ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 5
Issue I

August 2023

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

Affiliated to GGSIP University, Delhi
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JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015: FRAMEWORK ON ADOPTION IN INDIA

Ms. Raghvi Kanwal*

VIPS Student Law Review
August 2023, Vol. 5, Issue 1, 181-195
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
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https://vslls.vips.edu/vslr/

ABSTRACT

This paper aims to explore the Juvenile Justice Act, 2015 with special focus on adoption of children and the intricacies regarding the same. This paper starts by providing a brief historical background regarding the laws relating to juveniles and then focuses upon adoption rules in different religions in India. It also focuses on the procedure of adoption and the lack of laws on adoption for the rainbow community. Towards the end this article analyses the lacuna that is present in the existing law along with a few suggestions that might help in alleviating the situation.

Keywords*- Adoption, Juvenile, Human Rights, Protection, Legal Guardian.*

I. INTRODUCTION

Children are seen as the future of any state, and if they are without a legal guardian, their protection and welfare is the duty of the State. In furtherance to the same, India, following many previous legislations, legislated The Juvenile Justice Act, 1986.

The 1986 Juvenile Justice Act established the first consistent national framework for juvenile justice. It defined orphaned, abandoned, and handed-over children, and categorized minor, major, and severe offenses. The Act clarified the roles of the Juvenile Justice Board and Child Welfare Commission. Orphaned, relinquished, and abandoned children can be adopted within this organized system. The 2000 Act was updated by the 2015 Juvenile Justice Act (JJA), which stands as the current law. Legal adoption entails placing a child permanently with non-biological parents, transferring rights. Adoption finds mention in various faiths and myths.

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The desire for the idea of adoption has altered in the modern world from giving children to childless people to giving a home to those who are homeless. Adoption under the Juvenile Justice (Care and Protection of Children) Act, 2015 from Sections 56–73 is the subject of the whole Chapter VIII. "Adoption" is defined under Section 2 (2) of the Act.

Having such laws and interest towards the field, however, is not enough to ensure the proper implementation of these laws which affect the lives of children. It is seen that the lack of execution of these provisions leads to abuse and mistreatment of children in the country. Having no legal guardian, these children are the responsibility of the state and their welfare should be ensured by the state itself.

In this article, any lacuna in the provision will be identified and discussed and suggestions as to how it can be improved will be addressed in detail.

II. JUVENILE JUSTICE CARE AND PROTECTION ACT: AN OVERVIEW

The concept of children having special rights was unheard of in the past. The concept of particular protection for children first originated in France in the 1840s. Since 1841, laws have been enacted in France to safeguard children at labor and to guarantee them the right to education. Only after World War I did the world understood the necessity for children to have particular rights. The Declaration of the Rights of the Child was ratified by the International Save the Children Union in 1924. This document was forwarded to the League of Nations, which said that "Humanity must do its best for the child." Following that, the "Geneva Declaration," based on the research of Polish physician Janusz Korczak, was adopted as the first international Human Rights statement in history to particularly address children's rights.[1]

Since 1949, UNICEF has been present in India. It is the country's largest United Nations Organization. They were adopted, by the General Assembly, the Declaration of the Rights of the Child in 1959 (DRC). During the 1970s, UNICEF became an outspoken advocate for children's rights. During the 1980s, UNICEF worked with the United Nations Commission on Human Rights to create the Convention on the Rights of the Child[2]. The Democratic Republic of the Congo opened the way for the Universal Declaration of Children's Rights,

1 Children's Rights history, UNICEF, *available at* https://www.humanium.org/en/childrens-rights-history/ (last visited on December 21, 2022).

