

NATIONAL JUDICIAL ACADEMY



Orientation-cum-Sensitization Programme on Adoption under The Juvenile Justice (Care and Protection of Children) Act, 2015 for Faculty Members of State Judicial Academies and other Judges

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Programme Report

Submitted by

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&

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Object & Theme of the Programme –

CARA & Ministry of Women and Child Development, Government of India was very much concerned about pendency of adoption cases & hence wanted judges to be sensitized to dispose of adoption cases on priority. The melting ice theory i.e. ‘you have to use the ice cube before it melts’ is the theory applicable to adoption cases. One has to decide the adoption case before the child gets old enough to understand that he is orphan and not wanted by the rest of the world. At the same time, we thought that judges should also be sensitized to the darker side of adoption so in a haste of disposing cases, they should not forget that one wrong order on their part can destroy the life of innocent child. Target participants for the programme were Directors or Judges-in-charge of State Judicial Academies & some senior Judges who are handling adoption cases. These participant Judges are expected to impart further training in their respective State Judicial Academies for other judges who could not come here at NJA.

Day - 1

Introductory Address –

The programme commenced with the introductory address by Justice G. Raghuram, Director, National Judicial Academy, Bhopal. He explained the role played by NJA in judicial education and the vision and mission of the academy which is dedicated towards the enhancement of the justice delivery system. The Academy has been involved in the process of training judges from all the ranks of judiciary.

Session 1 -

**Theme - Fundamental Principles of Governing Adoptions & Various Legislations/
Regulations for Adoptions – an overview**

Speaker – Ms. Leena Nair.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Speaker for this session Ms. Leena Nair discussed the fundamental principles governing adoption. She said that, adoption shall be resorted to right to family for the OAS children (Sec 56(1) of JJ Act). The child's best interests shall be paramount (Reg 3(a) of AR, 2017). The principle of

placement of the child is in his own socio-cultural environment (Reg 3(b) of AR, 2017). All adoptions shall be registered on CARINGS (Reg 3(c) of AR, 2017). Maintaining the confidentiality is mandatory (Sec 74 of JJ Act & Reg 3(c) of AR, 2017)

Ms. Leena Nair point out that children are considered a bundle of joy and on whom the future of the country depends. She further discussed the relevant adoption laws. She said the Hindu Adoption and Maintenance Act, 1956 was passed after Independence as part of modernizing and codifying Hindu Law. But, as the name itself suggests, the Hindu Adoption and Maintenance Act, 1956 was applicable to Hindu society only.

Another law that deals with adoption is Guardians and Wards Act, 1890. She late point out that, The Guardians and Wards Act, 1890 was a law to supersede all other laws regarding the same. It became the only non-religious universal law regarding the guardianship of a child, applicable to all of India except the state of Jammu and Kashmir. This law is particularly outlined for Muslims, Christians, Parsis and Jews as their personal laws don't allow for full adoption, but only guardianship. It applies to all children regardless of race or creed. Following is an overview of the act.

Then she discussed The Juvenile Justice (Care and Protection of Children) Act 2006 read with the Guidelines and Rules issued by various State Governments.

She further discussed some typical & cryptic orders passed by some judges in adoption order, such as -

1. One Judge ordered production of adopted child after every three months before him till the child attains majority.
2. One judge asked the Prospective Adoptive Parents to donate Rs. 2,00,000/- to one school for getting the child in adoption etc.

Hence, she requested the Chair & Participants to look into such orders.

Session 2 -

Theme - Adoption Process in brief under JJ Act 2015 & Adoption Regulation 2017, Role of CWC in Adoption, Preparation & Importance of Home Study Report (HSR) in Adoption, & Post adoption follow up process.

Speaker – Mr. Deepak Kumar.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Mr. Deepak Kumar, CEO CARA was the speaker for this session -

He discussed JJ Act, 2015, JJ Rules 2016 and CARA Adoption Regulations, 2017. Then he discussed the role of CWC in adoption process. It declares the child free for adoption. Then he discussed as to how the home study report of PAP's is done & what it contains, how its important etc.

