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Fundamental principles of adoption under the adoption regulation 2022

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Abstract

Literacy and Legal Sources reveals that adoption was widely practiced one in many ancient societies. The adoption may be as old as human society itself, but the motivation for adoption have changed remarkably over time. In past societies regarded adoption as a means for preserving family lineage, enabling the continuation of ancestor worship creating political alliances and also to ensuring care for the adoptive parents in their old age. The norms for regulating the adoption process have also shifted over time. In many early laws, for instance, persons with children of their own, individuals of reproductive age and women are not allowed to adopt. In India a large number of orphan, surrendered and deprive children who are in need of care and protection. India being a signatory to UN Convention on Rights of Children-1989 has given an express legal sanction to the principle of “welfare of child”.

Keywords: Adoption, Adoprion Regulation-2022, authorities, legally free for adoption, eligibility of pap’s

Introduction

In 1989 something which is incredible was happened against the backdrop of a changing world leaders came together and made a historic commitment to the world’s children. They together made a promise to protect every child and also fulfills their rights, by adopting an international frame work through legal aspects thus The United Nations Convention on the Rights of the Child. Children are human beings and individuals with their own rights. The convention reveals that childhood is separate from adulthood and lasts till 18, it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.

“Every child needs to feel loved and valued.” We have to help every children to reconnect with biological parents or to find a new family that can provided the needed warmth, love, care, and a feeling of home. Family for every child programme develops alternative forms of placement for children deprived of parental care, such as adoption, custody and guardianship, foster families, family-type homes.

Adoption- a developmental Approach

As a children grow up, they need a family. For the protection of a child and give them a good life for the development of their mental and physical health they must have grew up with a family. Every parent has their own personal reasons for adopting but at its core, the advantage of adoption is simple, it builds families. Adoptive parents come from many different backgrounds, and have varied reasons for adoption. Adoption is one of the highly specialized and effective field that aim placing children with families and also ensuring that these placements are permanent. In the present scenario the basic concept of adoption practice was to help the families to find children to finding safe and permanent families for children. India is one of the ancient country has made major changes in the field of adoption. Adoption is the establishment of a parent –child relationship through a legal and social process other than the birth process.

Concept of Adoption

Adoption simply means when a couple take responsibility of a child and treat that childlike their own child and it also gets legal sanctity. Adoption usually refers to the legal process of becoming a non-biological parent. Adoption is the social, emotional, and legal process. Adoption is a life long process, and it is important for children and birth and adoptive parents to understand the range of emotions that come with adoption throughout a life time.

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Adoption is the better for the children's development and emotional wellbeing than temporary care arrangements. Adopting a child also has benefits for the adoptive parents their family. If anybody haven't able to have biological children, adoption gives them a chance to love, care for and raise a child as part of their family.

Fundamental Principles of governing Adoption

Regulation 3 of the Adoption Regulations 2022, The following fundamental principles shall govern adoptions of children from India, namely:

- The child's best interest shall be of paramount consideration, while processing any adoption placement.
- Preference shall be given to place the child in adoption with Indian citizens and in his/her own socio-cultural environment.
- All adoptions shall be registered on Carings and the confidentiality shall be maintained by the authority.

Authorities Concerning Adoption

1. Central Adoption Resource Authority (CARA)- CARA issues adoption guidelines for submission from time, guaranteeing smooth functioning of the adoption methodology.
2. State Adoption Resource Agency (SARA) - The State Adoption Resource Agency is a nodal body in the State to develop and regulate adoption and non-institutional accountability in co-ordination with the Central Adoption Resource Authority.
3. Specialized Adoption Agency (SAA) – This institution is formed by the State government or National Government Organisation (NGO) to restore the children.
4. Authorised Foreign Adoption Agency (AFAA)- An official foreign adoption agency is recognized as an international social or child welfare agency, which regulates all matters relating to the adoption of an Indian.
5. District Child Protection Unit (DCPU) - District Child Protection Unit refers to a unit established by the State Government at the district level under section 62A of the Juvenile Justice Act-2015. It separates orphaned and abandoned children in the district and makes them constitutionally free for adoption by the Child Welfare Committee.

Child eligible for adoption

The following shall be eligible for adoption

Any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee. A child or children of spouse from earlier marriage, surrendered by the biological parents for adoption by the step-parent.

