

IMPACT OF COVID-19 ON CHILDREN: NATIONAL EMERGENCY

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Abstract

In India, during the past couple of months, people have flooded social media while amplifying the pleas of the children who have lost their parents. COVID-19 is an unfamiliar situation for all of us. Many such posts were put with good intention but there's a need to make people more aware of its consequences before they do so because such acts are illegal in India. These posts can lead to more harm to children than good as they lead to fear of trafficking which exploits the children for the sex trade and forced child labour.

In India, adoption is made through various laws. Hindus, Buddhists, Sikhs, and Jains follow personal laws i.e. The Hindu Adoptions and Maintenance Act, 1956 in order to make legal adoptions whereas the personal law of Muslims, Christians, Jews, and Parsis don't recognize adoption but through the Guardian and Wards Act, 1890, they can adopt. In this case, the adoptive parent can become a guardian and not a parent.

Keyword: COVID-19, Children

1. INTRODUCTION

In India, during the past couple of months, people have flooded social media while amplifying the pleas of the children who have lost their parents. COVID-19 is an unfamiliar situation for all of us. Many such posts were put with good intention but there's a need to make people more aware of its consequences before they do so because such acts are illegal in India. These posts can lead to more harm to children than good as they lead to fear of trafficking which exploits the children for the sex trade and forced child labour.

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Hindu Adoptions and Maintenance Act, 1956 in order to make legal adoptions whereas the personal law of Muslims, Christians, Jews, and Parsis don't recognize adoption but through the Guardian and Wards Act, 1890, they can adopt. In this case, the adoptive parent can become a guardian and not a parent.

2. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

Juvenile Justice (Care and Protection of Children) Act, 2015 deals with children in conflict with the law and also provides protection, care, and security to children in conflict with the law.

A child can be defined as a person who is below the age of 18. Juvenile comes under Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015. Juvenile is a child above the age of 7 and below the age of 18. This lower limit of the age i.e. 7 years has been prescribed by Section 82 of the Indian Penal Code, 1860. Section 74 of the Juvenile Justice (Care and protection of Children) Act ensures that any of the details related to a child such as his name, school, address, or any other detail which might lead to his identification shouldn't be disclosed. For lawful adoptions, one may approach cara.nic.in which is the Central Adoption Resource Authority.

The implementation of Juvenile Justice Act 2015's provisions is mandated to be monitored by the State Commission for Protection of Child Rights and the National Commission for Protection of Child Rights as prescribed by Section 109.

3. PROSPECTIVE ADOPTIVE PARENTS (PAP) ELIGIBILITY CRITERIA

A prospective adoptive parent means an individual who seeks to adopt an adoptee. Central Adoption Resource

Authority's website mentions the PAP's eligibility criteria.

In India, a child can be adopted by a married couple, a single unmarried woman, and a single unmarried man. Even a couple wherein one adoptive parent is a step-parent and the other one is the biological parent can also adopt. A child can also be adopted by an Indian citizen as well as a foreign citizen but the procedure for adoption in both cases is different. All the parents willing to adopt should be physically, mentally, and financially fit and should not have any other life-threatening medical condition.

Any PAP can adopt a child irrespective of the fact whether he/ she has a biological child or not and irrespective of the marital status.

This condition is only subject to the things mentioned below:

1. Adoption in the case of a married couple, there's a requirement of consent of both the spouses.
2. A single unmarried woman can adopt a child of any gender.
3. A single unmarried man can only adopt a male child.

For any married couple, it is necessary that they have had at least 2 years of stable marriage and only then they can be eligible to adopt a child. The eligibility of PAP to adopt a child will be decided on the basis of age, as on the date of registration. A PAP's (couple) composite age should be a maximum of 90 years for adopting a child up to the age of 4 years and for a single PAP, the maximum age is 45 years. Children above 4 and up to 8 years can be adopted by PAP (couple) whose maximum composite age is 100 years and for a single PAP, the maximum age is 50 years. Children above 8 and up to 18 years can be adopted by PAP (couple) whose maximum composite age is 110 years and for a single PAP, the maximum age is 55 years.

The criteria of eligibility of parents willing to adopt a child changes as the age of the child increases. A child and a PAP's minimum age difference shall not be more than twenty-five years. Couples having 3 or more kids cannot be considered eligible to adopt a child. The minimum age for a single man or woman which makes them eligible to adopt a child below the age of 4 years is 25 years.

