



AIDING THE CHILD IN NEED: ADOPTION & FOSTER CARE IN THE INDIAN CONTEXT

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ABSTRACT

Adoption was considered a taboo until the introduction of the Guardians and Wards act, 1890 and even now, couples would prefer having their own offspring and only when their efforts have failed, they resort to adoption. Fosterage, on the other hand, is still in its infancy in India coming into recognition only with the introduction of the Juvenile Justice Act of 2000. It is still regarded with apprehension. This paper mainly aims to do a critical analysis of the laws in force for juvenile adoption and foster care specifically the Juvenile Justice (Care and Protection of Children) Act, 2015 and its revamped provisions regarding the same. Other legislations include the Integrated Child Protection Scheme 2009, Hindu Adoption and Maintenance Act, 1956 as well as guidelines published by the Ministry of Women and Child development and other enactments by the states. The researcher will deal with the benefits, shortfall of these provisions and their implementation and shed light on the various methods of improving it.

The research further intends to provide suggestions on making the system of adoption and foster care more transparent and feasible with the inclusion of voluntary organizations, sponsorship schemes, awareness programs, training standards for foster care, group consultations and regular monitoring. Our Constitution as well as the United Nations Convention on rights of child (1989) mandates us to protect the young and unguarded and therefore we must work towards it.

INTRODUCTION

Most persons think child bearing and parenthood is a natural process of life. They gain fertility as they become adults and they think it is their natural right to nourish their offspring. Sometimes this doesn't materialise. Immediately these individuals resort to vigorous techniques and numerous hospital visits to achieve it. Disheartened at first, a few give up but some think of nurturing an unrelated child. Even then they prefer to adopt a young infant so as to get the same experience as they would've gotten with a child of their own. They only

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resort to adoption of an older child when they have no option of younger ones.² When we talk about foster care, the people in India are quite apprehensive and the only step towards its recognition has been taken by various nongovernmental organizations as well as a few negligible provisions by the state.

The Indian constitution protects child rights through Article 15(3) through which the State can make special provisions for children. Article 39 and Article 51A(k) directs the State and citizens to secure that the tender age of children is not abused and that children are given opportunities and facilities to develop in a healthy manner which must also include education.³ The rights of children are also included in Articles 14, 19 and 21. Another right which is inherently present is one of conducive growth environment.

The importance of family in over-all development of a child has never been in dispute. A healthy environment, guidance, affection and communication are few things that decide the growth of an individual. Parents have an important part to play in the growth of children to individuals in a society and develop their capabilities.⁴ Addressing this, Courts around the world have recognised 'Right of Family Integrity' as a fundamental right.⁵ Article 20 of United Nations Convention on Rights of Child states that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection provided by the State including alternative care like foster placement, kafalah of Islamic law, adoption or in suitable institutions. The UN Guidelines for Alternative Care of Children, 2009 have also been instrumental in highlighting the importance and stating the role of states in protecting and caring for children.

Thus, there was seen a need and legal obligation on governments in India to ensure the providing of care for children, such as adoption and foster care.

LITERATURE REVIEW

²KALA LILANI, INTERCOUNTRY ADOPTIONS: LAWS AND PERSPECTIVES OF "SENDING" COUNTRIES 26-41 (Eliezer David Jaffe ed., Martinus Nijhoff Publishers, 1995).

³ *Avinash Malhotra v. Union of India* 2009(6) SCC 398

⁴ STEVEN M. COX *et. al.*, JUVENILE JUSTICE: A GUIDE TO THEORY, POLICY AND PRACTICE 43-44 (6th ed. 2008)

⁵ Article 9, Convention on the Rights of Child 1989.



According to Nidhu Srivastava (2014)⁶, the system of foster care and child protection services in a developing country like India has attracted tremendous criticisms for being driven by selfish motives and that the emotional and mental growth of children in foster cares/shelter homes is not normal.

Joseph Doyle⁷ (2007) stated that foster placements can be a very appropriate form of care if they are well-planned and monitored, because it provides the cultural and developmental advantages to children of living in a family environment pending family reunification or long-term placement.

