

Orientation-cum-Sensitization Programme
on
“Adoption”
under The Juvenile Justice
(Care & Protection of Children) Act, 2015



Presented by :

Dr. (Mrs.) Shalini S. Phansalkar – Joshi
Judge, High Court, Bombay

What Is Adoption ?

A Beautiful Way to Build a Family !!!

➤ Adoption is not about finding children for families;

➤ Its 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.

[Section 2(2) of JJ Act]

We should not be asking who this child belongs to but who belongs to this child.

- Adoption is more like a marriage than a birth : two (or more) individuals, each with their own unique mix of needs, patterns and genetic history, coming together with love, hope and commitment for a joint future.
- You become a family, not because you share the same genes, but, because, you share love for each other.

**Children Belong to Families –
Not Institutions**

➤ The UN Convention on the Rights of the Child, 1989, recognizes family as the fundamental group of the society and the natural environment for growth and well-being of all its members and particularly children.

➤ However, in reality, large number of children are found destitute and abandoned, without a nurturing family environment and not just in developing countries, but also all over the Globe.

➤ Though the homeless exists in India in large numbers, the Society, at large, tries to render them invisible and shockingly attempts to blame the homeless for their situation.

- The 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. Wins 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.

OBJECTS OF J.J. ACT

➤ To protect best interests of child and to help the child to develop full potential.

➤ By catering to their basic needs through proper care, protection, development, treatment, social re-integration through processes provided.

And

➤ Through Institutions and Bodies established.

OBJECTS OF 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.

GENERAL PRINCIPLES

- Positive Measures – All resources to be mobilized ;
- Including those of family and community;
- For*
- Promoting the well-being.
- Facilitating development of identity.
- Providing an inclusive and enabling environment.
- To reduce vulnerabilities of children;
- The need for intervention and the Act.

➤ When you honor the birth family of the child, you honor the child.

➤ When you don't honor the birth family, the child will believe that something is inherently wrong with him/her.

Juvenile Justice Act, 2015

- A Secular Act – any body irrespective of religion can adopt a child under this Act (Section 58(1) of the JJ Act).
- Nothing in this Act shall apply to adoption under HAMA (Section 56(3) of the JJ Act).
- All inter-country adoptions shall be done as per provisions of this Act and Adoption Regulations framed by the Authority (Section 56(4) of the JJ Act).
- Children upto the age of 18 can be adopted under this Act (Section 2(12) of the JJ Act).
- Orphan, Abandoned and Surrendered (OAS) children declared legally free for adoption by CWC (Section 38 of JJ Act & Reg. 6 and 7 of AR 2017) can be placed in in-country and inter-country adoptions (Section 56(1) of the JJ Act, Reg. 4(a) of AR 2017).

Juvenile Justice Act, 2015

- Children of relatives, as defined in Section 2(52) of the JJ Act, can be adopted by a in-country parent (Section 56(2) of the JJ Act and Reg. 51 of AR 2017).
- Children of relatives, as defined in Section 2(52) of the JJ Act, can be adopted by a inter-country parent (Section 60 of the JJ Act and Reg. 53 and 54 of AR 2017).

Juvenile Justice Act, 2015

Eligibility of PAPs (Section 57 of the JJ Act and Reg. 5 of AR 2017).

- ◆ A couple / single parent can adopt;
- ◆ Single male not eligible to adopt a girl child;
- ◆ PAPs age eligibility criteria is defined;
- ◆ Minimum two years stable marital relationship is mandatory;
- ◆ PAPs with three or more children shall not be eligible to adopt a normal OAS child;
- ◆ Eligibility and suitability of the PAPs are ascertain through a Home Study by the SAA (Section 58(2) of the JJ Act and Reg. 9(13) of AR 2017).

