment of certain amount to the scrutinizing agencies for their services such as Formulation of certain procedure for prevention of illegal trade of babies.

Maintenance of a consolidated list of prospective Indian parents who wish to adopt, No notice to be published in regard to any adoption application whether it is for foreign adoption or adoption under the Hindu Adoptions and Maintenance Act, 1956.

The time required for processing of the adoption application to be reduced.

The limit of reimbursement of expenses incurred by recognized placement agencies to be raised to Rs.6, 000 and so on.

Even while elaborate guidelines have been evolved by the Government in 1995, for regulating the adoption of children by parents out of the country, yet the procedural wrangles, including delays and technicalities, could dissuade and discourage even genuine couples from adopting abandoned, destitute children.

It has to be noted that India became a signatory to The Hague Apostille Convention on 2007, to facilitate ‘Inter-country Adoption.

**Difference Between Intra Country And Inter Country Adoption**

An individual or a couple who wish 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 parent/parents/couple who takes a child in adoption through the special child adoption agencies called as CARA and CARINGS is called as Domestic adoption.

Whereas an Individual or parent or couple who wish 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 a is called as Inter country Adoption.

Where an Indian citizen have applied for child adoption with CARINGS when they were in India under the category of In-country adoption. Later on after application, have been granted a foreign citizen ship, as such are residing in a foreign country, are the Overseas Indian citizens. There is a separate category for making an application for adoption In-country and Inter Country adoption. Due to the change in the citizenship the CARINGS have not considered the application made under the category of In-country adoption, though they were intimated the confirmation of adoption of a child which is declared legally free for adoption. Later on due to the change in the citizenship of prospective adopting parents the adoption was not given. As such the Adoption regulations 2017, which superseded the (Adoption regulations 2015) does not provide any proper mechanism for such circumstances as regards the application made prior to acquiring foreign citizenship. The Supreme Court has said that as there is no mechanism in the regulation in such a situation, thus the first registration for adoption cannot alter the legal position of acquiring the foreign citizenship by an Indian.

Domestic adoption case is filed u/s 58(3) whereas in inter country it is filed u/s 59(7) or 60 of the Act. In domestic adoption pre adoption care foster is given but in inter country adoption it is not given. For inter country adoption the children are free for the purpose after sixty days whereas no such barrier is in Domestic Adoption.

**Judgments**

Shabnam Hashmi v. Union of India,[[4]](#footnote-4)

In this case the petitioner was a Muslim who had adopted a young girl when she was young. She filed the petition for acknowledging the right that a person belonging to any religion could adopt a child since the Muslim law did not permit for adoption.

A three judge bench of the Supreme Court comprising of P. Sathasivam CJI, Ranjan Gogoi and Shiva Kirti Singh J.J. decided this case which dealt with the right to adoption by virtue of the Juvenile Justice Act, 2000, the Rules of 2007 and the CARA guidelines.

It was argued by the All India Muslim Personal Law Board that adoption was only one of the contemplated methods under the JJ Act, 2000 and Islamic Law did not recognize the concept of Adoption. They objected that Islam did not recognize adoption but rather it recognized the concept of Kafala which was similar to adoption.

The Supreme Court held that the JJ Act was an enabling legislation and it aims at achieving the purpose of a Uniform Civil Code. Thus it was held that any person belong to any religion could adopt a child subject to the rules framed. On the point of giving Adoption the status of a Fundamental Right it hesitated but recognized the statutory right to adopt.

In Re: Adoption of Payal @ Sharinee Vinay Pathak and his wife Sonika Sahay @ Pathak,[[5]](#footnote-5)

In this case a petition was filed before the Court wherein the question before the court was that whether a Hindu couple governed by the Hindu Adoptions and Maintenance Act, 1956, who was having a natural child of their own could adopt a child of the same gender by taking recourse of the provisions of Juvenile Justice Act of 2000(JJ Act).

It was held by the Court that the JJ Act provided for the adoption of specific children i.e., those children who were abandoned and were in need of care and protection. It was a different category of children for which a procedure was laid down.

It was held that the Hindu Adoption Act imposed a restriction on the adoption of a child who had the same sex as the Natural child, but the two Acts would have to be read harmoniously.

Therefore, a child could be adopted by a Hindu couple under the JJ Act. If the child completed the description of the specific class of children for whom the JJ Act was made. In the instant case the adoption was allowed since the child fulfilled the criteria which were made by the JJ Act.

Laxmi Kant Pandey v. Union of India[[6]](#footnote-6),

In this case, a letter by an advocate was treated as a Public Interest wherein it was stated that voluntary and social organizations and agencies were indulging in malpractices by offering services of inter-country adoption. The children were ending up in poor condition, being forced into beggary and other horrendous things. This case pertained to Adoption of children who were abandoned, destitute and living in the child or social welfare homes.

The Supreme Court took judicial notice and directions were issued. A regulatory body known as Central Adoption Resource Agency (CARA) was directed to be formed which was to oversee the whole process of adoption.

It was directed that every application for adoption by a foreigner must be sponsored by a child/social welfare agency of the foreigner's country. The Biological parent must never get to know who is adopting the child. All the details of the family, assets, liabilities, recent photographs, tax details, medical history etc must be submitted along with the application.

It was further directed that the Government would intimate the embassy in that country to keep a watch on the welfare of the child and safeguard against any ill treatment.