Then he said that once the child is given in adoption either in inter-country adoption or in in-country adoption, his follow up is taken for the period of 2 years. The agency which facilitated adoption sends the progress report of adopted child after stipulated period. The details are as follows -

Inter-Country	In-Country
Total 6 reports, i.e. for first year each after quarter & for next year, each after 6 months	Total 4 reports each after 6 months.

He further stated that, the special adoption agencies provide post-adoption counselling services for adoptees and adoptive parents. The follow-up measures continues up to a period of two years after the child acquires citizenship of the receiving country. The authorized foreign adoption agencies (AFFA) shall also provide post adoption data to CARA through CARA's web-based management system. The AFFA shall organize annual get-together of adopted children and adoptive parents and forward a report on the event to CARA. The AFFA may conduct post-adoption counselling for adoptees.

Here most of the participants were of the view that they don't believe the inquiry done by the CWC. CWC is the most politicized institution and its chairpersons and members are not selected on the basis of merit but on the basis of political nuisance value. They lack the judicial acumen. It should be JJB rather than CWC which should be entrusted with the job of inquiry as JJB is much stable and better than CWC.

But it was concluded that Legislature in its wisdom has entrusted the CWC with the said work and hence, no one can do anything in the matter.

Session 3 –

Theme - Inter-Country Adoptions: Laws and Regulations

Speakers – Arun Dohle, Deepak Kumar & Adv. Anil Malhotra.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Firstly, Arun Dohle started his session -

To start with his session, he showed a video of "Dutch girl" who was given in adoption from India & She was here in India in search of her roots i.e. mother & father. Then he started his presentation saying that "nobody wants to accept it but it is the open truth at international level that giving & taking the child in adoption in the money-making business. In India, less amount is to be spent for adoption & hence, foreigners opt India for adoption.

At this point of time there were some exchange of words with speaker & CEO of CARA as well as secretary of WCD ministry.

Thereafter, the presentation of Mr. Arun Dohle was aborted & he was made to sit.

The second speaker Mr. Anil Malhotra started his session & he read out the provisions in CARA Adoption Regulations, 2017. He also read out formats of applications in CARA Regulations & concluded his session.

Third speaker Mr. Deepak Kumar discussed the UN Convention of Rights of Child & Hague Convention on Inter-country Adoption with reference to Indian laws & regulations & conducted his sessions. In this session also participants raised their concerns about the functioning of CWC and the role played by it in the inter-country adoptions. Most of the participants raised issues about the safety of children abroad and post adoption care, which were attended by the speakers.

Session 4 -

Theme - Court Procedure and Content of the Adoption Order (Inter-Country)

Speakers – Deepak Kumar & Adv. Anil Malhotra.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

First speaker of this session Adv. Anil Malhotra read out the court procedures and application formats in the Act and CARA Adoption Regulations, 2017.

Second speaker for this session was Mr. Deepak Kumar. He discussed the procedure to be followed for inter-country adoption and also the format in which the application is to be made to the Court. He pointed out that, interest of child should be “first and foremost” during adoption. Whether it is in-country or inter-country adoption, the interest of the child should be supreme. There should be no compromise whatsoever. He also discussed as to what the court order should contain. In this session he tried to impress on the participants that once the application was filed before them, they should be assured that every care has been taken by CARA. He elaborated the process of adoption as follows -

- First PAPs will approach CARA affiliated SAA in their country and through it only, they will be registered on the portal CARINGS.
 - Then suitable child will be shown to them.
 - On their acceptance of child, CARA will issue NOC to them.
 - Then, petition will be filed by SAA in which child is residing in the Court.
 - After the Court passes order, PAPs will be entitled to take the child alongwith then abroad.
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He further stated that Fees for such adoption to be taken from PAPs is \$ 6000/-. This fee is taken for preparing Home Study Report and for other legal charges i.e. applying to Court, getting certified copies of Court orders, lawyers fee etc.

Most of the Participant Judges expressed their views about this session and the entire Court Procedure, as terming them just a “Rubber Stamp” and nothing more. They were of the view that whatever is done by the CARA, SAA and CWC is not binding on them and they can independently assess the fitness of PAPs, their income, their compatibility, welfare of the child etc. They will be scrutinizing as to whether CWC has taken every care or not and then only they will be able to pass the order.