Juvenile Justice Act, 2015

- Judicial Determination of Adoption by Court concerned defined in (Section 61 of the JJ Act and Reg. 12, 17 and 55 of AR 2017).
- Judicial Procedure for Court in Adoption Case defined in JJ Rules, 2016 (Rule 45(2), Reg. 17(2) of AR 2017).
- Post adoption follow-up of the adoptive family, both, in case of in-country and inter-country is undertaken for two years by the SAA and the AFAA respectively (Reg. 13 and 19 of AR 2017 respectively).

Comparative Statement on Adoption *under HAMA & JJ Act*

HAMA

- Only for Hindus.
- Same sex children cannot be adopted.
- Children only upto 15 years of age can be adopted.
- Registered deed finalizes adoption, court permission required in some cases.
- OAS children qualifying the conditions under Section 9(4) of the Act can be given in adoption by one Hindu to another Hindu (not necessarily relative to each other) with the permission of District Court.

JJ Act

- Secular Act.
- No such conditions.
- Children upto 18 years of age can be adopted.
- Adoption order finalizes adoption, deed is not required.
- JJ Act provisions for rehabilitation of OAS children in the SAA/CCI and these children have to be placed in adoption under this Act.

Comparative Statement on Adoption under HAMA & JJ Act

HAMA

- However, such children cannot be given in adoption by a SAA/CCI under HAMA, since such children belong to the State and neither the child nor the Institution can be considered as Hindu. Such application should not be entertained by the Courts.
- Suitability of the PAPs, sourcing of the child and the post-adoption follow-up cannot be ascertained/ensured for adoption under HAMA.

JJ Act

Orphan/Abandoned/Surrendered Children are Children in Need of Care and Protection, as per Section 2(14)(vi) of JJ Act and, therefore, have to be given in Adoption under JJ Act.

Welfare and best interests of the child is ensured through the built in mechanisms in the JJ Act, JJ Rules and Adoption Regulations.

Fundamental Principles Governing Adoption

- Adoption shall be resorted to right to family for the OAS children (Section 56(1) of the 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 (Section 74 of JJ Act and Reg. 3(c) of AR, 2017).

Types of Adoptions

Under JJ Act, 2015 and AR, 2017

- In-country adoption of OAS children.
- Inter-country adoption of OAS children.
- In-country relative adoption.
- Inter-country relative adoption.
- Adoption by step-parents.

“ADOPTION”

[Section 56 of JJ Act]

- (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.
- (2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.
- (3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

“ADOPTION”

[Section 56 of JJ Act]

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of section 80.

“Eligibility of Prospective Adoptive Parents”

[Section 57 of JJ Act]

- (1) 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.
- (2) In case of a couple, the consent of both the spouses for the adoption shall be required.
- (3) A single or divorced person can also adopt, subject to fulfillment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.
- (4) A single male is not eligible to adopt a girl child.
- (5) Any other criteria that may be specified in the adoption regulations framed by the Authority.

**“Procedure for Adoption
by Indian Prospective Adoptive Parents Living in India”**

[Section 58 of JJ Act]

- (1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

- (2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

**“Procedure for Adoption
by Indian Prospective Adoptive Parents Living in India”**

[Section 58 of JJ Act]

- (3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.
- (4) On the receipt of a certified copy of the court order, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.
- (5) The progress and wellbeing of the child in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations framed by the Authority.

“Court Procedure And Penalty Against Payment In Consideration Of Adoption”

[Section 61 of JJ Act]

- (1) Before issuing an adoption order, the court shall satisfy itself that —
 - (a) the adoption is for the welfare of the child;
 - (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and
 - (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised 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, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus. Court procedure and penalty against payment in consideration of adoption.

- (2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing.

“Additional Procedural Requirements and Documentation”

[Section 62 of JJ Act]

- (1) The documentation and other procedural requirements, not expressly provided in this Act with regard to the adoption of an orphan, abandoned and surrendered child by Indian prospective adoptive parents living in India, or by non-resident Indian or overseas citizen of India or person of Indian origin or foreigner prospective adoptive parents, shall be as per the adoption regulations framed by the Authority.