Process for Declaring Orphan/Abandoned Children Legally Free for Adoption

- Produce child before CWC within 24 hours.
- Submit report about the circumstances in which the child found to the local Police station within 24 hours.
- Interim care order by Child Welfare Committee (CWC) to a Specialised Adoption Agency (SAA) or Child Care Institution (CCI) to keep the child pending inquiry.

- Photo publication of the child by DCPU in newspaper within 3 working days to trace out the biological parents/legal claimant.
- Entering of the particulars of the child in missing and found children portal by the DCPU or CCI concerned.
- CCI or SAA shall submit a report to the Child Welfare Committee on completion of thirty days from the date of production of the child before the CWC.
- CWC shall declare a child legally free for adoption within a period of three days after the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, in case of a child up to two or above two years of age respectively.
- Non receipt of Police report within stipulated time frame of 2/4 months in case of a child younger/older than 2 years respectively shall be deemed to have been given.
- At least 3 members of the CWC shall sign the order declaring the child legally free for adoption.
- In case of siblings or twins, they shall be declared legally free in a single order by CWC.
- After the certificate declaring the child legally free for adoption is uploaded by the SAA (within 48 hours from the receipt of such certificate on CARINGS), only then the child is referred to the registered and eligible PAPs (Prospective Adoptive Parents).

Process for Declaring Surrendered Children Legally Free for Adoption

- Parent or guardian wanting to surrender a child shall produce the child before CWC for surrendering the child.
- After counselling, the child can be surrendered 'in camera' and a surrender deed (as per Schedule V of Adoption Regulations 2022) shall be executed by the parent or guardian before the CWC.
- 60 days reconsideration period is available to the parents or guardian surrendering the child from the date of surrender.
- No public notice or advertisement shall be issued in case of surrendered child.
- CWC shall issue an order declaring the child legally free for adoption after the expiry of 60 days from the date of surrender as per schedule 1 of Adoption Regulation 2022.

Who can adopt a child?

As per the Adoption Regulation 5 of 2022, the Proposed Adoptive Parent (PAP) should be physically, mentally, emotionally steady, and their financial ability is competent, ready to adopt a child and should not have any serious medical problematic situation, ie, they shall not have any life threatening medical condition and they should not have been convicted in criminal case of child rights violation. Any of the Proposed Adoptive (PAP), irrespective of their marital status and whether or not they have biological son or daughter, can adopt a child but subject to the following condition:

- (a) The consent of both the spouses for the adoption shall be required, in case of a married couple;
- (b) A single female can adopt a child of any gender;
- (c) A single male shall not be 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 except in the cases of relative or step-parent adoption. 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 as under:-

Age of the child	Maximum composite age of Prospective Adoptive Parents (PAPs) (couple)	Maximum age of single Prospective Adoptive Parent (PAP)
Up to 2 years	85 years	40 years
Above 2 and up to 4 years	90 years	45 years
Above 4 and up to 8 years	100 years	50 years
Above 8 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.

- In case of a couple, the composite age of the prospective adoptive parents shall be counted.
- The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.
- Couples with two or more children shall only be considered for special needs children as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2 unless they are relatives or step-children.
- The prospective adoptive parents have to revalidate their Home study report after a period of three years.
- The seniority of the prospective adoptive parents who have not received a single referral within three years shall be counted from their date of registration except those who have crossed composite years of one hundred ten years.

Basic Principle Child's best interest shall be of paramount consideration, while processing any Adoption Placement

- **Reg 3 of Adoption Regulations 2022:** The child's best interests shall be of paramount consideration. Preference shall be given to place the child in adoption with Indian citizens and in his/her own socio-cultural environment. All adoptions shall be registered on CARINGS and the confidentiality shall be maintained by the Authority.
- **Under the JJ Act, 2021:** All decisions regarding the child shall be based on Principle of Best Interest to help the child to develop full potential. The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. Principle of Institutional Care as a measure of last resort for the child after making a reasonable inquiry.

Procedure for Declaring a Child Legally Free for Adoption Juvenile Justice (Care and Protection) Act, 2021)

Adoption to be resorted to as per the provisions of the Act, the Rules and the Adoption Regulations framed by CARA, to ensure right to family for Orphan/Abandoned/Surrendered children [Section 56 (1)]

Procedure for Orphan/ Abandoned Child

- First, CWC tries to trace the parents and guardians of the child. If the child's status is established as an

orphan or abandoned, he/she is declared legally free for adoption.

