

Commerce In Adoption, Role of Juvenile Justice Act – A Question of Law?

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INTRODUCTION

Adoption is considered as one of the most noble acts in the recent history of mankind. However, like many other flaws in the judicial systems and their codification, even the most generous of the acts could be manipulated for personalized benefits and sometimes results into some of the most heinous crimes of modern times. Even today, after the emergence and formulation of various acts, some incidents will invariably be emerging, challenging the authority of such Acts and the contradiction among various sections of similar Acts. This study strives to highlight such a self-contradictory scenario in which the interpretation of law has been questioned over the existence and precedence of **Juvenile Justice (Care and Protection of Children) Act, 2015** {“**Juvenile Justice Act**”} over **Hindu Adoption and Maintenance Act, 1956** (“**Hindu Adoption Act**”).

THE CONTROVERSY UNDER QUESTION

The adoption of a child through a legal Notarized Adoption Deed in exchange of monetary favor to the biological mother which was actually the infringement of provisions of Juvenile Justice Act and the role of Child Welfare Committee (“CWC”) constituted under the Juvenile Justice Act.

THE ORIGIN

In a recent, however, unprecedented matter, the petitioners (Adoptive Parents), in the High Court of Bombay, have filed a writ petition seeking a writ of habeas corpus and a direction to respondents (State of Maharashtra and CWC) to release a minor child and handover her custody to the petitioners. The Adoptive Parents submitted that ¹“*they adopted the said girl-child when she was about two weeks’ old and it is their claim that action undertaken by CWC against them was not warranted in the present circumstances and facts of the present case.*”.

Subsequent to getting the information regarding the execution of **Notarized Adoption Deed** followed by the **transfer of custody of said girl-child** (by the biological mother to the Adoptive parents), FIR was lodged by the State against both the parties, the adoptive parents and the biological mother. Further the CWC, in present scenario, directed the girl-child to be handed over to a Special Adoptive Agency.

Both, the adoptive parents and the biological mother had filed an application before the CWC to get the custody of the said girl child.

With the above facts it was learnt that, both the parties seemed to be relying on their respective legal remedies i.e to say the provisions of **Juvenile Justice Act** and **Hindu Adoption Act** respectively, in claiming the legal custody of the girl-child in question.

¹ Para 2, Judgement in the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Criminal writ Petition No.143 of 2021

LEGAL ISSUES ARISING OUT OF SUCH ADOPTION METHODS

Prima facie, it seems that the new adoptive parents have, so called, legally adopted the child, as per *Hindu Adoption Act* and did favor on both, the girl-child and her biological mother. However, after learning the other side of the matter, it seems that the provisions of *Juvenile Justice Acts* were grossly infringed. **It leads the readers with the question that, in such a condition, which act should prevail?**

When it was emerged that the biological mother of the child herein was not willing to take care of the girl-child, an intimation was given to a Non-Governmental Organization (NGO), which has further intimated the matter to CWC. The correspondence to CWC also indicated that the **biological mother had decided to either give the girl-child in adoption or to keep her in some Ashram**. Subsequently, CWC sensed the gravity of upcoming situation and directed the biological mother to come before it with the girl-child once in a month and further gave a direction to the aforesaid NGO to supervise the activities of the biological mother on monthly visits. However, it was subsequently revealed that, closely thereafter, a **Notarized Adoption Deed** was signed by the biological mother, whereby the said girl-child was **purportedly given in adoption to the Adoptive Parents** petitioners against a monetary assistance (of few thousand rupees). On the basis of this deed, the girl-child was given to the **Adoptive Parents**, who took her to their native place.

PERSPECTIVE FROM ADOPTIVE PARENTS

The adoptive parents put forth the claim that they have not violated any provisions. They stated that the biological mother of the girl-child had willingly given the child in adoption to the petitioners by executing the aforesaid Adoption Deed. In light of the aforesaid, they had not committed any offence under **Section 80 of the Juvenile Justice Act**, which states the "*Punitive*

measures for adoption without following prescribed procedures."

²To support this contention, they relied upon **Section 56(3)**, which states that nothing in the *Juvenile Justice Act* shall apply to adoption of children made under the provisions of the *Hindu Adoption and Maintenance Act, 1956* ("**Hindu Adoption Act**").