Session 5 -

Theme - Relative Adoption & Adoption by Step Parent.

Speakers – Deepak Kumar.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Speaker for this session Sh. Deepak Kumar said that, "There is no law in India which defines legal relationship between a step parent and a step child. A step child has no claim to the step parents' property. Nor is the child legally obliged to look after the step parent in his or her old age. Earlier, only an orphan or abandoned or surrendered child was allowed to be adopted. Now the government has expanded the definition of children eligible for adoption to include "a child of a relative and child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption." However, in case of "step-parent adoption", the couple including one of the biological parents will have to register with Child Adoption Resource Information and Guidance System. They also need to get consent of the other biological parent for adoption and file an application in a court to obtain an adoption order. Similarly, for adoption by a relative, prospective parent/s will have to seek consent from biological parents if they are alive otherwise seek permission from a Child Welfare Committee. The Juvenile Justice Act 2015, from which the regulations are derived, defines the term relative as "a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent". To make adoption in these two categories simpler, the age criteria for prospective adoptive parents has also been waived off.

*At this stage all the participants demanded that Mr. Arun Dohle be provided with an opportunity to complete his presentation. Hence, as per demand, Mr. Arun Dohle was again given opportunity to present his topic. Then Mr. Arun Dohle completed his presentation. He elaborated as to how under the garb of adoption children are being trafficked at international level.

He also discussed that the children are even kidnapped & abducted & given in adoption & parents are fighting for getting their children back.

DAY - 2

Session 6 -

Theme - In-Country Adoptions Laws and Regulations.

Speakers – Adv. Ramkumar Mishra, Deepak Kumar.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

In this session Mr. Deepak Kumar elaborated the laws & regulations applicable to in-country adoption. He said that all rules or procedure of inter-country adoption are applicable to in country adoption also except with certain modifications. He elaborated here as to how the online registration system called "CARINGS" works & concluded his session.

Second speaker Mr. Ram Kumar Mishra shared his experiences of adoption & concluded in favour of in-country adoption.

Here the Speaker Mr. Deepak Kumar also explained differences between HAMA/GAWA and JJ Act with respect to adoptions.

Session 7 -

Theme - Court Procedure & Contents of the Adoption order (In-Country)

Speakers – Deepak Kumar & Adv. Ramkumar Mishra.

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Firstly Adv. Ramkumar Mishra introduced the second session by explaining the relevance in inter country adoptions. The role of Child Welfare Committee (CWC) in adoption. Later he moved on Assessing Eligibility of PAPs for Adoptions. Home study to check the suitability and eligibility of

the PAPs is conducted by the social worker of a SAA in the place of PAPs' residence. Home Study Report (HSR) is prepared in the format given in Schedule VII of AR 2017 which has a validity of 3 years. PAPs are declared suitable based on the HSR and only then they are eligible for adopting a child depending upon the availability of a suitable child.

For this session Mr. Deepak Kumar was second speaker. He in short said that all court procedures applicable to inter-country adoption are also applicable to in country adoption. He further said that the contents of court order for in-country is almost identical to inter-country adoption discussed earlier, except that - direction to issue visa & passport of child will not be there in in-country adoption.

Procedure –

- First PAPs will approach CARA will get themselves registered on the portal CARINGS.
- Then suitable child will be shown to them.
- On their acceptance of child, the child may be given in their custody as “pre-adoption foster care”.
- Thereafter, petition will be filed by SAA in which child is residing in the Court.
- After the Court passes order, PAPs will be entitled to retain child with them and get his birth certificate showing them as parents of child.

He further stated that fees for such adoption to be taken from PAPs is Rs. 40,000/-. This fee is taken for preparing Home Study Report and for other legal charges i.e. applying to Court, getting certified copies of Court orders, lawyers fee etc.

Most of the Participant Judges expressed their views about this session and the entire Court Procedure, as terming them just a “Rubber Stamp” and nothing more. They were of the view that whatever is done by the CARA, SAA and CWC is not binding on them and they can independently assess the fitness of PAPs, their income, their compatibility, welfare of the child etc. They will be scrutinizing as to whether CWC has taken every care or not and then only they will be able to pass the order.