2 History of UNICEF, UNICEF, *available at* https://www.unicef.org/about-us/75-years-unicef (last visited on December 21, 2022).

also recognized as the United Nations Convention on the Rights of the Child (UNCRC) which was adopted on November 20, 1989. This made it the first legally binding international instrument to acknowledge all of the inherent rights of a child. The UNCRC provided legal form to the idea that children have autonomous human rights and that these rights should be at the center of all international agreements. Because India joined the UNCRC in 1992, the Indian government is bound to follow the UNCRC's provisions. In February 1997, the Government of India presented the first ever Country Report on the Convention on the Rights of the Child.

India possesses numerous child protection laws, acknowledging child's welfare importance for societal progress. It boasts a comprehensive policy and legal structure ensuring equitable access to quality protective services. Nonetheless, a lack of on-ground human resources hampers effective implementation, resulting in countless children facing risks of violence, abuse, or exploitation. Most of the legislations that focus on the protection and rehabilitation of children in India are included in four main Acts, they are: the Juvenile Justice (Care and Protection) Act 2015, The Prohibition of Child Marriage Act 2006, The Protection of Children from Sexual Offences Act 2012, The Child Labor (Prohibition and Regulation) Act 2016.[3]

A Brief History of Laws for The Protection of Children In India

Special laws for children originated from British colonial legislations during their time in India. The first such law was the 1850 Apprentice Act, allowing minors who committed minor offenses to be treated as apprentices instead of being imprisoned. This did not create a separate juvenile system, functioning within the adult one. The 1897 Reformatories Schools Act later separated children and adults in the legal system for crimes.

In 1919, the Madras Children Act 1920 was passed, following a suggestion from the Indian Jails Committee. It was considered the first step towards Juvenile Justice in the region, initially applicable only in Madras. After independence, these laws were replaced by the uniformly applicable Juvenile Justice Act 1986. In 2000, after the UNCRC signing, it was amended and re-enacted as the Juvenile Justice (Care and Protection of Children) Act 2000. The 2000 Act lacks differentiation between 'conflict-involved children' and those 'needing care and protection'. It also lacks provisions for reporting abandoned or missing children. Amendments to the Act in 2012 followed public outrage after the Delhi gang-rape incident (Nirbhaya Case), involving a 17-year-old perpetrator. The 2015 Juvenile Justice (Care and

3 Child Protection, UNICEF, *available at* https://www.unicef.org/india/what-we-do/child-protection (last visited on December 21, 2022).

Protection) Act was introduced in response. It amended the earlier law to suit current needs and adapt to the evolving society. This Act emphasizes counseling over punishment to hold young offenders accountable.

In 2015, the Act was revised to modify the term "juvenile" to "child" and "child in dispute with the law." Orphaned, surrendered, and abandoned children are also defined in the Act. It also defines 'petty', 'serious', and 'heinous' crimes committed by children. The Act clarifies the Juvenile Justice Board's and the Child Welfare Commission's functions and powers. The Act also establishes a systematic and efficient framework for adoption. It also makes registration of all childcare facilities mandatory.

The modified Act includes an essential clause that allows juveniles aged 16 to 18 to be viewed as adults in cases of severe offenses. Any teenager aged 16 to 18 who is alleged to have committed a severe crime can indeed be tried as an adult. For the same purpose, the Juvenile Justice Board would review the child's physical and mental capacities, ability to appreciate the consequences of the crime, and other factors to determine if the youngster can be treated as an adult. The Central Adoption Resource Authority (CARA) is also given legal character under the Act. The Act differentiates between children in contravention and children who need care and protection.

Under the prior Act, any child, regardless of the offense committed, might be sentenced to a maximum of three years in prison. Under no circumstances may the youngster be tried like an adult in court, imprisoned as an adult, or sentenced for more than three years. This was amended in 2015, with one exception, all children under the age of 18 will be treated equally. That would be, in the instance of heinous acts as well. Subsequently, the JJA, 2015 replaced the Juvenile Justice Act, 2000.

