Adoption under new Juvenile Justice Act- A Critique

Justice U.C. Dhyani

High Court of Uttarakhand

Nainital

One of the salient features of Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.0.2 of 2016), which has come into force on 15.01.2016, is that, it has separate chapter on adoption, which provides a complete mechanism to streamline adoption of orphan, abandoned and surrendered children. The Act is applicable to the whole of Indian except Jammu & Kashmir. It applies to all matters concerning child in Conflict with Law including social reintegration, adoption and restoration of children by catering to their basic needs through proper care, protection, development, treatment etc. by friendly approach in the adjudication and disposal of matters to the best interest of children and their rehabilitation through processes provided.

It was enacted taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1986 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children & Co-operation in respect of Inter-Country Adoption (1993), and other related international instruments.

The Government of India had acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assemble of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child.

'Child' has been defined to mean 'a person who has not completed 18 years of age'. 'Juvenile' has defined as 'a child below the age of 18 years'. Had same language been used in defining a 'child' and a 'juvenile', it would not have been improper. Likewise, the words

*The views expressed by the writer are his personal views.

'abandoned child', 'orphan' and 'surrendered child' have been defined appropriately, but with some over-lapping in the definition of 'orphan' and 'abandoned child' with respect to child deserted by his biological or adoptive parents or guardian and a child whose legal guardian is not willing to take the child.

In the earlier legislations also, on the subject, there was a provision for children's home, observation home, special home, special juvenile police unit, fit institutions, but we don't see anything about them in reality. What to talk about different homes, there is not even a home, by whatever name called, in a district. Fit institutions have not been notified in most of the states and one has yet to find where is special juvenile police unit.

In the backdrop of such an informal environment which is tried to be created, CARA and SARA have been given statutory recognition. Central Adoption Resource Authority (earlier know as agency) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency, to regulate inter-country adoptions. to frame regulations on adoption and related matters form time to time, to carry out to functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of inter-country adoption and any other function as may be prescribed, has been created. Likewise , a direction is also given in the Act that the State Government shall set up a State Adoption Resource Agency (SARA) for dealing with adoptions and related matters in the State under guidance of CARA.

A solemn endeavour has been made to create 'child friendly environment' in the 'best interest of the child' by defining both. When there is provision for setting up 'special juvenile police unit' designed for handling children, word 'accused' has already been replaced by the word 'child in conflict with law', the definition of 'child in need of care and protection' has been widened to the farthest possible, the proceedings are conducted in simple child friendly atmosphere; no lockup, no jail; theory underlying is restorative justice, not deterrent justice; once a juvenile always a juvenile, then why should we have an 'authority' or 'agency' for the purpose of adoption?

'Authority' means 'the power or right to enforce obedience'. 'Power' means 'ascendancy or control,' or 'the capacity for exerting influence'. Why should we need to exercise authority over children, whereas in basic idea of framing the Act is otherwise? Likewise, 'agency' co-relates to an agent, who acts for another, a person or thing that exerts power or produces an effect, a 'go-between, or 'a middle man'. Why should we use such a word? Some will argue that this word has been used in the Hague Convention. The lawmakers will please remember that a Convention is not enforceable unless translated into a functional language under Municipal Law, which is exclusively the domain of our Parliament. In other legislations, use of the word 'Authority' or 'Agency' sounds well, but not in respect of welfare legislation governing a neglected child.

In my humble opinion, the authority or agency, which has been given statutory recognition under this Act, should be like a catalyst, getting the things done without intermingling in the process. The impression should be given that it is like a person possessing skills without showing the same, like a person wearing a wristwatch without flashing it out to show that he has one.

The abbreviation of the authority should, therefore, connote an organization which cares (for the children).CARE would be the appropriate abbreviation, from the point of view of phonetics also. The writer, while delivering a talk to distinguished gathering on 30.07.2016 in the Judicial Academy, tried to find out various words starting with 'E', such as Earth, Eco, Echo, Education, Eden, Embalm, Exuberant or Ebullient, but finally stuck to 'Environment'. In the same way, SARA should be substituted by SHARE, 'H' denoting 'Human' and 'E' denoting 'Environment'. The writer also tried to introduce word 'C' (for child) in place of 'H'. but was finally SCARED of using it. It is a request to the lawmakers to bring these nomenclatures to the tune of the objectives of the Act.