They further claimed that that the continued custody of the girl-child with the Adoption Agency, under the directions of CWC, amounted to illegal detention and in these circumstances, the writ petition deserved to be allowed and the registration of FIR against them was wholly misplaced.

It was further submitted that once it was revealed that the adoptive parents had validly adopted the girl-child (basis the Notarized Deed), there was no jurisdiction with the CWC, to take away the custody of the girl-child.

In order to support their contention, the judgement of the **Hon'ble Supreme Court** in the case of *Mst. Param Pal Singh through Father v. National Insurance Company & Ors* was also highlighted.

This case was related to the compensation to the compensation to be given to the adopted son of a deceased worker who was working as a truck driver at the one of the respondent's organization. The compensation claim requested by the adopted son of the deceased was turned down by the High Court on two grounds namely,

- a) The death of the deceased was due to natural causes and it had **no Causal Connection** with his employment and;
- b) The adoption of the appellant was not proved and the deceased was never married.

Subsequently the compensation was not qualified as per the Workmen's Compensation Act.

² Para 9, Judgement in the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Criminal Writ Petition No.143 of 2021

The matter was appealed & reconsidered at the Apex Court wherein, we would like to highlight the matter of validity of this kind of adoption, since if only his adoption is held to be valid there is scope for examining his right to claim compensation over the death of the deceased as his adopted son.

Precedence of another case was considered in which the Hindu Law in the celebrated decision of this Court reported in **Lakshman Singh Kothari (supra)**, the legal requirement for a valid adoption has been succinctly stated in paragraph 10 which reads as under:

“10. ³The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.”

The said legal position has been consistently followed by this Court which can be mentioned by referring to a recent decision of this Court reported in **M. Gurudas and others V. Rasaranjan and others - 2006 (8) SCC**

³ Para 10 of *Mst. Param Pal Singh Tr. Father vs M/S National Insurance Co. & Anr* on 14 December, 2012

Paragraphs 26 and 27 were considered relevant for our purpose which read as under:

“26. ⁴To prove valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony. Performance of “Datta Homam” was imperative, subject to just exceptions. Above all, as noticed hereinbefore, the question would arise as to whether adoption of a daughter was permissible in law.

27. In Mulla's Principles of Hindu Law, 17th Edn., p. 710⁵, it is stated:

“488. Ceremonies relating to adoption.—

(1) The ceremonies relating to an adoption are—
(a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;

(b) the datta homam, that is, oblations of clarified butter to fire; and

(c) other minor ceremonies, such as putresti jag (sacrifice for male issue).

(2) The physical act of giving and receiving is essential to the validity of an adoption.

As to “Datta Homam” it is not settled whether its performance is essential to the validity of an adoption in every case.

As to the other ceremonies, their performance is not necessary to the validity of an adoption.

(3) No religious ceremonies, not even datta homam, are necessary in the case of shudras. Nor are religious ceremonies necessary amongst Jains or in the Punjab.”

*In this context, it will be worthwhile to note the requirement of registration of an Adoption Deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. **The deed of adoption is not one of the documents mentioned in sub-section 1 of***

⁴ Para 27 of *M. Gurudas & Ors vs Rasaranjan & Ors* on 13 September, 2006, SCC

⁵ Mulla's Principles of Hindu Law, 17th Edn., p. 710

Section 17 which mandatorily required registration. Sub-section 3 of Section 17 only refers to the mandatory requirement of registration of an authorization that may be given for adopting a son executed after 01.01.1872 if such authorization was not conferred by a Will. Dealing with the said provision relating to authorization, it has been held in the decision reported in *Vishvanath Ramji Karale V. Rahibai Ramji Karale and others - AIR 1931 Bombay 105* by a **deed of adoption as distinguished from authority to adopt does not require registration.**

Keeping the above statement of law in mind as regards the procedure to be followed for a valid adoption and the statutory stipulation **that an adoption deed does not require registration**, the claim of the appellant as the adopted son of the deceased requires to be considered. The court found from the record that the appellant has produced Exhibit AW1/R which is the copy of the Adoption Deed.