III. PROVISIONS ON ADOPTION IN INDIA

Adoption is the legal process of placing a child with non-birth parents and transferring their rights, it is worldwide and present in many faiths. Historically, it aided orphans but now focuses on providing shelter to the homeless, shifting from adoptive parent benefits to adopted child welfare. Adoption in the 2015 act is given under Chapter VIII, ranging from sections 56-73. *Section 2 (2)* of the Juvenile Justice Act, 2015, gives the definition of 'adoption' as "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." [4]

4 Juvenile Justice (Care & Protection) Act, 2015 (Act 2 of 2016), s. 2(2).

History of Adoption Legislations

Adoption has ancient origins like Moses' and King Octavian Augustus' cases. Modern regulations emerged after World War I due to the pandemic and war effects. Abandoned and estranged children led to new adoption laws in many states due to war-induced instability and upheaval.[5] England and Wales introduced initial adoption laws with the 1926 Adoption of Children Act. This law required consent from birth and adoptive parents. Although it granted equal rights, it could not ensure full family membership or replace inheritance rights for adopted children. Post-WWII, numerous countries passed new adoption laws, with changes made between 1940 and 1980. Some nations adapted rules for novel adoption forms.[6] Adoption is an ancient Indian practice that has evolved in purpose. Originally driven by humanitarian care for abandoned children, it now includes seeking affection, caregiving in old age, and securing an heir after death. The process remains consistent.[7]

Hindu Law

In India, Hindu law treats adopted children equally to biological ones, driven by the belief in the importance of a son for the family's spiritual and material welfare. Originally, only males could be adopted and orphans were excluded. Modern Hindu Law allows any adult Hindu, male or female, of sound mind to adopt.[8]

Muslim Law

Islamic adoption, termed kafala, differs from typical adoption. It is a caretaker's role, not parental, to preserve family integrity. Islamic law regulates this to safeguard lineage. Adoption is not prohibited but cannot imply biological relations, as Islam prioritizes lineage protection over distortion.[9] Features of Islamic adoption are:

a) Adopted child retains the original surname, not of adoptive families.

b) Inheritance is from biological, not adoptive parents.

c) Adoptive parents manage assets from biological parents, acting as trustees, not owners.

5 United Nations, Department of Economic and Social Affairs, *Child Adoption: Trends and Policies*, (United Nations, New York, 2009).

6 *Ibid.*

7 Kusum, *Family Law Lectures – Family Law I*, (2nd edn., 2008, Lexis Nexis Butterworths).

8 *Ibid.*

9 Islam Today, *available at* http://en.islamtoday.net/quesshow-16-786.html (last visited on December 21, 2022).

Muslim foster families are caretakers and trustees, not parents, under these rules. Orphaned situations are rare, relatives are typically found before a new adoption is considered.[10]

In *Shabnam Hashmi vs. Union of India*,[11] it was noted that Muslim Personal Law opposes adoption. Instead, the 'Kafala system' supports children. Under this, a Muslim cannot adopt but can provide for a child's well-being as a 'kafil'. The child remains linked to their biological parents, being a 'kafil' is not adoption.

Christian Law and Parsi Law

Adoption involves legal child association. Christians lack adoption laws, using the Guardians and Wards Act of 1890. Unified adoption law is stressed by the National Commission on Women. Christians can foster under this Act, but the ties end at adulthood, with no inheritance rights.[12]

The Effectiveness of The Provision and Role Of Central Adoption Resource Agency (Cara)

Initially, the option of adoption was only available to the Hindu community once the Hindu Adoption and Maintenance Act became effective in 1956, that enabled the adoption of Hindu kids by an individual complying toward the Hindu community, but did not extend to groups such as Muslims, Christians, and Parsis who were required to rely just on Guardians and Wards Act, 1890, that allowed them to become guardians. However, the technique simply formed a guardian-ward link. The Juvenile Justice (Care and Protection) Act of 2015 was the very first step towards a secular adoption legislation. The Juvenile Justice Act outlines detailed processes both for in-country and intra-country adoption, that are overseen by the Central Adoption Resource Authority (CARA), a state agency of the Government of India.

