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Citizenship Dilemmas Concerning International Adoption in India

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ABSTRACT

International Adoption is a phenomenon mainly of the past one and a half decade. In India, Adoptions are predominantly governed by personal religious laws. The amended Juvenile Justice (Care and Protection of Children) Act, 2016, laid down an Adoption regulation, 2017 which framed an adoption pathway for non-residential Indians, foreign prospective parents, overseas citizens of India, and adoption of child by an Indian citizen from a foreign nation. However, there is a dearth of specific provisions with regards to the grant of citizenship of internationally adopted children. This article focuses on highlighting the gaps in the provisions and sets forward a solution to fill those gaps.

Keywords: CARA, Citizenship, International Adoption.

I. INTRODUCTION

Over the past decade, India has noticed a significant rise in popularity of International Adoption. International Adoption refers to the relocation of children from one country to another intended for parenting which is often known as “stranger adoption”. With changing times, the statistics and pattern of International Adoption has seen a change due to fluctuating political attitude of the sending and receiving countries, and the comity of nations, and not primarily because of the objective need of children for homes or the appetency of prospective parents for the children.² International Adoption not only bridges the gaps of biology but also serves to obliterate differences in socio-economic class, race, ethnicity, nationality and cultural heritage. Basically, richer countries with privileged citizens adopt children born in relatively poorer countries. In the year 2018-2019, India marked 653 International Adoption.³ This number was dropped to 394 in the past year due to firm government rules.⁴ The declination in the numbers of International Adoption is primarily because of the stricter government rules. One important factor faced in the area of International Adoption is citizenship. The

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² Dr. Achina Kundu Ms. Ayushi Kundu, *An overview of intercountry adoption with special focus in India*, Bharti Law Review, Oct-Dec 2013.

³ Adoption Statistics, Central Adoption Resource Authority, http://cara.nic.in/resource/adoption_Statistics.html.

⁴ Nisha Nambiar, *Stringent rules bring down inter-country adoption rate*, Times of India, Dec 23, 2019.

Constitution of India and the Citizenship Act, 2005 mainly governs the process and specifications of Citizenship. A person can acquire citizenship through birth, registration, descent and naturalization.

Particularly in India, the Hindu Adoption and Maintenance Act, 1956⁵, governs adoption in communities such as Hindu, Sikh, Jain and Buddhist. There was no statute, till 2006, dedicated to adoption associated with followers of Muslim, Parsi, Christian and Jewish religion, they could only be granted guardianship under the Guardians and Wards Act⁶, Section 7. The non-residents of India and foreigners also could only acquire guardianship under the same. The year 2006 witnessed a series of amendments made to the Juvenile Justice (Care and Protection of Children) Act, 2000, which paved way to a secular process of adoption and covered everyone not included by the Hindu Adoption and Maintenance Act to adopt. But this Act only made possible adoption of children put through abandonment or abuse. The Juvenile Justice (Care and Protection of Children) Act, 2000 was repealed in 2016 and the Juvenile Justice (Care and Protection of Children) Act, 2015⁷ was enacted. The act came into force on 15th January, 2016 and intended to make adoption laws universally applicable to abandoned, orphaned and surrendered children.

II. PROVISIONS OF INTERNATIONAL ADOPTION IN INDIA

The Supreme Court in *Laxmikant Pandey v. Union of India*⁸, in support of international adoption asserted guidelines which favoured foreign persons to adopt Indian children according to the laws of their nation.

At an international level, India is a party to the Hague Convention on Intercountry Adoption. The Hague convention was signed by India on January 3rd, 2003 and the same was given formal consent to on June 6th, 2003. The Central Adoption Resource Authority (CARA) is an autonomous and statutory body which falls under the wing of the Ministry of Women & Children and operates as the nodal body governing adoption of Indian children along with regulating and monitoring in-country and international adoptions.⁹ Under the Juvenile Justice Care and Protection Act, 2015, a set of regulations namely the Adoption Regulation, 2017¹⁰, were issued which provided clarity regarding the process of adoption in case of non-residential Indians, foreign prospective adoptive parents, overseas citizens of India and Indian citizens

⁵ The Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956.

⁶ Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890.

⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015.

⁸ *Laxmikant Pandey v. Union of India* A.I.R. 1984 S.C. 469 (India).

⁹ Central Adoption Resource Authority, http://cara.nic.in/about/about_cara.html.

¹⁰ Adoption Regulations, 2017, <http://www.bareactslive.com/ACA/act2994.htm#0>.

adopting a child from a foreign nation. The regulation lays down the process of adoption of a child from a foreign nation by Indian citizens under Section 22¹¹. However, it does not clarify if the same process applies in case of children to be adopted by Indian citizens in a foreign country.