- Produce child before CWC within 24 hours submit report about the circumstances in which the child found (Form 17) to the local Police station within 24 hours. (Sec 31 of JJ Act & Reg 6(2) of AR 2021)
- Interim care order by CWC (Child Welfare Committee) to a SAA (Specialized Adoption Agency) or CCI to keep the child pending inquiry. (Section 36(1), 37(1) of JJ Act & Reg 6(4) of AR 2022)
- Photo publication of the child by DCPU (District Child Protection Unit) in newspaper within 3 working days to trace out the biological parents/legal claimant (Reg 6(6) of AR 2022)
- Entering of the particulars of the child in missing and found children portal by the DCPU or CCI (Child Care Institutions) concerned. (Sec 32(2) of JJ Act & Reg 6(6) of AR 2022)
- Child Care Institutions (CCI) or SAA shall submit a report to the Child Welfare Committee on completion of thirty days from the date of production of the child before the CWC. (Sec 36(1)(2), 38 of JJ Act & Reg 6(10) of AR 2022).
- CWC (Child Welfare Committee) shall declare a child legally free for adoption within a period of three days after the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, in case of a child up to two or above two years of age respectively. (Sec 38 of JJ Act & Reg 6(14) of AR 2022)
- Non receipt of Police report within stipulated time frame of 2/4 months in case of a child younger/older than 2 years respectively shall be deemed to have been given. (Reg 6(11) of AR 2022)
- At least 3 members of the CWC shall sign the order declaring the child legally free for adoption. (Sec 38(4) of the JJ Act & Reg 7(17) of AR 2022)
- In case of siblings or twins, they shall be declared legally free in a single order by CWC. (Reg 6(19) of AR 2022)
- After the certificate declaring the child legally free for adoption is uploaded by the SAA (within 48 hours from the receipt of such certificate on CARINGS), only then the child is referred to the registered and eligible PAPs (Prospective Adoptive Parents). (Reg 29 (d) of AR 2022)

Process for Declaring Surrendered Children Legally Free for Adoption

- Parent or guardian wanting to surrender a child shall produce the child before CWC for surrendering the child.
(Sec 35(1) of JJ Act & Reg 7(1) of AR 2022)
- After counselling, the child can be surrendered 'in camera' (Reg 7(22) of AR 2022) and a surrender deed (as per Schedule V of AR 2022) shall be executed by the parent or guardian before the CWC.
(Sec 35(2) of JJ Act and Reg 7(2) to 7(9) of AR 2022)
- 60 days reconsideration period is available to the parents or guardian surrendering the child from the date of surrender.
(Sec 35(3) of JJ Act, Reg 7(12) of AR 2022)
- No public notice or advertisement shall be issued in case of surrendered child.
(Reg 7(13) (14) (20) of AR 2022)
- CWC shall issue an order declaring the child legally free for adoption after the expiry of 60 days from the date of surrender as per schedule 1 of AR 2022.
(Reg 7(17) of AR 2022)

Eligibility of Prospective Adoptive Parents

Adoption Regulations 2022, Reg. 5 Provides that

- PAPs shall be physically, mentally and emotionally stable, financially capable and 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 Reg. 5(1)
- The consent of both the spouses for the adoption shall be required, in case of a married couple; a single female can adopt a child of any gender; a single male shall not be eligible to adopt a girl child. 5(2).
- Two years of stable marital relationship with minimum age difference between the child and either of the PAP shall not be less than twenty five years and composite age shall be considered in case of a couple. Age criteria can be relaxed in cases of relative and step-parent adoption. Reg 5(5) & 5(6)
- PAPs with two or more children shall only be considered for special needs and hard to place children except in the case of relative or step children adoption. 5(8) PAPs need to revalidate their HSR after the initial validity period of three years. Reg 5(9)

Conclusion

Adoption is a legal process through which a abandoned /orphaned/surrendered child will become legally entering in to the residence, there they will become more comfortable and also by adopting a child the adoptive parents social and mental problems will be avoided. By Adoption Regulations 2022, the process of adoption and its procedures are made easy as comparing to the old regulations.

References

1. Adoption Regulations; c2022.
2. Juvenile Justice (Care & Protection of Children) Amendment Act; c2021.
3. Bench Book for adoptions, CARA; c2017.