Central Adoption Resource Agency

CARA, the Central Adoption Resource Authority, operates as a statutory body under the Ministry of Women & Child Development, Government of India. Its main role is to serve as the central authority responsible for the adoption of Indian children, both within the country and internationally. CARA is specifically designated as the official entity to handle inter-country adoptions in compliance with the Hague Convention on Inter-country Adoption,

10 Huda, Adopting a Child in Islam, *available at* http://islam.about.com/cs/parenting/a/adoption.html (last visited on December 21, 2022).

11 (2014) 4 SCC 1

12 Adoption: Under Hindu, Muslim, Christian and Parsi Laws, Legal Service India, *available at* http://www.legalserviceindia.com/articles/hmcp_adopt.html (last visited on December 21, 2022).

which was ratified by the Indian government in 2003. The primary focus of CARA is to facilitate the adoption process for orphaned, abandoned and surrendered children through its affiliated and recognized adoption agencies. Subordinate to the Central Agency, the other agencies are as follows:

SARA: The State Adoption Resource Agency has been established by the State Government under the guidance of the Authority as per section 67 of the Act. Existing State Adoption Resource Agencies are recognized under the Act. It is headed by the Principal Secretary or Secretary of the adoption department in the State Government. The Governing Body is to include representatives from the adoption department, Department of Health or Hospital Administration, Child Welfare Committee, Specialized Adoption Agency, civil society involved in child welfare and the State Legal Services Authority. The Governing Body is directed to meet regularly to review adoption progress and address operational challenges.

The State Adoption Resource Agency plays a crucial role in handling adoption matters. It recommends recognition for Specialized Adoption Agencies (SAAs) in each district and conducts quarterly meetings to address adoption-related issues. The Agency closely monitors SAAs for accountability and efficiency. It links Child Care Institutions with suitable SAAs, facilitating adoption for eligible children. It enforces adoption standards for the welfare of orphaned, abandoned, and surrendered children. For children with special needs, it identifies SAAs capable of providing quality care and arranges their transfer. The Agency expedites de-institutionalization through adoption and non-institutional alternatives. It focuses on research, training, and accurate data management to promote program expansion. The State Government ensures appropriate action in case of violations, prioritizing the child's best interests.

SAA: The State Adoption Resource Agency oversees several essential functions carried out by Specialized Adoption Agencies (SAAs). SAAs play a vital role in ensuring the well-being of children under their care, catering to their physical, emotional, and educational needs, as well as protecting them from abuse and exploitation. SAAs report all child-related activities, including admissions, restorations, transfers, deaths, and adoptions through the Child Adoption Resource Information and Guidance System. They prepare detailed reports for each child and create care plans, prioritizing options such as restoration to biological families, in-country adoption, inter-country adoption, foster care, or institutional care. SAAs facilitate the adoption process, ensure sibling placement when possible, and provide memory albums to adoptive families. Additionally, they maintain confidentiality and offer counseling support to biological parents during surrender and prospective adoptive parents

during the adoption process. The SAAs also engage in counseling for older children and adoptive parents when needed and they extend post-adoption support to adoptees seeking their roots. Moreover, SAAs establish facilities to receive abandoned children and utilize the Child Adoption Resource Information and Guidance System for accurate documentation and record-keeping, ensuring an efficient and transparent adoption process.

AFAA: The Authorized Foreign Adoption Agency is responsible for several crucial functions. Firstly, it registers prospective adoptive parents interested in adopting children from India and promptly completes their Home Study Report. It also follows up with the Specialized Adoption Agency to ensure swift adoption after obtaining the No Objection Certificate from the Authority. The agency provides orientation to prospective adoptive parents, acquainting them with the culture, language, and food of the child's place of origin. Additionally, it monitors the post-adoption progress of adopted children and addresses any disruption cases as specified in regulation 19. To foster a sense of community, the agency organizes get-together for children of Indian origin and their adoptive families in collaboration with the relevant Indian diplomatic mission. Moreover, the agency assists older adoptees in their root search. Furthermore, the agency uploads attested copies of adoption applications in the Child Adoption Resource Information and Guidance System and forwards the originals to the allocated Specialized Adoption Agency. Finally, the agency diligently adheres to the legal requirements of the host country and the terms and conditions of the Authority's authorization.