According to Saumaya Vinod Joshi et al⁸ (2015), the incidence of infertility is on the rise in India and adoption is an under researched field. He stated that there is a need for generating awareness amongst prospective adoptive parents about the process, procedures and laws related to adoption and the society needs to be sensitized to develop a positive attitude towards adoption to create enabling environment.

Aditya Bharadwaj⁹ (2003) opined that adoption continues to remain an undesirable option because the links between an adopted child and the social parent become a public, vocal, and visible admission of infertility that cannot be subsumed.

Kala Lilani¹⁰ (1995) has stated that with societal expectations and basic biological motivation to produce, nurture and protect, people do not prefer to adopt and if they do, only a young child. It was also stated that the adopted children face many challenges in developmental stages about identity. Talking about intercountry adoption, Kilani said that though there may be isolated cases of abuse, adopted Indian children in foreign countries do develop into happy, healthy individuals because of system of training and support in those countries. John D. Mayne¹¹ (1899) wrote about the conservative nature of Indians in the matter of adoption.

OBJECTIVES

- I. To trace the origin of adoption and foster care in the Indian society.
- II. To know the regulatory framework pertaining to the above in India.

⁶Nidhu Srivastav, *Do We Need to Re-Think the Doctrine of Parens Patriae?*, (3)1 NSLJ 33 (2014)

⁷Joseph Doyle, *Child Protection and Child Outcomes*, 97(5) Am. L. & Econ. Rev. 1583-1610 (2007)

⁸Saumaya Vinod Joshi, *A Study of Knowledge and Attitude Towards Adoption Amongst Infertile Couples*, 3 Int J Public Health Res 318-326 (2015).

⁹Aditya Bharadwaj, *Why Adoption Is Not an Option in India : The Visibility of Infertility, the Secrecy of Donor Insemination, and Other Cultural Complexities*, 56(9) Soc. Sci. Med.1867-1880 (2003)

¹⁰supra note 1

¹¹John D Mayne, *Adoption in India*, 1 J. Soc. Comp. Legis. N.s. 237 (1899).



- III. To understand the different methods and structure developed in the effective implementation of foster care and adoption in Indian context.
- IV. To highlight the promising practices and identify gaps.

RESEARCH METHODOLOGY

The data collected for this paper is from secondary sources and an explorative analysis was done. Books and articles were referred to and online material such as websites, journals and articles were also used.

ANALYSIS

DEVELOPMENT OF ADOPTION LAWS IN INDIA

- Adoption in India dates back to the scriptures of 5000 years ago when Lord Krishna was given up by his imprisoned parents for his protection. This practice was followed for providing children to childless relatives or to gain a male heir. Although the act of adoption remains the same, the objective has differed. It usually ranges from the humanitarian motive of caring and bringing up a neglected or destitute child, to a natural desire for a kid as an object of affection, a caretaker in old age, and an heir after death.¹²
- There was no legal provision for formalising this secretive practice which was considered a taboo until the passing of the **Guardians and Wards Act, 1890** under the British rule. It was the only non-religious universal law regarding the guardianship of a child, applicable to all of India except the state of Jammu and Kashmir. Earlier the personal laws in India did not provide for complete legal adoption except the Hindus and Khojas. With the introduction of this act, the adoptive individuals became the permanent, legal guardians of the adopted children and the basic rights of the children were guaranteed. However, laws of inheritance and rights were governed by the personal laws. In this act, a minor and his property could have more than one guardian¹³ and one possesses only legal right on the child till he/she turns an adult and the biological parents have a right to intervene during that period. However this Act mainly established guardianship and could not be a substitute for a full-fledged adoption law.

¹² KUSUM, FAMILY LAW LECTURES – FAMILY LAW I, (Lexis Nexis Butterworths) (2nd ed. 2008)