Session 8 -

Theme - Open House Discussion & Conclusions –

Chair – Justice Shalini Phansalkar-Joshi and Justice K. Hema.

Hon'ble Justice Dr. (Mrs.) Shalini Phansalkar Joshi commenced on the session with brief introduction of Adoption. She said that "Adoption is a Beautiful Way to Build a Family". Adoption is not about finding children for families; it's about finding families for children. Adoption is meant; to provide permanent, non-institutional care within the family. To the children in need of care and protection, namely, Orphaned, Abandoned or Surrendered. Adoption means 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 biological child. We should not be asking who this child belongs to but who belongs to this child. She further said, longer the child remains in Institution, the more negative the effects on cognitive, emotional, social and physical development of the child. Developmental stages do have expiry dates. Winds of emotional developments are lost when children are left in Orphanages and Institutions. The number of children in need of care and protection are many times more than children in conflict with law in India. Hence, adoption is the best non-institutional support, which can be arranged for these children. She pointed out that objects of JJ Act 2015, to protect best interests of child and to help the child to develop full potential. She further said the objects of the adoption, the primary responsibility of providing care, nurture and protection that of his biological family. In its absence, that of adoptive family. Primary Aim – To provide a child who can't be cared for by his biological parents with a permanent substitute family. Institutionalization – to be the last resort. Further she moved on "Procedure for Adoption by Indian Prospective Adoptive Parents Living in India". She cited *Lakshmi Kant Pandey Vs. Union of India, [(1984) 2 SCC 244]* "Every effort must be made first to see if the child can be rehabilitated by adoption within the country. And if it is not possible, Then only adoption by foreign parents i.e. inter-country adoption should be acceptable. This principle stems from the fact that inter-country adoption may involve trans-racial, trans-cultural, trans-national aspects, which may create problems for assimilation of child, in the adoptive family." *Lakshmi Kant Pandey Vs. Union of India [(1984) 2 SCC 244]* Emphasizes the need for adhering to the time schedule And Directed the High Court to exercise effective supervising control. Expresses strong disapproval of keeping

the applications pending for not less than 5 to 6 months and delay in disposal. Impresses upon the Courts that such proceedings must be disposed of at the earliest and in any event, not later than 2 months from the date of application.

She pointed out that What Is Welfare? Welfare of the child not to be measured by money alone or by physical comforts only. The word 'welfare' is an all-encompassing word and must be construed in its widest sense. While material considerations have their places, more important are the suitability and security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the helpful development of child's own character, personality and talents.

She cited that *Shabnam Hashmi Vs. Union of India & Ors.* [AIR 2014 SC 1281] wherein it has been held that Any person, irrespective of religion, caste, creed etc. can adopt a child under J.J. Act.

Finally they discussed on Simulation Exercise

Ms. Sonam, aged 17 years and Mr. Anil, aged 22 years both residents of Bhopal were in love with each other. They were also having physical relationship and as such Sonam became pregnant. Till the time pregnancy was discovered, medical termination of pregnancy was not possible. When this fact was discovered by the parents of Sonam, they lodged an FIR under the provisions of Protection of Children from Sexual Offences Act, 2012 (POCSO). As a result, Anil was arrested and sent to prison. While the case was pending, Sonam delivered a male child. Due to pressure of her family members and to avoid stigma of being unwed mother, she surrendered the child in the institute/orphanage. For the legal period of 2 months, institution tried to persuade Sonam to take back the child but in vain. As a result, after two months CWC, Bhopal declared the child to be legally free for adoption.

Accordingly the child was shown to Mr and Mrs XYZ and they agreed to adopt him. After completion of required procedure they filed application before the District Court, Bhopal under Section 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015. By the time, Anil was released on Bail from the criminal case and when he came to know about the status of his son as child legally free for adoption and the adoption proceedings in the District Court, Bhopal, he

applied to the court for cancellation of order of CWC and to drop the adoption proceeding filed by Mr and Mrs XYZ as he is ready and willing as well as physically, mentally and financially fit to maintain the child.

What recourses/options are available?

Participants discussed the exercise almost for 1 hour but no solution could be found out to it.