DCPU: The District Child Protection Unit (DCPU) has additional adoption-related responsibilities, apart from its mandated functions. These include identifying orphaned, abandoned, and surrendered children and assisting in their legal declaration as adoptable with the help of Specialized Adoption Agencies or Child Care Institutions. The DCPU ensures prompt uploading of essential reports for legally free children in the Child Adoption Resource Information and Guidance System. It also promotes adoption by facilitating partnerships between Child Care Institutions and Specialized Adoption Agencies. Furthermore, the DCPU monitors adoption progress for both legally free children and registered Prospective Adoptive Parents, expediting the process when necessary. It maintains qualified social worker panels and counselling centers to provide adoption-related support. The DCPU supervises and ensures accurate data updates in the Child Adoption Resource Information and Guidance System while assisting the State Adoption Resource Agency, the Authority and the Child Welfare Committee with adoption matters.

Additionally, the DCPU aids in restoration efforts and the legal process of declaring abandoned children as adoptable, including publication of child information, obtaining social investigation and non-traceable reports through Specialized Adoption Agencies. The DCPU ensures the timely uploading of the Child Welfare Committee's certificate for legally free children in the system. It diligently updates adoption-related information according to specified schedules or the Authority's directions on the Child Adoption Resource Information and Guidance System (CARINGS).

Adoption Rules, 2022 as formulated by the CARA have now been enforced with a notification of the Ministry of Woman and Child Development dated 23rd September 2022. These rules supersede the earlier enforced Adoption Rules 2017 in accordance to the power granted to the central government as under Section 68(c) and Section 2(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

The Procedure of Adoption

A prospective parent can apply with the Adoption Coordination Agency (ACA) in their state, which is the CARA-accredited agency for each state. This adoption agency performs a comprehensive examination of the parents, including three years of pre-adoptive therapy. Potential parents can voice their preferences at this phase. Once a suitable kid has been identified, agencies can organise for prospective parents to actually get to know the child. After completing the foster care agreement, the child might be put into pre-adoption foster care if the match is established.[13] Meanwhile, the Specialized Adoption Agency/Child Care Institution as well as the adoptive families file a joint application with the District Court within 10 working days after matching. All proceedings must be held in secret and end within two months after filing, as per Section 61(2) of the Juvenile Justice Act. The CWC is really no longer the "ultimate authority" in instances of children who require protection and care. Anyone connected to the kid may submit a request before a district magistrate, who can examine and make necessary orders. Because he has access to and is better acquainted with all the authorities in his jurisdiction, the district magistrate would be able to oversee the procedure more efficiently and quickly.

Eligibility for Adoption in India

To be eligible for adoption, prospective adoptive parents must meet specific criteria. They should be physically, mentally, emotionally, and financially capable with no life-threatening

13 Adoption Regulations, 2022, framed by 'Central Adoption Resource Authority (CARA) as mandated under s. 68 (c) of Juvenile Justice (Care and Protection of Children) Act, 2015.

medical conditions or criminal convictions related to child rights violations. Marital status and having biological children do not affect eligibility. Married couples need consent from both spouses, while single females can adopt any gender, but single males cannot adopt girls. The intent behind such a law was to prevent instances of abuse at the hands of the adoptive parent, however, it is difficult to prove its realization. Couples should have at least two stable years of marriage, except for relative or step-parent adoptions. The age of prospective adoptive parents at registration that determines the eligibility for children of different age groups is as follows:

a) For children up to 2 years: The combined age of couples should not exceed 85 years and single adoptive parents should be under 40 years.

b) For children above 2 and up to 4 years: The combined age of couples should not exceed 90 years and single adoptive parents should be under 45 years.

c) For children above 4 and up to 8 years: The combined age of couples should not exceed 100 years and single adoptive parents should be under 50 years.

d) For children above 8 and up to 18 years: The combined age of couples should not exceed 110 years and single adoptive parents should be under 55 years.