¹³ *Guardians and Wards Act 1890*



- Then the **Hindu Adoption and Maintenance Act of 1956** was introduced which governed adoption among Hindus, Sikhs, Jains and Buddhists among their groups. The adopted children had the rights to property and inheritance just like the children by birth. When a child has been adopted that child severs all ties with his natural family and becomes as though a natural born child. Adoption is generally held to be permanent in nature, with neither party going back on their words¹⁴. This act has come into scrutiny for its discriminatory nature. In this Act only an adult Hindu male can adopt a child¹⁵ and a female adult Hindu could adopt only a child if she was unmarried, divorced, widowed or her husband suffers from certain disabilities such as ceased to be a Hindu, renounced the World or declared to be of unsound mind by the court¹⁶. The father can give the child in adoption with the consent of the mother but the mother may only give the child in adoption if the father is dead or unsound mind or renounced the world or ceased to be a Hindu.¹⁷ In the cases of *Malti Roy Choudhury v. Sudhindranath Majumdar*¹⁸ and *Brajendra Singh v. State of Madhya Pradesh*¹⁹, the court has observed that during the subsistence of marriage, a wife has no right to adopt, only to give consent in adoption if taken by her husband.
- Adoption is called *kafala in islam*. It is not prohibited but it is unlawful to attribute one's adopted child to oneself, as if there is a biological relationship. This is because Islam seeks to safeguard biological lineage and not confuse lineage. The adopted child does not change his name nor has the right of inheritance.²⁰ **Christians and Parsis** also have no adoption laws. India being signatory to CRC (Convention on the Rights of a Child), such uniformity was necessary so that the rights of adoptive children can well be enhanced and protected. .
- Then the revolutionary **Juvenile Justice Act of 1986** was introduced whose purpose was to provide care, protection, treatment, development and rehabilitation for neglected and delinquent children. It recognised adoption as a means for rehabilitation of orphaned or neglected child. Custodial guardians or parents not having resources or facing poverty could put up children for adoption. When a child had been abandoned

¹⁴ S.15, Hindu Adoption and Maintenance Act 1956.

¹⁵ Id S. 7.

¹⁶ Id S. 8.

¹⁷ Id S. 9.

¹⁸ AIR 2007 Cal 4.

¹⁹ (2008) 13 SCC 161.

²⁰Huda, *Adopting a Child in Islam*, ABOUT RELIGION-ISLAM, (July 22, 2016) <http://islam.about.com/cs/parenting/a/adoption.htm>



at a place, the receiving party had to make a report to the nearest juvenile court or juvenile board within twenty four hours after which it had to obtain a legal order for authorisation to provide care for the abandoned child. If after six months, the child's parents were not been found, the local government court became the guardian of the child though the custody may remain with a licensed agency or institution.

- The **Juvenile Justice (Care and Protection of Children) Act, 2000** addressed children who are in conflict with law and children in need of care and protection.²¹ The Act was brought in to adhere to the United Nations Convention on the Rights of the Child (UNCRC) which was ratified by India in 1992. Personal laws cannot dictate the provisions of an enabling statute like the Juvenile Justice Act of 2000 and cannot come in the way of a person who chooses to adopt under this act.²² All the previous laws did not prove to be sufficient in case of adoptions in India as there was no uniformity. Hence this act was enacted. The main objection to this Act was that it hid an adoption law in it with no reflection on how it is to be implemented.²³

INTERCOUNTRY ADOPTION

In the international level, attempts had been made to legalize Inter-Country adoption through Rights of Child Resolution adopted by the United Nations General Assembly on November 20, 1959 and Guidelines formulated by Expert group and adopted by the Economic and Social Council of the United Nations its 20th session and also through adoption of Children Bill, 1980 relating to Inter-Country adoption legislation.

As we talk of inter country adoptions in India, our government, in its stress on national pride, makes maximum efforts for these orphans to be adopted by Indian parents either and only when it fails, the foreign nationals. The Hon'ble Supreme Court of India in a landmark case of *Laxmikant Pandey Vs. Union of India*²⁴ laid down few principles governing the rules for Inter-Country adoption. The court said "while supporting Inter-Country adoption, it is necessary that great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents or be subjected to moral and sexual abuse or forced labour or experimentation for medical or other research and may be placed in worse situation than that in his own country."

²¹ The Juvenile Justice (Care and Protection of Children) Act 2000.

²² Shabnam Hashmi v Union of India (2014) 4 SCC 1

²³ Parvathi Menon, *A new Act and some concerns* 18 THE HINDU (2001)

²⁴ AIR 1984 SC 469.



As a result of this judgement, the Central Adoption Resource Agency (CARA) was established. It is a statutory body which functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. It works in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by Government of India in 2003.