4. LEGAL PROCEDURE FOR ADOPTION

For a PAP to adopt a child, it becomes necessary to follow the guidelines provided on CARA's website. CARA follows the Juvenile Justice Act which says that if there's any child who has been found and has lost his/ her parents or has been abandoned or surrendered, such a child is ought to be produced before the District Child Welfare Committee (CWC) within 24 hours excluding the journey time.

For those children who have been abandoned, the committee first tries to find their parents. If the parents are found, they are required to give in a written format that they are surrendering their child.

If the committee is unable to track the parents, then it becomes the responsibility of CARA's registered specialized agency after which the child is declared as legally free and can be legally adopted. If there's any person willing to adopt, they are first supposed to register on CARA, following the procedure and guidelines given on the website. Registration shall be considered as complete only after the submission of all the documents which are supposed to be uploaded within 30 days from the date of registration. Otherwise, the PAP will have to register afresh.

Parents cannot ask for a specific child for adoption but they can give their preference. In the case of married couples, consent of both spouses is necessary. On the website of CARA, it mentions all the documents which are required in the process of adoption which also includes that if there are any older child/children who are above the age of 5 years, and then it is necessary to have their consent as well.

After the completion of registration, you will be given a number through which you can know about the progress of your application and you'll have to wait till your turn comes. The registered agency's social worker goes to the PAP's house for home study. Parent counselling is also done. Then later, the report of home study and counselling is sent to the honourable Court.

As soon as the child is ready for adoption, CARA contacts the PAP as per the child's match. Then the child's medical examination report, physical examination report, and other relevant information are shared with the PAP. After sharing the information, if PAP agrees to adopt that child, then the agency allows the child to spend some time with the PAP.

When the PAPs are comfortable with the child, they have to sign certain documents related to the adoption as

mentioned on CARA. After the child is brought home after completing the adoption process, within 6 months, for 2 years, the agency comes and keeps a track of the child's wellbeing. The process from registration of adoption to bringing the child home is a very long process that can take 2-3 years, but in order to prevent child trafficking, this whole process has to be followed.

5. ISSUES FACED IN THE PROCESS OF ADOPTION

The whole process of adoption in India from registration to bringing the child home takes a very long time of around two to three years. This exhausting process attracts people towards illegal adoption.

There are also certain biases during the process of adoption as people in most of the cases prefer small children over older ones because of adjustment issues and often a boy child is preferred over a girl child.

In fact, many children are there who are not even registered in the process for legal adoption. The adoption process given under the Juvenile Justice Act, 2015 is often not followed and the children are given to the families illegally. If this process of adoption is not followed, it is not considered a lawful adoption. India has strict adoption laws. All these things lead to a low rate of adoption.

Even the ones who want to adopt, face issues to understand and access computers. Even though the constitution claims to provide equal rights to everybody irrespective of gender, but still, unfortunately, even today, the online adoption form has only two options which are for males and females and not for any other gender. These sexual minorities still face a lot of issues in the process of adoption.

6. RIGHTS OF AN ADOPTED CHILD

The term 'Son' does not have a specific definition according to the Hindu Succession Act, 1956. Therefore, an adopted child enjoys as many property rights as a biological child. If a person dies without writing a will, the property possessed by the person will be equally inherited both by his adopted and biological children.

Before dwelling deep into the property rights of an adopted child, we need to understand the conditions which need to be followed during the adoption, for the child to be able to inherit the property from his adoptive parents.

According to Hindu Law, a child can be adopted and be able to inherit the property of his adoptive parents if he is below the age of 15 years and if he has never been adopted and married before. Other religions like Islam, Christianity, Parsis, and the Jews do not have adoption laws, hence, if any Muslim, Christian, Parsi, or Jewish person ever wishes to adopt, he/ she has to follow the rules laid down in the Guardians and Wards Act, 1890, then only they'll be able to adopt or attain the guardianship of the child.

Children who aren't Hindus, are unmarried, a minor, and an orphan or are abandoned can be adopted according to the Juvenile Justice Act and the Guardianship Act, 2015.

