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“CHILD ADOPTION IN INDIA: EXAMINING THE RIGHTS OF THE CHILD AND THE OBLIGATIONS OF THE STATE”

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ABSTRACT:

India manages adoption mostly through the Juvenile Justice (Care and Protection of Children) Act, 2015, known as the JJ Act. This process is handled by the Central Adoption Resource Authority, or CARA, which operates under the Ministry of Women and Child Development. For Hindus, the Hindu Adoptions and Maintenance Act, 1956 (HAMA) is applicable, and it treats adopted children the same as biological children when it comes to inheritance and family rights. The JJ Act allows adoption irrespective of the religion and focuses on making the process secular, easier and child-friendly. At the same time, CARA works to simplify both domestic and international adoptions. Adopted children have the same legal rights as biological children, which means they fully inherit from their adoptive parents' family property as well as anything their parents earned themselves. Key protections cover the right to live in a family environment, gender equality following the 2005 Hindu Succession Act changes, and the need for children over 7 years old to give their consent.

India ratified the UN Convention on the Rights of the Child to protect children from exploitation, thereby, giving priority to the welfare of children. The state has to officially declare children "legally free for adoption" through proper institutional steps. This helps in reducing illegal adoptions that happen through hospitals or informal fostering, which are penalized as wells. CARA runs a National Portal that handles matching, home studies, and pre-adoption foster care, ensuring prospective parents meet age, health, and financial requirements. Government policies like the National Policy for Children require rehabilitation of orphans, keeping an eye on them after adoption, and making data transparent to help prevent trafficking. Even though there's been some progress, delays in the process and low awareness keep adoption numbers low—only a few thousand kids get adopted each year, while hundreds of thousands are eligible. The 2015 CARA guidelines focus on giving priority to placements within the country and making sure there is a balance between genders. It is important to keep building up state orphanages and make sure the courts keep a close eye on them to hold

everyone responsible.

Keywords: - Child Adoption, Child Rights India, State Responsibilities Adoption, CARA Authority, Juvenile Justice Act.

I. INTRODUCTION

In India, the adoption process is a complicated one, involving various cultural, legislative, and evolving approaches to the rights of a child. The government is in a difficult situation, supporting a child in their desire to have a permanent place to belong to, while simultaneously safeguarding the interests of children who are orphan, abandoned, or given up by their parents. This is a result of India's compliance with the United Nations Convention on the Rights of the Child.¹ Child adoption is also a result of the diverse legal landscape in India. A legal statute based on the Hindu Adoptions and Maintenance Act of 1956 is applicable for Hindus and permits adoption that is fully legal with the child becoming a complete member of the family.² Also, the Juvenile Justice Act of 2015 allows for a broadening of adoption across all communities in a secular way by using the Central Adoption Resource Authority (CARA). The two-part system shows that adoption is much more than a family matter. It shows that an entire state is committed to meeting a child's emotional, physical and developmental needs above all else.

Here, child legislation has focused on such elements as enclosing protection from exploitation, the right to be cared for and treated equally once adopted, to be treated the same as the biological children of the family, to have inheritance and family identity rights, etc. Under such rights, children up to 18 can be adopted. There are other provisions for the older children, leaving them in a state of offset shadow of what should be a family. Prior to placing children, the state is required to remove children from the system and step up family placement. Adoptive parents go through a system of home study, training and placement as a family in the country. The placement is done by CARA and takes a great deal of time. The compatibility, family structure, age gap, and the needs of the child are the determining factors. This process is to ensure that the child is able to live in a peaceful and loving home, free from any form of exploitation, trafficking, and coercion.

¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

² Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE (1956).