- (2) The specialised adoption agency shall ensure that the adoption case of prospective adoptive parents is disposed of within four months from the date of receipt of application and the authorised foreign adoption agency, Authority and State Agency shall track the progress of the adoption case and intervene wherever necessary, so as to ensure that the time line is adhered to.

“Effect of Adoption”

[Section 63 of JJ Act]

- A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family: Effect of adoption.
- Provided that any property which has 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.

“Reporting of Adoption”

[Section 64 of JJ Act]

Notwithstanding anything contained in any other law for the time being in force, information regarding all adoption orders issued by the concerned courts, shall be forwarded to Authority on monthly basis in the manner as provided in the adoption regulations framed by the Authority, so as to enable Authority to maintain the data on adoption.

“Punitive Measures For Adoption Without Following Prescribed Procedures”

[Section 80 of JJ Act]

- If any person or organisation offers or gives or receives, any orphan, abandoned or surrendered child, for the purpose of adoption without following the provisions or procedures as provided in this Act, such person or organisation shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both:
- Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year.

“Reports To Be Treated As Confidential”

[Section 99 of JJ Act]

(1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential:

Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child’s parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers.

Inter-Country Adoption of OAS Children

Counselling and Preparation of HSR of PAPs by the Social Worker of AFAA or CA for Hague Signatory Countries and Indian Mission for Others.

Registration of PAPs in CARINGS by AFAA / CA / Indian Mission

Uploading of Documents by AFAA / CA / Indian Mission

Initial Approval by CARA

Child Referral and Reservation through CARINGS

Child Acceptance by PAPs

NOC by CARA

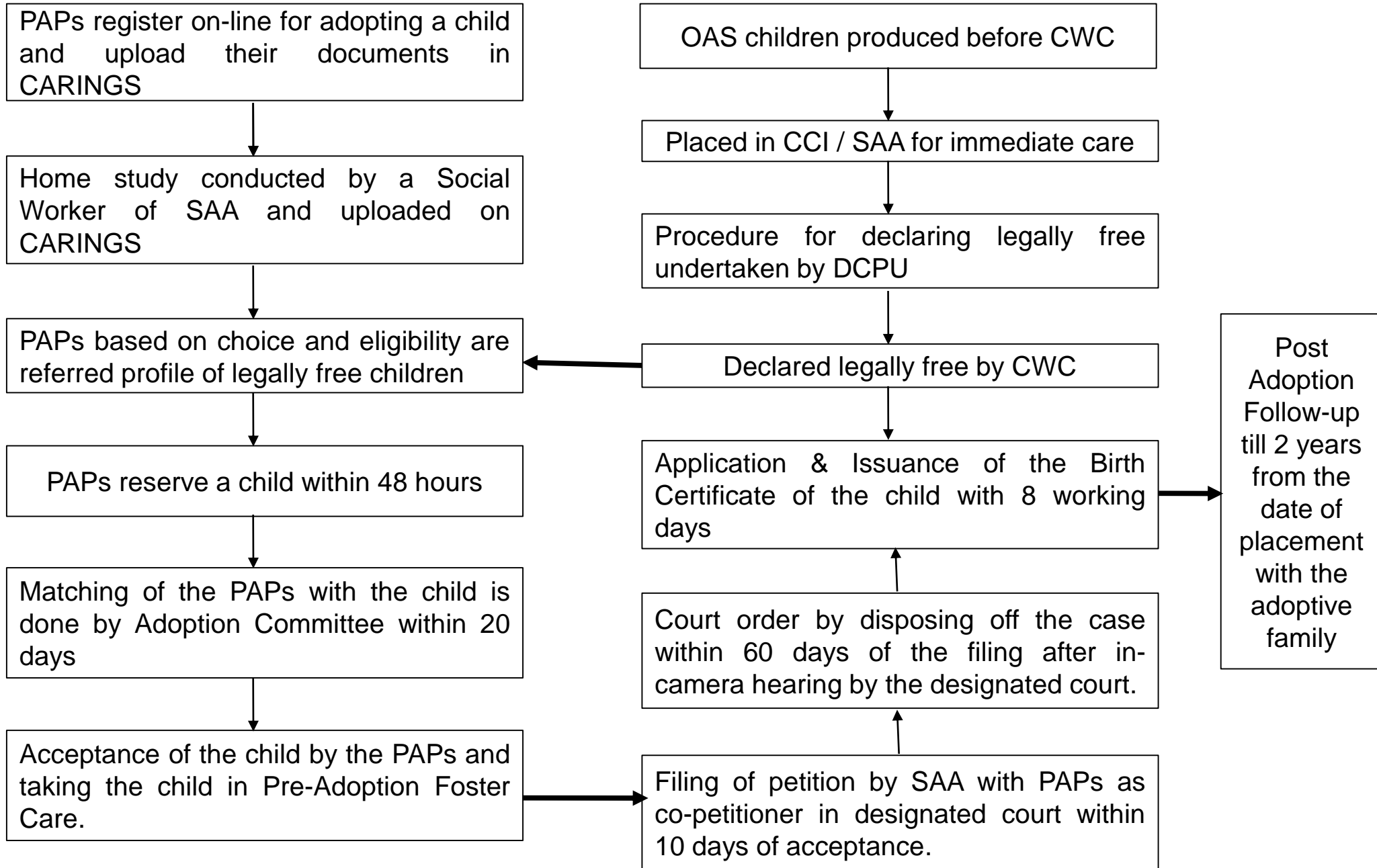
Pre-Adoption Foster Care (Only in Few Cases)

