

PROCEDURE FOR ADOPTION UNDER JUVENILE JUSTICE ACT 2015: AN OVERVIEW AND CHALLENGES AHEAD

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Introduction

'United Nations Convention on Rights of Child obligates the state parties to undertake all appropriate measures in case of child alleged as, or accused of violating any penal law, including the treatment of child in a manner consistent with the promotion of the child's sense of dignity and worth. It also hold necessary reinforcing the child's respect for the human rights and fundamental freedom of others as well taking in to account the child's age and desirability of promoting the child's reintegration and assuming his constructive role in society'.

Following the Constitutional mandate to protect the vulnerable section of society and respect the international obligations by ratifying on 11th December 1992 Indian legislature has enacted, and amended, the Juvenile Justice (Care and Protection) Act in 2000, 2006, 2015 to address the gaps in its implementation and also to make it more child friendly. During the course of its then implementation, several issues arose such as increasing incidents of child abuse in institutions meant for their protection, inadequate facilities therein, lack of care and rehabilitation measures in such Homes. The other issues such as high pendency rate in their cases, delays caused in adoption due to faulty processes, lack of clarity in implementation authorities about their roles, responsibilities. The cases of sale of children for adoption purposes etc. were forcing circumstances to get the old Act re-enacted with wider objective and concerns, and sensitivity.

It was expedient to re-enact the international concerns, the standards prescribed along with the 'Convention on Rights of Child, The United Nation Minimum Standard Minimum Rules For Administration of Juvenile Justice, 1985¹, United Nation Rules for the Protection of Juveniles Deprived of their Liberty 1990 and also Hague Convention on Protection of Children and Co-operation in respect of Inter-country

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¹ The Beijing Rules.

Adoption² 1993 and several other instruments were deliberated and discussed.

The Act of 2015³ was divided in to IX chapters covering all issues of exhaustive detailed definitions and preliminary matters, about juvenile justice boards, Procedures applicable for Juveniles in conflict with law, the procedure for children in need of care and protection, their rehabilitation and social integration.

The separate chapter meant specifically for adoptions⁴ which is itself a salient feature of the Act of 2015. Worth appreciable point is it allows a child under the age of 18 for the concerned issues like adoption etc. It provides the adoption shall be resorted to for ensuring the right of family for the orphan, abandoned and surrendered children⁵ The Act is secular in nature. It also takes care of Inter-country adoptions as per guidelines under the Act of 2015 and provides punishment for him who takes or sends a child to another person in foreign country without a valid order from court.⁶ In order to ensure the good upbringing it lays down the eligibility criteria for the prospective adoptive parent (PAP)⁷ to be physically fit, financially sound and also expects him to be mentally alert with high motivation to adopt a child with benevolent object.⁸ The Act also takes precautionary measure in respect of girl child by providing that single male is not eligible to adopt a girl child.

The provisions for the PAP living in India is taken care under Sec. 58 as if such parent is interested in adopting an orphan, abandoned or surrendered child, irrespective of his religion can apply to the authority under the Act. The agency is to take care by preparing the 'home study report' of PAP and identify them as eligible. It also makes the medical report of the child and child study report send the papers for pre-adoption foster care and then apply the court for the further procedure. The job of agency never ends here by getting the court order but it extends to the real follow up even after actual adoption as per guidelines.⁹

² The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Adoption Convention) protects children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. India became signatory in 2003.

³ Hence forth The Juvenile Justice (Care and Protection) Act, 2015 would be called as 'Act of 2015'.

⁴ Chapter VIII of Juvenile Justice (Care and Protection Act) 2015.

⁵ Sec. 56(1) of the Act of 2015.

⁶ Sec. 56 (4) of the Act of 2015.

⁷ Prospective Adoptive Parent (PAP) Sec 1(49).

⁸ Sec. 57 of the Act of 2015.

⁹ Sec. 58 of the Act of 2015.

For inter-country adoption by NRI¹⁰ Overseas Citizen of India, or a person of Indian Origin or Foreigner also irrespective of their religion can be Prospective Adoptive Parent and can claim for adoption of an orphan or abandoned or surrendered child through foreign adoption agency, or govt. dept. of their country where they habitually reside as per guidelines.¹¹ A detailed precautionary procedure in order to protect the interest and wellbeing and future of the adoptive child is prescribed in the guidelines.

The process for inter-country relative adoption is also allowed under the Act of 2015 with several restrictive clauses to safeguard the interest of Adoptive child.

The legal procedure

Adoption is only for the welfare of the child and in any of type of adoption the issue of financial gain or payment in consideration of adoption is strictly prohibited. It is for the courts¹² to identify this crucial and delicate issue and the court is required to satisfy itself it is for the welfare of the child, and child's wishes are taken care of. The court also looks that there is no financial transaction in this process.¹³ The adoption Proceedings are compulsorily required to be conducted *in camera*. And the procedure of case must be within the period of two months from the date of filing.¹⁴

The legal procedure for adoptions to be followed in court cases is provided in Sec.s 12, 17, and 56 of the notification¹⁵ regarding the Specialised Adoption Agency where at what location to initiate, time schedule for the process, NOC from the authority for obtaining order from court every procedure is detailed out. It also provides that if the adoptive child is from Child Care institute the application is to be from the district concerned.

There is no requirement of Scrutiny Committee as the application gets filed in the court only after the entire process has been scrutinized by the respective agencies mandated to do so and relevant documents are attached with the application Adoption case is non-adversarial in nature hence no need to make opposite party or

¹⁰ Non Resident Indian.

¹¹ Sec. 59 of the Act Of 2015.

¹² Court means civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court or City Civil court Section 2 (23) of the of 2015.

¹³ Sec. 61 of the Act Of 2015.

¹⁴ Sec. 61(2) of the Act of 2015.

¹⁵ Ministry of Women and Child Development Notification 4th January 2017 came in to force on 16/01/2017 (Part II Sec. 3(1)).

respondent in its application¹⁶. After the home study report is clear no need to ask to make investment or execute any bond or so.

Once the certificate is granted it is to be forwarded to PAP in ten days and its copy of order and updating entry in Child Adoption Resource Information and Guidance System. Here the registration of Adoption deed is not mandatory. After the due process is over the agency has to submit an affidavit to the court.

Legal Procedure for cases of inter-country adoption if prospective adoptive parents habitually reside abroad along with the application has to accompany Power of Attorney in favour of the social worker. Though the Act of 2015 and the Notification prescribes the child friendly provisions and utmost care of the child still the implementation has not yet made the process favourable and easily accessible for the common man.

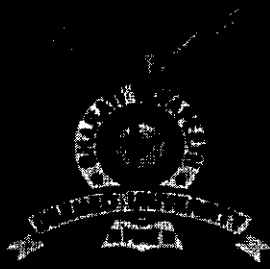
Challenges ahead

Since the Act of 2015 not much time is passed and to say in few words for its success or failure is not easy but still some issues are criticised in general such as -the detail lengthy process and single authority for all adoptions have caused delay in process due to several reasons-as it followed CPC procedure instead as defined in the Act of 2015, the applications are not admitted immediately due to procedural technicalities , power of Attorney not respected to in Inter-country adoption cases, delay in assigning dates and short adjournments, absence or lack of required number of the Family/District Court Judges, reserved judgements and delayed pronouncement of Adoption Order etc.

The required changes in the process are not difficult. The overview of the situation prevailing requires sensitivity to look at these issues. Delay in adoption order delays the right to family which every child has. The adoption cases must be looked with sincere care and accorded due priority. The rules and regulations must be followed in true letter & spirit.

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¹⁶ Reg. 12(5) of AR 2017.



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