FOSTER CARE IN INDIA

The right to family as stated previously is not un-qualified. Situations might require amputation of parent-child relationship. To protect the best interests of a child, the concept of *Parens Patriae*²⁵ has been extended to childcare. It refers to the power of the State to act as a parent to protect the interests of persons unable to protect themselves adequately.²⁶ The system, prevalent in most developed countries of the world, is an arrangement wherein abandoned and surrendered children are placed with families unrelated to them while awaiting adoption. Children whose one or both parents are in jail or are unable to take care of their wards due to a terminal illness can also be now taken up for foster care.²⁷

Foster care is severely under-utilised as a method of providing family care to children in India. We need to build effective structures for developing an effective foster care regime. State and NGO run shelters are the only resort for abused children. But, often even these shelters are accused of furthering physical or sexual abuse of children, hence, making the situation much worse.²⁸

Similarly, even in cases of countries with highly developed infrastructure on childcare, many deficiencies are found with the possibility of children who grew up in foster care indulging in crimes higher in void of a supportive system. These children, once they leave foster care, are left stranded as all connects with the family have already been severed and State takes no responsibility once they cross the mark of 18 years.

Nordic countries usually follow a Paid Foster Parent System. It pays a regular salary to foster parents, along with other benefits like holidays, allowances, house, car, pension etc. turning

²⁵ “parent of the country”.

²⁶ Richard P. Vornholt, *Application of the Vagueness Doctrine to Statutes Terminating Parental Rights*, DUKE L.J., 336 (1980).

²⁷ Sobhana K Nair, *Foster care finally comes for children in India*, BANGALORE MIRROR (June 6, 2015 04:00 AM) <http://www.bangaloremirror.indiatimes.com/news/india/Foster-care-finally-comes-for-children-in-india/articleshow/47559399.cms?prtpage=1>

²⁸ Sweta Dutt, *Manipur Kids Suffered Sexual, Physical Abuse in Jaipur Home*, THE INDIAN EXPRESS, (June 2, 2013) <http://archive.indianexpress.com/news/-manipur-kids-suffered-sexual-physical-abuse-in-jaipur-home-/1123869/>



child care into a business. In Sweden, the foster homes are being paid exorbitant fees of around 3,650 000 SEK (equivalent to 5,57,585 U.S Dollars or 3,38,25,827 Indian Rupees) per year per youngster in foster care.²⁹ Whereas in India, according to the Model Guidelines for Foster Care, for gaining financial support there is a long overhaul of procedure including proposal by the district protection unit to the Sponsorship and Foster Care Approval Committee (SFCAC) which reviews each recommendation and approve Foster Care support in all cases found deserving. After the approval, within 15 days of the reference by DCPU the case is referred to the Child Welfare Committee for the final order. Even if it is allowed the amount to be given is a meagre 2000 rupees. This procedure poses an impediment and discourages those who apply for foster care.

This was initiating step at the central level towards foster care which was almost negligent. There has been a lot of development of the adoption system in India including online application, and stricter regulation by CARA but as far as foster care is concerned no initiative has taken place.

DEVELOPMENT

- Foster care was first recognised in a non-institutionalised scheme in Maharashtra in 1972 which was later revised as '**Bal Sangopal Scheme - Non Institutional Services**' in 2005.³⁰ Similar schemes were present in the 1990s in Karnataka and Gujarat after 2001 where around 350 children were rehabilitated with the help of neighbours and relatives.³¹
- In response to the UNCRC recommendations, India incorporated its aims into domestic legislation by passing the **Juvenile Justice (Care and Protection of Children) Act, 2000**. Section 68 put foster care under the authority of State Government, while Section 42 suggested foster care to be a temporary solution, aiming at reunification or adoption. It gave no definition of foster care and the scope of children to be included as in need was also restricted.