II. HINDU ADOPTION AND MAINTENANCE ACT, 1956 (HAMA)

The Hindu Adoption and Maintenance Act of 1956 has provided for the first time a complete and detailed legislation on adoption for the Hindu community in India, ensuring that the adoption of a child is the primary concern and that the state has a duty to monitor and prevent any form of exploitation or abuse.³ The Act has legislation on the divergent Hindu practices on adoption and has the effect of modernizing, and, in a sense, civilizing the practice of adoption among Hindus, by ensuring that adoptions are not just rituals and that they are a full and complete legal transfer of parentage. The Act's state paternalism is seen in the requirement for the state to take certain actions in order for an adoption to take place. The Act gives the power to prevent the adoption of children to protect them from human trafficking and also from being subject to family disputes in regard to property inheritance.⁴

Most framework acts focus on capacity and consent and don't go into great detail about how a male Hindu of sound mind and majority age can adopt, except in cases where she has died, been widowed. This does show consideration of the concerns of harmony of the marriage as to where a child would be placed, but shows an imbalance in the child being placed in an impulsive and unstable home in a marriage where they don't agree.⁵ This law also applies to most women, would be able she meets the same mental and age requirements and secures her husband's consent if married unless he is in one of those exceptions, which demonstrates the power the Act gives to women as mothers (primary caregivers) and the right to a child equally without gender discrimination. The state also applies these conditions with the aid of courts, which are able to verify the existence of coercion to ensure that the consent is authentic and that the transfer of the child was intended with the physical act of handing over the child, which represents the transfer of legal parentage and the exercise of the right of the parent.⁶

III. RIGHTS OF THE CHILD IN ADOPTION

In India, when a child is put up for adoption, there is a lot of consideration and legislation regarding the needs of the child so that they do not become victims of adoption. There, the child is seen as an active participant rather than a passive recipient and is entitled to a family with an environment that nurtures their potential, free from the institutional neglect and

³ Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE.

⁴ *Sawan Ram v. Kalawanti*, A.I.R. 1967 S.C. 1761 (India).

⁵ Flavia Agnes, *Family Law in India* (2011).

⁶ Statement of Objects and Reasons, Hindu Adoptions and Maintenance Bill, 1956.

isolation of an environment that is too often associated with the abandonment of a child. There are courts and agencies that repeatedly advocate for the voice of the child, and while this is especially true for children of a particular age, it is assumed that the child is active. The child's capacity to influence a decision and the need for consultations so that this child's voice is not tired, and certainly not overwhelmed becomes a focus of the courts. This is especially true to maintain the spirit of child-centred adoption and to avoid trafficking, sale, coercive post-adoption placements, and to provide psychological and medical evaluations to the child. These evaluations are aimed at adopting a child are matched with children who may have particular needs or a unique cultural background, such as children who have been abandoned, or who are available for adoption after extensive and unfounded tracing.⁷ After adoption, rights become permanent and the child gets to be in the family like his/her siblings who are biologically related to the parents. The child gets education, medical rights and even property rights which are legally split up to the kids in the family. The child, under Hindu law, gets to serve all legal ties and integrate completely, legally, to the new family.⁸ If the welfare officers see the family is having problems, they can take the child away. The law, along with these adopted parents having to give updates, protect the child's new family. The law fights stigma against the adopted child. The return to his/her original family to protect the new family. Campaign shows adoption is a new family, a new beginning not discrimination for the adopted child.⁹

IV. RESPONSIBILITIES OF THE STATE

The Child Adoption Services in India have many laws covering the entire process from the time a vulnerable child is found to the time they flourish in a stable family.¹⁰ There is a deep level of commitment to the adoption process, not leaving any steps to the fates in a private manner. The Central Adoption Resource Authority is the Adoption Services policy maker that sets standard procedures to be followed by Indian Adoption Agencies, including granting permission to the agencies, monitoring compliance, and oversees the domestic inter-country adoption process focusing on culturally sensitive placements while considering the identity of the children in the process. The Child Protection Units in each district are the very first responders in the search for community orphans and abandoned babies, whether babies are abandoned in hospitals and on the streets, or babies 'surrendered' by desperate and needy

⁷ *Lakshmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244 (India).