7. PROPERTY RIGHTS OF AN ADOPTED CHILD ON THE PROPERTY OF THE ADOPTIVE PARENTS

As already discussed, an adopted child enjoys as much property rights as a biological child. Hence, the adopted child can claim their stakes on the property of the adoptive parents as much as a biological child and so can the adoptive parents on the property of the adopted child.

But there is an exception to this, an adopted child cannot claim his stake at the property of the adoptive parents if the adoptive parent didn't qualify as an heir to their parent's property.

Now the main question here is: what counts as a disqualification? The law clearly states that "No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or save as provided in this Act, on any other ground whatsoever," But, if the adoptive parent was a widow who got remarried, she does not have any claim over the deceased spouse's property. Some other situations where heirs of a convert (a person who was born in a family following a particular religion but chose to follow another) who haven't hung on to their original religion at the time of the succession, criminals, half-bloods, and some other circumstances where the adoptive parents themselves cannot inherit the property do not hold a position to let their adopted child stake a claim on that property.

8. PROPERTY RIGHTS OF AN ADOPTED CHILD ON THE PROPERTY OF BIOLOGICAL PARENTS

According to the Hindu Adoptions and Maintenance Act, 1956, the adopted child loses all his rights to stake any sort of claim on the property of his/her biological parents after the adoption. The adopted child basically loses all sorts of rights with regards to his/her biological family, including the right to stake a claim on shares of any estate of the biological father or even the Coparcenary property, which is any property that is jointly owned by a smaller unit of the family.

However, there is an exception to this, in the cases where due to any reasons mentioned above, if the adopted child loses his rights over the property of the adoptive parents, the biological parents can give their property to their child who has been adopted by someone else by writing a will or through a gift. This is the only condition when the adopted child has any rights over the property of his biological parents.

9. CAN AN ADOPTED CHILD BE DISOWNED?

According to section 15 of the Hindu Adoptions and Maintenance Act, 1956, No adoption which has been done through a legal procedure, validly, can be cancelled as per the wishes of the adoptive parents, mother, and/or father, nor can the adopted child reject the adoption and go back to their biological home or biological parents.

As of inheritance, the adopted and the biological child both have an equal right to stake a claim on their parents, hence under the inheritance laws, any child adopted or biological can be disinherited. The parents just have to make it loud and clear in their will, that they want to disinherit the child (biological or adopted), and doing so is their intent. If it's not clearly expressed in the will that the parents want to disinherit the child, the child may be considered as an overlooked heir and called 'permitted', where he becomes able to claim a certain portion or some amount of share off the parent's property after their death.

Hence, if an adoptive parent wants to disinherit the adopted child, he has an absolute right to do so, the key here is just to be clear in the will about the same. In the US, if a parent desires to disinherit any child from their property, they are absolutely free to do so, regardless of the child being adopted or biological. Therein, the life insurance of the person who died is usually handed down in two ways and it goes either to the people whose names have been mentioned or to the estate directly. If

the insurance names specific names of people, the property will go only to them, and if the property is proceeded to pass on to the estate the money will only be passed on to the children whose names have been mentioned in the insurance. In the US, it is not compulsory for a parent to inherit any property to their adult children, they may disinherit one, two, or all their children as per their wishes. They have the complete authority to do so.

10. SUGGESTION & CONCLUSION

Currently, society is being reactive when it comes to mental health but at this point, we need to be proactive and predictive.

At this point when the numbers have been drastically increasing, the main concern should be to look at the mapping as per the vulnerability of which child needs support and is in massive distress to alleviate this problem, focus should be on short-term foster care wherein, the children are looked after temporarily which can further attract the families to formally and legally adopt these children.

Apart from the distribution of food and health facilities, enrolling abandoned and orphan children in various government programs, it is equally important to help children in accessing education and enhancing their skills, as this would lead to a brighter future and make them independent. Free education facilities should be given to the children who have lost either both their parents or the only earning member of the family and their reservations should also be increased for them to get enrolled in educational institutions.

Despite the fact that the constitution claims to provide equal rights to everybody irrespective of gender, unfortunately, even today, the online adoption form has only two options which are for males and females and not for any other gender. These sexual minorities still face a lot of issues in the process of adoption just because of their sexual orientation.

We truly believe that the COVID-19 pandemic presents us with a golden opportunity to transform and repair the cracks in our social structure by making new laws for children, who seem to have been excluded from the mainstream so far.