Court Order, Conformity Certificate, Passport & Exit Visa for the Child

➤ In intra-country adoption – only family adopts the child.

➤ In inter-country adoption – not only the family, but the entire country adopts the child.

In-country Adoption of OAS Children



➤ Judgment in *Lakshmi Kant Pandey Vs. Union of India*, (1984) 2 SCC 244, is the high watermark in the development of the right of the child.

➤ If an Indian child can be given to foreign adoptive parents irrespective of their religion, does the same child not have the right to be adopted in a home under Indian skies ?

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.

DIRECTIONS

- High Court to call for returns from District Courts, showing as to how many applications are pending and the reasons for their non-disposal within two months.
- In the absence of satisfactory explanation, High Court to take serious view.
- Applications should not be treated in lackadaisical manner.
- High Court should exercise proper vigilance in this behalf.

N. John Vs. G. Narasaiah & Ors.

[2010 (2) MLJ 5]

In matters relating to adoption, sensitive approach and expeditious disposal is expected and it should not be kept buried in Court dockets. An impression will be created that Courts have no time for such matters and it is busy dealing with the matters relating to property claims of more wealthy and influential persons. Such matters, if kept pending for over ten years, it will virtually defeat the very purpose.

N. John Vs. G. Narasaiah & Ors.

[2010 (2) MLJ 5]

- Publication of notice in newspaper, totally repugnant to the decision of *Lakshmi Kant Pandey Vs. Union of India, (1984) 2 SCC 244*.
- Not necessary to send the matter to mediation.
- No scope to call for the report from Police Officer.
- Children not in conflict with law - therefore, Probation Officer's assistance not necessary.
- There is no contesting party in this proceeding.

N. John Vs. G. Narasaiah & Ors.

[2010 (2) MLJ 5]

- The paper work is largely done not before the Court, but by the Registry and other agencies involved.
- Therefore, there should not be delay in processing such uncontested matters and giving an expeditious disposal.
- Not to call for the production of child for every hearing.
- Especially, not to ask the Police to produce the child.

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.