The minimum age difference between the child and either adoptive parent should be at least twenty-five years. The age criteria do not apply to relative adoptions and step-parent adoptions. Couples with two or more children are generally considered for special needs and hard-to-place children unless they are relatives or step-children. Prospective adoptive parents must revalidate their Home Study Report every three years. The seniority of prospective adoptive parents without any referrals within three years is determined from their registration date, except for those who have surpassed a composite age of one hundred ten years.

Despite the fact that a single parent can adopt a child, the adoption rights of same-sex couples are not yet defined anywhere in the act.

Eligibility of Same-Sex Couples to Adopt Children

The recognition of adoption rights for the LGBT community is not directly derived from constitutional and statutory sources; instead, these rights are often established through judicial decisions. The LGBT community has experienced significant injustices, particularly in relation to marriage and adoption. They face numerous social and economic inequalities in connection with their adoption rights. Despite living in a modern era, the acceptance of

LGBT individuals adopting children is still less common compared to opposite-sex couples. Various procedures and practices continue to create barriers to their adoption efforts. Additionally, many foreign countries prohibit same-sex couples from enjoying adoption rights. This discriminatory trend is also observed in India, where the law neglects the adoption rights of same-sex couples.

In contrast, countries like the United States, the United Kingdom, South Africa, and the European Union have taken progressive steps by legalizing joint adoption for same-sex couples, highlighting the legislative gap that remains to be addressed. The urgency for action is apparent, especially considering the recognition of the rights of the third gender and their protection against discrimination. Denying them the right to family life is no longer tenable.

Advocates of LGBT adoption contend that there is a considerable number of children requiring homes. They argue that as parenting skills are not linked to sexual orientation, the legal system should permit them to adopt children.[14] In contrast, those who oppose this idea posit that purportedly higher instances of depression, substance abuse, promiscuity, and suicide among homosexuals (along with a supposed higher occurrence of domestic violence) could negatively impact children. They also suggest that the absence of both male and female role models during a child's upbringing might lead to difficulties in adjustment. [15] Detractors might further point out that in the case of couples seeking to adopt, there is usually a requirement for a stable marriage of at least two years, whereas LGBTQ marriages might not yet be officially recognized under the law, thus potentially invalidating their adoption efforts from a legal standpoint.

The case of Navtej Singh Johar has brought about a significant transformation by removing the criminalization of sexual activities among homosexual couples. As a result, it is imperative for the government to revise existing laws in order to acknowledge and support adoption by same-sex couples. Numerous nations have already taken steps to legalize adoption by same-sex couples. Furthermore, countries like Estonia, Italy, Slovenia, and Switzerland have embraced step-child adoption, allowing one partner in a relationship to adopt the natural and adopted children of their partner. This points to a growing trend where individuals from the LGBTQ+ community become eligible to legally adopt children and exercise their right to have a family. In light of this, India must revisit and modernize its longstanding adoption laws to effectively address the changing societal landscape.

14 Charlotte Patterson, Wainright, *et. al, Adolescents with Same-Sex Parents: Findings from the National Longitudinal Study of Adolescent Health, Lesbian and gay Adoption: A New American Reality*, pg. 2 (Oxford University Press, New York, 2009).

15 Gordon Moyes, Gordon Moves (26 February 2009) (last visited on August 05, 2022)

IV. ANALYSES OF PROVISIONS RELATED TO ADOPTION

Adoption is defined in the Chapter VIII of the Juvenile Justice (Care and Protection) Act, 2015, ranging from sections 56 to 73. Adoption was first recognized only in Hindu Law, where the adopted child was considered to be the same as the naturally born child. All other religions being Muslims, Christians, and Parsis, were governed by the Guardians and Wards Act, 1890. However, this act did not make provision for the adoptive child to be considered the same as a naturally born child of that family.