²⁹ Marianne Haslev Skanland, *The Iron Hand that Rocks the Cradle*, THE HINDU, (Feb. 5, 2012) <http://www.thehindu.com/todays-paper/tp-opinion/the-iron-hand-that-rocks-the-cradle/article2843489.ece>

³⁰ *Bal Sangopal Yojana- Experiences of Implementation in Mumbai*, WOMEN & CHILD DEVELOPMENT DEPARTMENT, MAHARASHTRA (Oct, 30, 2016) <https://womenchild.maharashtra.gov.in/Sitemap/womenchild/pdf/fostercare.pdf>

³¹ BOSCO, *A Study On The Practice of Foster Care*, BANGALORE: NATIONAL RESEARCH AND DOCUMENTATION CENTRE 7 (2013)



- In addition to the JJ Act and Rules, the Ministry of Women and Child Development through the **Integrated Child Protection Scheme (ICPS)** reaffirmed the rights of the child to grow up in a family. The Guiding Principles 3.6 of the ICPS states that institutionalization needs to be the last resort for the care and protection of the child. Under the ICPS, the Child Welfare Committee (CWC) shall identify suitable cases and order placement of the child in foster care. The Specialized Adoption Agency (SAA) shall follow up and monitor.
- Goa, under the powers conferred by Section 68 of the Juvenile Justice Act, 2000 passed the Goa Foster Care Scheme named '**Vatsalya**'. It is commendable to note that the identification of foster families and awareness about the Scheme allows for self help groups, Mahila Mandals, women's organisations, NGOs and adoption agencies to be involved in the process.³²
- The **Juvenile Justice (Care and Protection of Children) Karnataka Rules of 2010** in Rule 37(1) make a few significant departures from the other schemes. They have specifically provided for the much debated 'kinship foster care', wherein arrangements are made for the child to be taken care of by relatives or family friends
- In *Bachpan Bachao Andolan v. Union of India*³³, referring to the Integrated Child Protection Scheme (ICPS), the Supreme Court suggested the need for creating and implementing schemes that provide support for foster care through Sponsorship and Foster Care Funds.

INTRODUCTION OF JUVENILE JUSTICE CARE AND PROTECTION ACT 2015 **ACT**

The Juvenile Justice Care and Protection Act 2015 was introduced in Parliament as a bill last year on August 12, 2014 after public outrage because one of the offenders in the 2012 gang rape case was a few months short of 18 years of age and sent to a reform home for 3 years rather than being punished for such a gruesome act.³⁴ It was introduced to address crimes committed by juveniles, children in need of protection, their rehabilitation and adoption processes, etc. It came into force from 15th January 2015 and repealed the Juvenile Justice (Care and Protection of Children) Act, 2000. The introduction of this act provided new

³² Foster Care India, *Policy Brief on Foster Care and Recommendations for India*, CENTRE FOR LAW AND POLICY RESEARCH (2015)

³³ AIR 2011 SC 3361

³⁴ Jatin Gandhi, *10 Things You Need To Know About The New Juvenile Law*, NDTV (Dec. 22, 2015) <http://www.ndtv.com/cheat-sheet/10-things-you-need-to-know-about-the-new-juvenile-law-1257667>



comprehensive guidelines for adoption and foster care which was insufficient in the previous act.

Adoption: To streamline adoption procedures, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

An elaborate procedure has been established under part VI for dealing with the child in need of care and protection as well as visitation rights of biological parents³⁵ and inspection every month by the child welfare committee.³⁶ It allows State intervention for care and protection of best interest of children, if the child is in need of care and protection³⁷ and if the parents are unfit for taking care of them. The new act has also removed the vague provision made it the authority of state and has conferred powers on the child welfare committee.

“**Foster care**” has been defined by section 2(29) of JJACT 2015 as placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child’s biological family, that has been selected, qualified, approved and supervised for providing such care. This is an improvement from the definition in the 2000 act which stated it to be a temporary placement of infants to be ultimately given for adoption.

However, although the JJ Act presently provides for foster care, it is not being implemented effectively. Very few state governments have developed foster care programs.³⁸

GUIDELINES FOR ADOPTION AND FOSTER CARE

Currently, the Guidelines Governing Adoption, 2015 under the 2000 Act, regulates adoptions. Model Foster Care Guidelines have also recently been released by the Ministry of Women and Child Development.³⁹

³⁵ Section 44(5), Juvenile Justice Care and Protection Act 2015

³⁶ Id S. 44(8)

³⁷ Id S. 44(1)