⁸ Juvenile Justice (Care and Protection of Children) Act §§ 63–70 (2015).

⁹ Law Comm'n of India, Report No. 153, *Adoption Law Reform*.

¹⁰ Adoption Regulations, 2022, Gazette of India (Mar. 2022).

parents due to poverty and ill health, after completing the search for possible biological relatives, each child must be legally declared free for adoption, a lengthy process of several months in order to prevent claims or child trafficking under the guise of families ‘gifting’ children.¹¹ These units work directly and closely with, have the authority to determine the child’s status, allow temporary custody to become foster care, and terminate custody if post-adoption reports indicate negligence and therefore, the child is subject to a maximum of two to five years of vigilance, in which the social worker visits the home without notice to determine the emotional attachment and developmental status of the child.¹²

V. ADOPTION PROCEDURES AND ELIGIBILITY

The steps to adopt a child in India are very in depth and organized to make sure the child is the priority in every aspect of the process. This blends the requirements of the process with the governmental steps to avoid rash decisions and align with the requirements of the process to make sure the adoptive parents are a good match for the child. The process of adoption begins with the prospective parents registering on the CARA portal.¹³ The portal is the first digital step where the parents are first able to select preferences for the child based on age, gender, and a few health concerns. The portal also requires them to upload their ID, proof of residency, marriage to spouse if applicable, proof of income stability, and proof of medical fitness which is all examined together within a set time frame and only financial and emotional stable parents are allowed to continue with the adoption process.¹⁴ This demonstrates the states concern for children who are placed in unstable situations.

In order to legally adopt, there are restrictions designed to protect the development of the children. The couples must be married for two years, with the wife being younger than 45 and the husband younger than 55 for younger children. Single women have more options, while single men cannot adopt girls.¹⁵ There must be a gap of 25 years between the adoptive parents and the children. This is to establish an authoritative relationship and avoid any close generational ties. There are also income restrictions to ensure that potential adoptive parents are not relying on adoption subsidies. Those currently taking care of biological children are

¹¹ Juvenile Justice (Care and Protection of Children) Act §§ 27–38 (2015).

¹² Nat’l Comm’n for Prot. of Child Rights, *Child Protection Reports* (2020).

¹³ Central Adoption Resource Authority, *CARINGS Portal Manual*.

¹⁴ UNICEF India, *Adoption Systems in India* (2021).

¹⁵ Adoption Regulations, 2022, scheds. II–VII.

excluded unless they choose to adopt children with special needs. There are no criminal records, child protective service records, or domestic adoptions that ended in a disruption.¹⁶

VI. ANALYSIS OF PROPERTY RIGHTS DISPUTES

In adoption cases in India, family disputes over property rights are often hidden under the illusion of familial peace, only to erupt like a volcano into legal battles over legal adoption's defences against alleged inheritance fraud or procedural gaps. The courts have been focusing on the timing and legitimacy of an adoption to determine that a child cannot be removed from the estate of the adopting parents, and to reduce annoying claims. Totally losing their former family ties and gaining a right to a share of the family self-acquired and ancestral property just like a biological child.¹⁷ However, disputes often arise when relatives claim that adoptions are shams, without spousal consent or the requisite giving-and-taking. Judges have decided to nullify such adoptions and revert the estate to the natural heirs.¹⁸ The state steps in, through family courts, requiring anything less than an ironclad proof such as a registered deed, witness proof, and an age gap, or mentally competent. This protective burden is to the detriment of the child's rights as it eliminates claims that arise after the death of the adoptive parent to ensure that adoption does not serve as a shield for recessive claims, but primarily provides irrevocable security for the child's future.¹⁹

The recent adoption cases gain layers of complexity from the recent Supreme Court case where a mother adopted a child and sold land she purchased prior to the adoption case, and the child contested this. Section 14 of the Hindu Succession Act allows a landowner to possess and sell land without limit and therefore her son could not stake a claim.²⁰ This case also limited the 'relation back' doctrine, which allows retroactive ownership by an adoptive parent because of death, and adoptive parents cannot die as a way to prevent adopted children from clawing back ownership interests from the estate.²¹ These cases show how the state protects the child and promotes parental rights. Because of this, stake child welfare agencies must review a family's finances the monitor the potential for disputes, and after an adoption, if there are signs dispute about the children's welfare financial welfare of the child is prioritized over possessive

¹⁶ Central Adoption Resource Authority, *Eligibility Criteria for Prospective Adoptive Parents*.