The chapter on adoption is aimed at ensuring right to family for the orphan, abandoned and surrendered children. Adoption of a child from a relative by another relative, irrespective to their religion can be made as per the provisions of the Act and regulations but

nothing shall apply to the adoption of children made under the Hindu Adoption and Maintenance Act, 1956. Although, there was one section in the Act of 2002, but the provisions for adoption were neither elaborate, nor the Act said anything specific about religion, which is clarified here that the adoption of a child has nothing to do with the religion. The phrase "irrespective to their religion" has been repeated in the chapter relating to adoption. Adoption has therefore statutorily become secular and casteless. The process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive with all the rights, privileges and responsibilities that are attached to a biological child, is called adoption.

Since there was no law enabling anydody to adopt the child, therefore, adoptive parents were, earlier, satisfied with their status as legal guardians of the child. Then came the Act of 2002, which contained a section on Adoption. Adoption as a legal concept was available only among the Hindus. But in the Act of 2000, one finds the concept of secular adoption whereby without any reference to the community or the religious practices of the parents or the child, a right was granted to all citizens to adopt and all children to be adopted.The concept of secular to all citizens to adopt and all children to be adopted. The concept of secular adoption has been translated into a codified law by the Act of 2016, which is applicable to all the countrymen. It has brought credit to the secular credentials of Indian polity. A laudable attempt has been undertaken by the Parliament by codifying secular adoption.

The Hindu Adoptions and Maintenance Act, 1956 recognized adoption. Except where customs permitted adoption, other faiths had no legal option of adopting a child. The Act of 2000, and more elaborately, the Act of 2016 made it possible for the parents to adopt and Indian children to be adopted, thus bringing the same under the purview of Article 21 of the Constitution recognizing the Constitutional right of the parents to adopt and the children to e adopted and conferring legal status of biological parents and children on them.

The child in respect of whom an adoption order is issued by the Court shall become a child of the adoptive parents and the adoptive parents shall become the parents of the child as if the child has been born to the adoptive parents, for all purposes including intestacy, but any property which is vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child, subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.

All inter-country adoptions, on which there was no statutory law hitherto, shall now be governed by this Act and regulation framed thereunder.

I have been informed by CEO, CARA, who was present in the workshop, that such regulations are on the anvil. Rules are in the process of being notified.

The fundamental principles governing the adoption of children from India, as per the guidelines of 2015, are that the child's best interests shall be of paramount consideration. While processing any adoption placement, preference shall be given to place the child in adoption with Indian citizens, with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible. The word 'environment' has been used not 'religion' or 'caste'. Indian citizens have been given preference.

The Court, before issuing an adoption order shall satisfy that the adoption is for the welfare of the child, due consideration is given to the wishes of the child having regard to the age, understanding of the child, neither the prospective adoptive parents has given or agreed to give nor the specialized adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption.

A problem may come up while translating Section 57 of the Act into functional plane. There is a requirement that prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good

upbringing to him. These are sweeping generalizations. How to ensure these? What is the criteria? Goal should be attainable and measurable. How to measure that the adoptive parents are mentally alert and highly motivated? Whether a person in 'creamy layer' only will be considered 'financially sound'? What if a physically challenged but mentally alert person wants to adopt a child? Under Sections 7&8 of the Hindu Adoptions and Maintenance Act, 1956, any male or female Hindu, who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption. The reply to the questions posed above, probably, may be-let it be adjudged from the point of view of a reasonable prudent person. Let us not. therefore, look into subtle technicalities.

Are we really heading towards a secular and casteless society? Is it a step towards uniform civil code? Only time will tell. A critic will always crave to find replies to the same.

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