In the current scenario, there was a demand of a secular and uniform law to govern the whole of India when it concerned the Adoption of children. The introduction of the Juvenile Justice Act, 2015 was seen as the first and a very significant attempt towards the Uniform Civil Code. It was a revolutionary piece of legislation that has attempted and even succeeded in providing some uniformity and a sense of legal equality to exist in this regard. However, to say that the legislation does not need improvement would be wrong. Some of the points on which improvement can be done are as follows:

Time-Consuming and Tedious Process

Adoption is a time-consuming procedure that must be addressed. The adoption procedure can be exceedingly time-consuming, causing great strain and stress in some families. In both domestic and international adoptions, average waiting durations might range from a few months to years. Adoption is complicated and the state, as well as adoption organisations and specialists, frequently impose highly severe standards in different nations.[16] Moreover, according to data from the Ministry of Women and Child Development, there are many pending adoption cases in India's Civil Courts that have been ongoing for longer than the time limit allowed in section 61(2) of the Juvenile Justice Act. Despite the fact that various changes have already been made over time to address concerns raised during the Act's implementation.

Very Stringent Rules and Procedures

Domestic adoptions follow tight guidelines and adopting families' eligibility is scrutinised. This complicates the adoption procedure and most of the time, the family is unable to adopt a kid due to such laws, which discourages potential adopters and adoptees.[17]

16 How Long Does It Take to Adopt a Child, Adoption Network, *available at* https://adoptionnetwork.com/how-long-does-it-take-to-adopt-a-child (last visited on December 21, 2022).

17 Pros and Cons of Adoption, India Parenting, *available at* https://www.indiaparenting.com/adoption/3_3786/pros-and-cons-of-adoption.html (last visited on December 21, 2022)

Inadequate Availability

According to the Child Adoption Resource Information and Guidance System (CARINGS), only one child is available for every ten adoptive parents in India. Because the institutionalised care ratio of orphaned children to children is unbalanced, there are not enough youngsters available for adoption. As a result, fewer children may be available for adoption, and foster parents may be less eager to adopt minority group children.

Gender Inequality In The Process Of Adoption

Although it was declared following the Act of 2000, that gender discrimination had been removed, it still exists in practice. A married woman cannot adopt, even with her husband's consent, unless her spouse dies, suffers from a handicap or renounces the world. A husband, on the other hand, may adopt with the permission of his wife. To elucidate the same, in the case of *Malti Roy Choudhury* v. *Sudhindranath Majumdar,*[18] Malti, the appellant, was adopted by the now deceased mother. After her mother died, she became the only heir and applied for her mother's assets and possessions. The appellant produced several pieces of evidence, including documentation of the adoption ceremony, natural parents turning over the daughter to the foster mother as in presence of the husband and the priest, recognition through school records and Malti performing her mother's burial ceremony. The Court, however, rejected the claim, holding that "under the provisions of the act, the husband alone can adopt, but here, it is an admitted position that Malti was adopted by the mother Tripti not by the father and thereby, rejected her appeal."[19]

Additionally, in the matter of *Sawan Ram v. Kalavati*, [20] the issue was whether, in the instance of a widow's adoption, the adopted kid would be held to be the late husband's child as well and therefore his heir. The Supreme Court ruled that the adoption will be made not only by the female, but also by her late husband. This argument was founded on the language of Section 5(1) of the Act.

Intercountry Adoption and Child Trafficking

While there is a need to not let the procedures of the act be very stringent which may lead to discouragement of prospective parents to adopt children, there is also a need to make sure that in case of intercountry adoption, the safety of children is preserved and they get the care and protection they need. There is a balance that needs to be maintained. In this regard the case of *Laxmikant Pandey v. Union of India,* [21] serves as an important case. The Supreme

18 AIR 2007 Cal 4.

19 *Ibid*.