³⁸ supra note 31

³⁹ Apoorva Shankar, *The Juvenile Justice Bill, 2015: All you need to know*, LEGALLY INDIA (DEC 18, 2015) <http://www.legallyindia.com/blogs/the-juvenile-justice-bill-2015-all-you-need-to-know>



On July 26, the Women and Child Development Ministry notified the set of new guidelines for CARA, the adoption authority, with the aim of making adoptions faster and more transparent, and ensuring that at least 15,000 children are adopted every year. The new guidelines include transferring the entire adoption procedure online, creating a centralised national waiting list, monitoring adoption agencies more closely and treating non-resident Indians on par with domestic Indian adoptive parents. The ministry and CARA have already begun cracking down on illegal adoptions and unauthorised agencies. But there are other concerns like access to computers, knowledge of English and societal expectations for perfect, flawless babies.⁴⁰

The bigger advantage of a centralised waiting list will be the increased transparency about the availability of babies – individual agencies will no longer be able to put parents on hold citing lack of children. Another problem faced by those who wanted to adopt is the exorbitant fees charged by adoption agencies exceeding the ones specified by CARA. The online system has removed that difficulty.

In order to sign up as prospective adoptive parents, it is mandatory to fill in a slew of forms on the CARA website before selecting an adoption agency of one's choice. Parents have to submit everything from their health and financial details to recommendations from friends, employers and relatives, and errors made during the lengthy process cannot be easily corrected. The whole process of adoption was easier for the agencies to explain when it was offline, and the face-to-face interactions also gave them a better understanding of how keen the parents were to adopt.

In a recent case, the petitioners challenged the 2015 guidelines on adoption issued by Central Adoption Resources Agency (CARA). They had alleged that the new procedure established by the guidelines, of viewing the children online, was unfavourable to these children and had become obsolete being framed for the 2002. The court directed the Centre to frame new regulations as per the 2015 Act.⁴¹

SHORTCOMINGS

- The act of 2015 has changed the nomenclatures across the act such as 'juvenile' to 'child' or 'child in conflict with law', to remove the negative connotation associated with the word "juvenile". But even then the negative connotation attached to the title of the act "Juvenile" still prevails.

⁴⁰ Areefa Johari, *Adoption rules are changing, but can the new system really give more children a home?* SCROLL.IN (Aug 6, 2015) <http://scroll.in/article/745981/adoption-rules-are-changing-but-can-the-new-system-really-give-more-children-a-home>

⁴¹ *Mr. Santosh Digambar Honkarape & Anr v. Central Adoption Resources Agency & Ors* **PIL(C)/162/2015**



- The Standing Committee Report on the bill for the 2015 Act had observed that the Juvenile Justice Act, 2000 was not being implemented well. It recommended an increased focus on the implementation of the Act and uniform establishment of systems and procedures under it, by all agencies.⁴²
- The Committee also said that support to children cannot always end at the age of 18 years, once they have left institutional care. It recommended modifying the definition of aftercare to include financial or any other support to continue to children after leaving institutional care, till 21 years of age.
- The adoption of children with special needs has suffered, especially amongst Indian couples, more so after changes made in Central Adoption Resource Agency (CARA) guidelines in August 2015. The new online system makes couples select state, male v/s female, and normal kids v/s ones with special needs on CARA's portal before being offered options of six children and then getting directed to agencies. It removes corruption to some extent but the scope of pre-counselling couples to adopt children with special needs is gone. In case of babies who are undernourished or have a disease, they are mostly rejected by Indians. Only foreigners are ready to adopt such kids because they have better medical facilities.⁴³ An important interface between the parent and the agency is lost. The agencies can't counsel prospective parents into considering a child with special needs.
- The Ministry for Child and Women Development has also stated that there were bottlenecks, idleness, unconcern; deliberate lying by the adoption agencies and that Child Welfare Committees did not do home-checks up to two years.⁴⁴
- With over 50000 orphans languishing in child care homes with a few young being adopted, the foster system which could be used for older children is severely unutilised. It could benefit the children above the age of 5 years old who are called 'unadoptable' because no one wants them.
- There is also no provision for the adoption of the foster children by their foster parents except for the adoption previously applied for.