PERSPECTIVE FROM CHILD WELFARE COMMITTEE(CWC)

The CWC submitted that in the said case, the **provisions of the Juvenile Justice Act** exclusively applied, especially for the reason that the girl-child, in the present case, was a **child in need of care and protection as defined under Section 2(14)** of the Juvenile Justice Act.

It was evident that the documents available on record with CWC clearly confirmed that the girl-child was **sold by the biological mother to the Adoptive Parents** and that such an **act could not be covered up on the basis of the said fabricated/purported Adoption Deed.**

It was further iterated that the **CWC was clearly empowered** to take all necessary steps for the safety and security of the said girl-child, who was in need of such care and protections, as per the provisions of the Juvenile Justice Act.

It is accentuated here that the **very objective** of Juvenile Justice Act, highlights/projects those principles and procedures which are required in

case of children in need of such care and protection. The **purpose** of this act also emphasizes that to ensure proper care, protection and development, including treatment and social re-integration of such children, which are in keeping in view the **best interest of the children.**

It was further deliberated that, on the **basis of reports and concerned observations** submitted by the said NGO, **reliance could not be placed on the Notarized Adoption Deed**, as **proper procedure for adoption** of the girl-child by the said adoptive parents was **NOT followed.** Subsequently the **FIR lodged stands a legal ground** and the matter could be evidently seen as of that of **Child Trafficking** and not a noble affair.

This counter dialogue could also be seen under the light of the case of **“Exploitation of Children in Orphanages in State of Tamil Nadu, in Re. v. Union of India & Ors. and S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors.”**

The importance of the reports and facts produced by the NGO regarding the context and the manner in which the mother had given birth to the said child and how she had accepted money for handing over the said child to the petitioners was a major consideration.

THE MATTER OF INTERPRETATION

Since the evidences and the circumstances have, in this matter, shown that the care and custody of the said girl-child was questionable, since the **biological mother has immediately expressed her unwillingness** to take care of the child. Further, the **manner** in which, exchange of said girl-child for money was executed, both the parties to adoptions, had **clearly violated the essential purpose of the Juvenile Justice Act.**

Bypassing of the laid down adoption procedures (as per Juvenile Justice Act) certainly indicates that the **Notarized Adoption Deed was executed to give the legal color** to the said illegal child trafficking.

Therefore, under the light of **Section 2(14)(v) of the Juvenile Justice Act**, which reads as follows:

“2. **Definitions.** - In this Act, unless the context otherwise required, -

xxx xxx

(14) “child in need of care and protection” means a child -

xxx xxx

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or”

OBSERVATION & SUBSEQUENT JUDGMENT OF THE COURT

After examining the notarized deed, the court had observed that the said document was lacking any indication regarding the requirements of the Hindu Adoption Act pertaining to a valid adoption. Both, the concept and the compliance, were found being absent in letter and spirit.

Another fact was highlighted before the court stated that the document was executed only after the filing of the FIR.

The Court eventually adjudged that, 7"Although the respondent No.3 claimed that the amount was given to her for her treatment and groceries, the material on record indicates that the child was given away to the petitioners in exchange of money".

CWC & NGOS- BRIDGING THE GAPS IN JUSTICE BY CONNECTING THE DOTS

In the present study, the criticality of the existence of CWC is highlighted, because if these types of **legally fabricated deeds** are not curtailed/discontinued/highlighted, then the exploiters of these loop holes would never come under scanner (legal scrutiny) and the provisions of excellent acts (like JAA), despite being existent, could never be meeting their aims. So various welfare committees like CWC plays a critical role in connecting the dots and give actual

grounds for implementing such acts and their procedures.

Further the roles of some selfless NGOs are second to none, which actually are intertwined with the frameworks of the aforesaid committees. It is therefore appreciated and expected that such NGOs and such Committees should work in tandem to bring the justice to such children, who doesn't even have the brains to understand the nuances of such legal viewpoints. Business of reproduction and child trafficking will become the norm of the underprivileged part of the society, in absence of such proactive organisations.

⁶ Sec 2 of The Juvenile Justice (Care and Protection of Children) Act, 2015

⁷ Para 21 of, Judgement in the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Criminal writ Petition No.143 of 2021