III. CITIZENSHIP OF FOREIGN CHILDREN

- In case of internationally adopted children raised in India, there are no specific provisions dedicated to them for the grant of citizenship. It is also unclear if citizenship can be granted through the process of registration. Section 22 of the Adoption Regulations¹² only states the requirement of a foreign passport and an Indian visa to enter India. The provisions of the Citizenship act under Section 5(1) (d) that the minor child of persons who are Indian citizens can be registered by the Central Government provided the person is not an illegal immigrant. Rule 6 of the Citizenship Rules, 2009 needs the parent of a minor child to file a declaration asserting legal guardianship of the minor. However, it is still unclear if adoptive parents and the adopted minor are included in this rule. The Juvenile Justice Care and Protection Act, 2016 does lay down the legal effects of adoption which asserts adoptive parents to become the parents of the adoptive child as if the child had been born to the adoptive parents. But, the Ministry of Home Affairs further stated the under Section 5(4), the Central government can register any minor child as an Indian Citizen if it is satisfied that there are special circumstances that favours such registration. Citizenship can be acquired by naturalization under Section 6 of the Citizenship Act by a foreigner who is not an illegal migrant, if he has been a resident of Indian for a minimum of twelve years which adds a longer waiting time for minor adoptive children.¹³

(A) Procedure of acquiring Citizenship

Rule 6 of the Citizenship rules, 2009, stipulates the use of Form IV and a declaration of being the legal guardian by the parent for registration of a minor child as a citizen of an Indian citizen. The application along with Form IV requires attachment of documents such as a valid foreign passport, a copy of the valid residential permit, proof of citizenship of both the parents or proof of guardianship. As per the Ministry of Home Affairs, a certificate of Indian citizenship will be issued after scrutiny of each minor child's application on a case-by-case basis. Upon scrutiny of the application and acceptance, the applicant will be informed and only after acceptance, the applicant will renounce the foreign citizenship. The applicant will be then required to submit

¹¹ Ibid

¹² Ibid

¹³ Tariq Ahmed, *Citizenship through International Adoption*, Law library of Congress, Feb 2021.

the fees as under Schedule IV of the Act and personal particulars in Form V along with the certificate of renunciation. The state government will then grant an Indian Citizenship to the applicant.¹⁴

- In case of internationally adopted children raised in abroad, it is unclear if the same rules for registration of Indian citizens applies.

IV. ACQUISITION OF CITIZENSHIP FOR FOREIGN ADOPTED CHILDREN IN US

The rate of adoption of International children by Americans expanded significantly in the 1990s and it has continued to increase majorly in numbers after the turn of the century. Since then, the numbers have decreased to 17,483 in 2008 and 12,753 in 2009 whereas, the numbers have further declined to just 2,971 in 2019. The immigration law of the United States grants automatic citizenship to all adopted children by American citizenship¹⁵. Under Section 320 of the Immigration and Nationality Act (INA)¹⁶, a child can acquire U.S Citizenship on satisfaction of certain requirements which includes the category of internationally adopted children. Section 322 of INA further instructs the process of citizenship, if the parent (U.S Citizen) and the child reside outside U.S. then the child may apply for a certificate of citizenship through USCIS (U.S. Citizenship and Immigration Services) and take an oath of naturalization to acquire citizenship. It also includes adoptive children of U.S government employees and members of the armed forces placed abroad.¹⁷

V. CONCLUSION

The system and process of adoption has developed and been subject to many changes over the years. With Supreme court recognising and favouring adoption of foreign children by Indian citizens, the legal system has gained clarity and strength along with parentless children finding permanent homes and fulfilling the desires of childless parents. However, there is scope for further clarification and development in this area. The provisions governing adoption are scattered around several legislations which makes it even more obscure. Section 5(1) (d) of the Citizenship Act asserts the registration of minor child of an Indian Citizen but it is unclear if it applies to internationally adopted minor children. Furthermore, there are no provisions monitoring the citizenship of foreign adopted children of Indian citizens living abroad. No rules

¹⁴ Supra note 13

¹⁵ Richard Tessler Mia Tuan and Jiannbin Lee Shiao, *The many faces of International Adoption*, Vol. 10, No. 4, Sage Journals, 2011.

¹⁶ The Immigration and Naturalization Act, 1965, 8 U.S.C, §320.

¹⁷ FAQ: Child Citizenship Act 2000, Travel.State.Gov, https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html.

are provided for citizenship of Inter-country adopted children of overseas diplomat or members of the armed forces; it is unclear if the same process of registration applies. The dearth of such provisions or rules creates a need for amendment surrounding these issues for clarity. As India does not have an enactment solely vested to Adoption Laws, clarity in such grey areas is much required.