- None of the 3 Laws, viz. JJ Act, HAMA and Guardians and Wards Act, require adoptive parents to be infertile in order to get an adopted child.
- There should not be delay in deciding these applications since the admission in school, getting community service, birth certificates is delayed.
- Parents in adoption cases are mostly from out of station. They have to travel from far of places to appear before the Court. They suffer, as they could not continuously apply for leave from the employer if the matter is adjourned again and again.

On the Questioning of Adoptive Parents

- The adoptive parents are very new to the Courts, feel uneasy and also suffer very much about the questioning since they feel that they have been criticized by the Court.
- Parents are unhappy about the vast questioning and critical questioning.
- Courts should be careful – not to ask such questions to the parents explaining about the parents' mind and their inability.
- These cases should be taken up early in the morning and;
- Not to keep the parents waiting in the Courts upto 5 pm.

Shabnam Hashmi Vs. Union of India & Ors.

[AIR 2014 SC 1281]

- Any person, irrespective of religion, caste, creed etc. can adopt a child under J.J. Act.
- Prospective parents have option to employ the provisions of J.J. Act to adopt a child or they can also choose not to do so and to submit themselves to their applicable personal laws.
- However, personal laws cannot dictate the operation of the provisions of the J.J. Act and cannot come in the way of person, who chooses to adopt a child under J.J. Act.

Mrs. Daksha Van Dijick Vs. Commissioner of Police & Ors.

Bombay High Court Order dated 22nd October 2010

passed in Criminal Writ Petition No.1502 of 2010

- The dictum of Supreme Court in *Lakshmi Kant Pandey Vs. Union of India, (1984) 2 SCC 244*, indicates that the right of disclosure of information about the biological parents of the adopted child is of the adoptive parents.
- That discretion has to be exercised by them and they are entitled to furnish information about biological parents to the adopted child, after the child attains maturity.
- The Agency, which has enabled the adoption, cannot be compelled to disclose such information.

- The right of the orphaned, the abandoned, the destitute and/or similarly situated child to be adopted is not pursuant to any personal law.
- The right of the child is independent, as a human being and flows from his right to life as contained in Article 21.
- Under J.J. Act, now any eligible parent / parents, irrespective of religion, can apply to adopt a child.

[Manual Theresa D'Souza (1999 SCC OnLine Bom. 690)]

➤ J.J. Act does not incorporate a restrictive condition foreclosing the right of parents to adopt another child of the same gender.

➤ The Act recognizes the right of parents to adopt children irrespective of the number of living biological sons or daughters.

[In re-adoption of Payal, 2010 (1) Bom.C.R. 434]

- Whether a Hindu couple governed by HAMA with a child of their own can adopt a child of the same gender under J.J. Act? - **Yes**
- Court must harmonize personal law with secular legislation.
- Section 11 of HAMA stipulating a prohibition on the adoption of the child of same gender cannot apply to adoption under J.J. Act.
- J.J. Act Beneficial Legislation – Must receive meaningful and liberal construction – to facilitate and further the object of the Act.

*[In the matter of adoption of Payal @ Sharinee Vinay Pathak & Anr.
Vs. Indian Adoption, (2010) 1 Bom.C.R. 434]*

B. Selvaraj Vs. Others

[2008 SCC OnLine Mad. 567]

- A decision in application for adoption – should not take more than four months.
- Court should not hear the matters in open Court, but, preferably, in the chamber or in-camera.
- There should not be adjournments – as frequent adjournments add misery to those parents, who require strength and support from all concerned.
- There should not be frequent request to produce the child.

- Adoptive parents must be treated with respect and due courtesies.
- It must be understood that they are not litigants in any adversarial proceedings before the Court.
- In operative portion, date of birth of the child must be mentioned with a direction to all Authorities to accept it for all practical purposes.

Aniruddha M. Raikar Vs. ICSW & Ors.