20 AIR 1967 SC 1761.

21 AIR 1984 SC 469.

Court of India in this case formulated a handful of principles governing the prerequisites for inter-country adoption. The action was started after an advocate, Laxmikant Pandey, filed a letter to the court claiming that social groups and volunteer organisations who sell Indian infants to non-citizen parents are engaging in malpractice.

Eligibility Grounds Not Clearly Specified

On reading of the legislation in the Juvenile Justice Act that deals with the eligibility of the person to adopt a child as per section 57(1) it is mentioned that "The 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".[22] This criterion seems to be inclusive on the first reading, however, if we go into the details, all these grounds can be said to be based more on the discretion, and being subjective. Since no strict grounds are laid, it makes decision making complicated and it would definitely lead to disparity. Adoption rights of same sex couples are not mentioned in any legislations despite many judgements passed by the Supreme Court regarding the same.

V. CONCLUSION AND SUGGESTIONS

Adoption is a good endeavor that offers joy to children who have been abandoned or orphaned. This allows the humanitarian aspect of society to show through. It is a helpful program in which the kid is treated as if he or she were a biologically born child and is lavished with love, care and attention. In addition to the same, it fills the gap in the hearts of parents who long for children, their laughter and mischief ringing off the walls of their home.

Adoption in the olden days yielded an heir to the adoptive parents and son to perform religious rights. It was on the adoptive parent's wish and benefits, that the adoption happened in due course with the development of social justice, equality of law, and welfare of children. Adoption in modern days is viewed from the point of welfare and psychological development of the adopted child.

Both the adoptive parents and child are to benefit from adoption. The prospective adoptive parents gain a son or daughter to show their love and to nurture them to their heart's content. The adopted child gets a supportive and loving parent who replaces the loss of the biological parent. Anything less than this results in the failure of the adoption concept especially for the child.

22 Juvenile Justice (Care and Protection) Act, 2015 (Act 2 of 2016), s. 57(1)

Though Numerous laws, regulations, guidelines, and monitoring agencies were employed to prevent abuses on the adopted child, active follow-up of the process is necessary for the welfare of the adopted child. The major focus is on the child as he/she is the future pillar of the society and needs to have proper physical and mental makeup for their prosperous future. Guidance and training from authorized welfare agencies and nodal agencies can ensure this.

The adoption by a single parent is alarmingly high nowadays. Hence it is the responsibility of the child care agencies to train them to handle the children in such a way that they should not feel abandoned or not taken care properly. Gender and religious equality in the adoption process is almost addressed in the Juvenile Justice (Care & Protection) Act, of 2015.

Navtej Singh Johar's case spurred change, decriminalizing homosexuality. India must update laws to acknowledge same-sex adoption. Many nations and even some countries with step-child adoption embrace LGBTQ+ adoption. India should modernize adoption laws for societal progress. The central and state governments need to monitor the latest socio-cultural developments and amend the relevant acts to protect and preserve the rights of children.

The Juvenile Justice Act, 2015 is recognized as the first step towards the Uniform law for adoption. However, there still exists some room for improvement.

Some of the measures that can be taken are as follows:

a) In the researchers' modest opinion, in order to simplify the process, we must guarantee that adoption processes are very well known and that there are enough adoption facilities.

b) Though extensive waiting duration may be required for certain adoptions, many families want to find every means they can to lessen these long waits. This may be accomplished by making those aspects of the procedure that take a long time but are not critical to the child's safety, online. There are steps that may be taken to limit the number of matters that reach the court, yet many cases remain outstanding.

c) The qualifying conditions listed in section 57(1) of the Juvenile Justice Act, 2015 might be clarified so that judges and authorities have less discretion.

d) Legislative gaps should be covered in defining the adoption rights of LGBTQ couples. Their right to create a family should be recognized and protected.