¹⁷ Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE.

¹⁸ Paras Diwan, *Modern Hindu Law* (2018).

¹⁹ Law Comm'n of India, Report No. 208, *Property Rights and Adoption*.

²⁰ Hindu Succession Act, No. 30 of 1956, INDIA CODE.

²¹ *V.T.S. Chandrashekhara Mudaliar v. Kulandaivelu Mudaliar*, A.I.R. 1963 S.C. 185.

relatives.²² In non-Hindu cases, similar disputes occur with guardian adoption cases under the Juvenile Justice Act where adopted children through CARA become Class I heirs and collaterals become adversaries, and this prompts the judiciary to disregard the informal kinship by adoption arrangements to deny property ownership without a court order.²³

VII. RISKS OF TRAFFICKING AND INSTITUTIONALIZATION

The problems present in India during child adoption such as trafficking and institutionalization have resulted in desperation in families and impatience in perspective parents. This has resulted in them attempting use underground black market adoption processes.²⁴ This is in contrast to light and love economy of adoption and is instead a dark and dangerous trap for the families and children that the government is attempting to put end to. What is worse is that the traffickers pretend to be legitimate as they sell children disguised as rural private adoption agreements, i.e. via a 'kinship transfer' agreement, a document that is supposed to prove that a child has been voluntarily surrendered and is used to obtain a baby from a mother who has just given birth and is desperate and poor from a regulated clinic, and then they simply abduct the child and sell that baby across state lines to childless parents who do not want to wait in line to adopt an infant.²⁵ The Supreme Court has described these child trafficking rings as being worse than death and life-altering. These illicit trafficking rings are able to function due to the mounds of legal obstructions of adoption that those traffickers have literally paid for to smuggle infants by the hundreds. These infants are a result of the demand that exceeds the supply of legal adoption infants. The traffickers literally erase the identity of these children. The result is that these children have no birth certificates, no documents, and no identity and they have been trafficked in inhumane and violent conditions, which is a violation of child protection laws. This is in direct violation of the 'legal' and 'social' protection' of child welfare committees and child protection systems as they have these traffickers under a 60-day inquiry, child welfare committees have organized tracers to document the inquiries within the 60 days.²⁶

²² Law Comm'n of India, Report No. 174, *Property Rights of Women and Children*.

²³ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, INDIA CODE (2015).

²⁴ U.N. Off. on Drugs & Crime, *Global Report on Trafficking in Persons* (2020).

²⁵ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 S.C.C. 1 (India).

²⁶ UNICEF India, *Child Trafficking in India Reports*.

VIII. CONCLUSION

Adoption in India spans the emotional, legal, and social dimension of child welfare, protecting the child from uncertainty, and ensuring that the child gets a family, in a legally and socially protective family, and soft/balanced reinforcing family support systems, etc. These laws demonstrate that adopted children will have the same rights and claims as their biological siblings in the areas of maintenance, education, inheritance, and identity, including a legal, positive severing of all previous familial relationships and full integration into new families (with protections against legally created relationships that may create a downward psycho-jurisprudential spiral), and regulatory legal post-adoption control), the state's psycho-legal and operational balance traverses the entirety of the system, with CARA managing, and legally empowering, registrations, home studies, and parent-child matching, along with district-level origin tracing and child trafficking raids, all designed to balance the operational state control of the system and the psycho-legal operational control of the market).

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