[Date of Judgment : 4th April 2007]

- It is of considerable importance that the Petitions for granting leave and permission to adopt, be disposed of most expeditiously. These Petitions deal with lives of innocent, fragile, infant children. They are either destitute or abandoned by their parents. The welfare of such children, which is the only consideration, demands, expedition of application for giving these children homes with their adoptive parents as soon as possible.
- Any delay on the part of the Authority, including Judicial Officers, results in delayed bonding with their adoptive families and consequently their overall welfare is prejudicially affected.

Aniruddha M. Raikar Vs. ICSW & Ors.

[Date of Judgment : 4th April 2007]

- There is continuous flow of such children in the Institutions. Consequently, there should be a continuous out-flow of the children into the homes of adoptive parents.
- The Government Agency in the country for granting its approval is CARA. The Courts are, therefore, required only to oversee and supervise the work already done by the recognized Agencies as well as CARA and to see that the welfare of the child is heeded.
- All that has to be seen is that parties do not traffic in children and children are not taken for the purposes of any bondage, slavery, commercial or sexual exploitation or prostitution.

Aniruddha M. Raikar Vs. ICSW & Ors.

[Date of Judgment : 4th April 2007]

- Consequently, the Court is required to see that the adoptive parents are reasonably settled in life, to be able to take care of the children they desire to adopt and the Home Study Report shows a congenial atmosphere, in which children would be nurtured and brought up.

- Therefore, the judicial work is required only within such specific narrow confines. Once, therefore, Petition for adoption is brought before the Court, it is the bounden duty of the Court to take it up on the first date of hearing itself and to give the adoptive child a home, unless the parents are found unfit for the role of being adoptive parents.

Not flesh of my flesh;

Nor bone of my bone;

But,

Still miraculously my own.

Don't forget for even a minute,

You grew not under my heart, but in it.

A Child is Marvelous Gift of God

No matter how one receives it !!!

***One Who Touches Child's Heart,
Touches World's Heart !!!***

***Our children are not our children;
they are the sons and daughters of life,
longing for itself.***

- Khalil Gibran

- They are children just like other children.
- These are children, however, without home and family.
- Don't they have a right to love and security?
- Should not the Constitution be meaningful to them also?
- Having been orphaned, should the Republic abandon them forever?

➤ The Rule of law must reach them.

➤ The right of a child cannot be confused with the personal law of any section of our pluralistic society.

➤ No religion can deny family-love to these children of God.

- It is found that most of the personality traits and characteristics, which make people seem pleasant or unpleasant, are a result of their upbringing or nurturing.
- The child, who is brought up in a neglected, unloved and emotionally deprived environment, blossoms in a happy home.
- Even the child's appearance also gets transformed .
- Child starts resembling the people, who take care, adopts their expressions, gestures, behavioural patterns to such an extent that strangers might even remark on the resemblance.

“The values of caring, concern, justice, honesty, integrity are all “*learnt*” and not “*inherited*”.

They are the attributes of the mind and personality, which are created, nurtured and learnt through environmental influences.”

“*Ours by Chance*”

- *By Nilima Mehta*

Importance of Family

It is being increasingly felt that even bad or broken homes are better than not having a home at all.

**The right to a home,
A name and
A family
Is a part of “right to life”.**

**You don't have to give
birth to someone
to have a family,**

We are all family – an extended family

Parenthood Requires Love

Not DNA

**There are no unwanted children;
Just unfound families**

**Family is not defined
by our genes**

**It is built and nurtured
through Love**

The affirmative actions by the Judiciary are some times necessary to keep the Judiciary in tune with the legislative intent.

*We may be guilty of many errors and many faults,
but our worst crime is abandoning the children,
neglecting the fountain of life.*

*Many of the things we need can wait;
the child cannot.*

Right now is the time, his bones are being formed.

His blood being made and his senses are being developed.

To him, we cannot answer “Tomorrow”.

His name is “Today”.

- By Gabriela Mistral

THANK YOU !!!