⁴² *Standing Committee Report Summary The Juvenile Justice (Care and Protection of Children) Bill, 2014*, PRS LEGISLATIVE RESEARCH, (Feb 26, 2016) <http://www.prsindia.org/uploads/media/Juvenile%20Justice/SCR%20summary-%20JJ%20Bill.pdf>

⁴³ *Tabassum Barnagarwala, Change in CARA guidelines, dip in adoption*, INDIAN EXPRESS (May 22, 2016) <http://indianexpress.com/article/cities/mumbai/mumbai-change-in-cara-guidelines-dip-in-adoption-2812952/>

⁴⁴ *Press Trust of India, Adoption rate in India 'shameful': Union Minister Maneka Gandhi*, INDIAN EXPRESS (Feb 20, 2015) <http://indianexpress.com/article/india/india-others/adoption-rate-in-india-shameful-union-minister-maneka-gandhi/>



- Another thing to be noticed is the faint mention of aftercare in the legislations under 8(3)(b) of Juvenile Justice Act of 2015 as function of the juvenile justice board. There is an absence of much deliberated Aftercare programme, also an evaluation of existing programmes to meet the parameters of proper Aftercare delivery.⁴⁵
- Also, the facility for counselling should be sincerely completed with a follow up with the adoptive and foster parents and the children.

LIMITATIONS

- The lack of previously conducted research on adoption and foster care system from an Indian context was a significant barrier specifically on the latest legislations.
- Lack of understanding about foster care and its identification on par with adoption was a major obstacle.
- Low availability of statistical data and written documentation to support the queries on foster care in the Indian context.

RECOMMENDATIONS

1. Registration for adoption can be online, but a provision for visitation to the homes and counselling by the agencies must be allowed. Special provisions for children in need of special care such as children with disabilities must be made by the states.
2. Greater scope for intercountry adoption must be provided with rather than a conservative approach which is followed.
3. Only after all other alternate family- based forms of child care viz., adoption, guardianship, foster care et al. are completely ruled out, must institutional care be considered for a child. Institutional care must be the last resort in child rehabilitation.
4. Complaints and procedures facility for adoption and foster care must be effectively presented to the people in the system to make the redressals stronger.
5. Implementation, regular follow ups, counselling of parents old and new and children, etc., must be carried out.
6. It is suggested that many more organisations must initiate work in the field of foster care implementation as there is a need for foster care both in urban or rural areas. A proactive CWC that exist in all the districts can resolve the situation to a great extent.

⁴⁵*Multi-stakeholder Consultation on Aftercare for Institutionalized Children in India*, UDAYAN CARE (Sept 17, 2014) <http://www.udayancare.org/seminar-journal/multi17.html>



7. States should come up with schemes regarding foster placement of children like that of adoption (CARA). This also can help in the availability of more precise and accurate data.
8. It is also suggested that awareness building campaigns regarding the needs for de-institutionalizing children be initiated on a large scale to rectify the scarcity of parents who opt to take care of children for a short term.
9. Children outside of child care facilities who are in dire need of foster care must be taken into foster care rather only those children living in government run children's home or private child care NGO.
10. Ensure that foster parents are provided with adequate financial support for the work they do, for the child's maintenance such as education, health, nutritious and other expenses involved in the well-being of the child.
11. Voluntary organisations, if registered and regulated by the state, can be given crucial powers in the foster care program, but this granting of powers needs to be balanced with a comprehensive regulatory framework.
12. Classifying Foster Care based on time-frames as done by the Vatsalya Scheme of Goa where classification is done on (1) emergency placement (2) temporary placement (3) long term placement (extended to 21), and (4) assessment placement.

CONCLUSION

Adoption and foster care are such mechanisms which can significantly improve the situation of the children in India who are in dire need of it. India has come far from the tradition and conservative approach and we have seen the development of these systems through various schemes but still a few shortcomings have to be corrected. More importantly, awareness must be created. The corruption must be eradicated in institutions governmental as well as nongovernmental; only then the plan may succeed. Especially about the foster care system which a major population does not even know. With the improvement in technology, a major change can be incorporated. It is essential that it is not only on the state but the general public as well who should take an active step in such reforms. Also, if Indian children put up for intercountry adoptions can have immense facilities in the adoptive countries, why can't we? Development of the nation will only be through the development of its offspring. The country's talent must not be laid to waste.