**Merits Of Adoption**

1. Love: Every child is authorized to a loving family for the whole life. The parental relationship provided by adoption will permit a child to thrive.  A birth parent may not have the ability to provide the love a child needs.

2. Support:  Every child needs support through their life as well. An adoptive parent provides a child with emotional support through all of life’s ups and downs.

3. Resources: Children who are adopted typically do not have the right amount of resources in the current situation that they need. Birth parents will make a selfless decision to give up their child for adoption sometimes based on their lack of resources.

4. Education:  A child also deserves that chance for a great education and an chance to reach whatever goal they set.  Not only does adopting a child give them a chance at an education, but the financial security and support will drive the child to achieve more.

5. Social Relationships:  Life in the Foster care system can be tough for children to grow socially, especially if the child goes from home to home very often. A child who remains in foster care is less likely to develop long term relationships.

6. Opportunities:  As for birth parents, putting a child up for adoption rather than other methods is saving a life. Not only does that child get to have opportunities, but you are allowing for those opportunities to be carried through by a better-equipped family.  It also provide opportunities for a birth parent as they may be able to go to school and receive an education.

7. Growth:  Parents who adopt gets an experience that continues to grow in positive ways not only for themselves but for the child as well. A child has the capability to grow in a family where they will be loved, supported, and most of all wanted.

8. Traditions:  When an adopted child becomes a part of a family, parents can pass down traditions, spread culture and faith. Children should understand the heritage and family rites of passage. In an open adoption, the child can still have open way to their birth family so they can acquire a knowledge where they came from as well as how they were raised.

9. Gratitude:  If a family adopts a child; they will have feelings of gratitude. People often find fulfillment from helping a child in need, especially those who are in seriously negative situations. The child will also have gratitude especially if they are saving from their present situation.

10. Experience:  Raising a child is an overall amazing experience that any person should be able to enjoy. Adoption makes that possible for every individual who desires to be a parent.

**Demerits Of Adoption**

1. Intricate Processes - Adoption, in the modern generation, is to be done in a very formal and legal manner, which most adoptive parents see as a struggle. This is even more so when it comes to international adoptions, where the adoptive parents are need to fly in and out of the country quite frequently. Not only does it take a extend amount of time, but it also adds to the total cost.

2. Difficult to Adjust- Mainly for the adopted child, it is quite tough to learn to manage to a new family who is to be with them at every step of life. Believing in new people with everything that they have is not an easy task. The adopted child may also feel dismissed or unwanted compared to their adoptive parents’ own children. This sense of self doubt may lead to isolation and depression for the child.

3. Identity Crisis- More often than not, it has been noticed that adopted people face recognized confusion, especially during adolescence, where one capture on a hunt to find themselves. In closed adoptions, the lack of information about the birth parents may leave the child stuck in an identity crisis.

4. Apprehension about the Future of the Relationships- For both the adoptive parents and the child, there is a fear that the adoption may turn out to be failed due to the breaking of relationships in the future. Not only that, in case of open adoptions, the fear that the birth family may order the cancellation of adoption is also a fear that hide within the adoptive parents.

5. Dealing with Emotions- Mainly in the case of birth parents decide up with various emotions like guilt, grief, and denial regarding the adoption may lead to serious mental illnesses. In closed adoptions, the lack of details about the child and their lack of ability to begin a conversation with their own children may lead to them feeling like they have rejected their own child.

**CONCLUSION**

Despite the efforts of the government and the authorities to find a right home for the abandoned or surrendered children, the rate of adoption in India is still low and doesn’t seem to be increasing, Not only it can be because of the time consuming process of adoption set up by CARA, the insight of Indians regarding adoption can be one of the other contributing factors. Most parents want a child between the age of zero and two years old as they believe that the parent child bond is created during infancy. If more parents are wishing to adopt, the rate of adoption in India can significantly increase.

The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its succeeding amendment in 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 cannot be refused 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.

But it may be mentioned that at the same time that some more factors need to be considered specifically by the legislature. As for example, this Act specify adoption by any person regardless of his/her marital status, but it does not specify whether the consent of the other spouse is required to be obtained by the adopting spouse in case adoption by a married couple. This might create misconceptions among the Hindus as in Hindu Laws (HAMA) taking consent of the wife by her husband is an essential criteria for adoption. Secondly, the expression Court has not been specifically defined for the purpose of adoption under this Act as a result of unwarranted mistakes/misconception arises frequently in filing the application for adoption by the adoptive parents. Thirdly, the Act is silent about the criteria for age difference between the adoptee and adoptive parents in case they are of opposite sex.

This is an essential factor for adoption, which should be considered seriously for the purpose of preventing child abuse and trafficking. All these facts are obviously applicable to all religions and therefore, it is necessary to specify them for the interest of the children. 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 nurturing and solicitude are our responsibility.

1. . Juvenile Justice Act,2015 [↑](#footnote-ref-1)
2. . Central Adoption Resources Authority [↑](#footnote-ref-2)
3. . AIR 1984 SC 469 [↑](#footnote-ref-3)
4. . AIR 2014 SC [↑](#footnote-ref-4)
5. 2010(1) BomCR434 [↑](#footnote-ref-5)
6. . 1984 AIR 469 [↑](#footnote-ref-6)