

Bill No. 135 of 2019

**THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)
BILL, 2019**

By

SHRI BHANU PRATAP SINGH VERMA, M.P.

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BILL

further to amend the Juvenile Justice (Care and Protection of Children) Act, 2015.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 56 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the principal Act), in sub-section (2), the words ", irrespective of their religion," shall be omitted. Amendment of section 56.

3. In section 58 of the principal Act,—
(a) in sub-section (1), the words "irrespective of their religion," shall be omitted; and Amendment of section 58.

(b) after sub-section (1), the following proviso shall be inserted, namely:—

Provided that where the identity of the orphan or abandoned or surrendered child is known, he shall be adopted by prospective adoptive parents belonging to similar religious or spiritual (Scheduled Tribe) ethnic group matching with the identity of such child." 5

Amendment
of section 59.

4. In section 59 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) A foreigner, who is a prospective adoptive parent living abroad, if interested to adopt an orphan or abandoned or surrendered child from India, irrespective of his religion, may apply for the same to an authorised foreign adoption agency or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority. 10

(3A) A non-resident Indian or overseas citizen of India, or person of Indian origin, who are prospective adoptive parents living abroad, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority: 15

Provided that where the identity of the orphan or abandoned or surrendered child is known, he shall be adopted by prospective adoptive parents belonging to similar religious or spiritual (Scheduled Tribe) ethnic group matching with the identity of such child." 20

Amendment
of section 69.

5. In section 69 of the principal Act, in sub-section (5), for the words "regional offices", the words "provincial Steering Committee for each State or province, as the case may be" shall be substituted. 25

STATEMENT OF OBJECTS AND REASONS

India is a signatory to the United Nations Convention on the Rights of the Child (1992) and the Hague Convention (1993) on inter-country adoption of child. In consonance with the commitment towards these conventions, the Juvenile Justice (Care and Protection of Children) Act was enacted in the year 2000 which was consolidated and amended in the year 2015. Para (1) of Article 14 of Resolution 44/25 of the United Nations General Assembly dated 20 November, 1989 clearly expects the State parties to respect the "right of the child to freedom of thought, conscience and religion". The Government of India did not give due respect to the said resolution and without carrying out a thorough study of article 25 of the Constitution of India, enacted the Juvenile Justice (Care and Protection of Children) Act in the year 2015 and made a mistake by way of insertion of provisions related to inter-country adoption. To address the discrepancies in the Act of 2000, the amendment Act of 2015 [Act No. 2 of 2016] was enacted. However, the discrepancies could not be removed. Therefore, the amendment of the present Act of 2015 has become necessary for adoption of Hindu children.

As per sections 2(1), 2(42) and 2(60) of the Juvenile Justice (Care and Protection of Children) Act, 2015, abandoned or orphan or surrendered child may be categorised into following two categories of child whose:—

(1) identity is not known to the Committee; and

(2) identity is known to the Committee including sections of society, religion and spiritual ethnic group to whom the child belongs to.

The present Bill is intended for the welfare of the children coming under second category where the identity of the child is known to the Committee. The words "irrespective of their religion" as mentioned in sections 56(2), 58(1), 59(3) of Chapter VIII of the Act implies that the children whose identity is known are still being adopted by the prospective parents belonging to different religion. Such provisions cannot be justified as it leads to forced conversions.

Though the best interests of the child are mentioned in the Juvenile Justice (Care and Protection of Children) Act, 2015 and are also defined in section 2(9), there are still many ways to serve further. The present Act seems to be more inclined to give the Hindu Children to followers of other religions for adoption. Though at present no major movement is being noticed at social level, in coming days it may possibly lead to agitation by followers of Hindu religion. The Hon'ble Supreme Court also does not support such type and inappropriate attempts and in 1977 had clearly stated that "..... if a thing disturbs the current of the life of the community and does not merely effect an individual. It would amount to disturbance.....".

It is an indisputable that the number of followers of Hinduism is greater than that of other prominent religions like Christianity and Islam. Out of which the Hindus are considerably poor and the followers of Christianity and Islam used to get substantial foreign financial assistance. Therefore, the children of the followers of Christianity and Islam religions are available for adoption in meager numbers and the number of children born in Hindu families is comparatively higher under the present Act. There is a provision in the Act which clarifies the religious and socio-economic background of children available for adoption. If the Government of India reveals its related records such as Form 43 Rule 69 (H) 3 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 pertaining to Case History of the Child for Child Care Institutions; Schedule II of the Adoptive Regulation, 2017 pertaining to Child Study Report and Schedule VII pertaining to Home Study Report of Resident Indian Parent/ Overseas Citizen of India/Foreigner Living in India, the actual position may be placed before the House.

The Bill, therefore, seeks to amend the Juvenile Justice (Care and Protection of Children) Act, 2015 with a view to:—

(a) ensure that injustice is not meted out to the abandoned Hindu children; and

(b) provide that the orphan or abandoned or surrendered child whose identity is known to the Committee be adopted by prospective adoptive parents belonging to similar religious or spiritual (Scheduled Tribe) ethnic group matching with the identity of such child.

(c) establish Provincial Steering Committee for each State or Province, as the case may be.

Hence this Bill.

NEW DELHI;
June 19, 2019.

BHANU PRATAP SINGH VERMA

ANNEXURE

EXTRACT FROM THE JUVENILE JUSTICE (CARE AND PROTECTION CHILDREN)
ACT, 2015

(2 OF 2016)

56. (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.

Adoption.

(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.

(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.

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58. (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.

Procedure for adoption by Indian prospective adoptive parents living in India.

(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.

(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.

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59. (1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Procedure for inter-country adoption of an orphan or abandoned or surrendered child.

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the court order, the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.

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Steering
Committee of
Authority.

69. (1) The Authority shall have a Steering Committee with following members:

(a) Secretary, Ministry of Women and Child Development, Government of India, who shall be the Chairperson—*ex officio*;

(b) Joint Secretary, Ministry of Women and Child Development, Government of India, dealing with Authority—*ex officio*;

(c) Joint Secretary, Ministry of Women and Child Development, Government of India, dealing with Finance—*ex officio*;

(d) one State Adoption Resource Agency and two Specialised Adoption Agencies;

(e) one adoptive parent and one adoptee;

(f) one advocate or a professor having at least ten years of experience in family law;

(g) Member-Secretary, who shall also be Chief Executive Officer of the organisation.

(2) Criteria for the selection or nomination of the Members mentioned at (d) to (f), their tenure as well as the terms and conditions of their appointment shall be such as may be prescribed.

(3) The Steering Committee shall have the following functions, namely:

(a) to oversee the functioning of Authority and review its working from time to time so that it operates in most effective manner;

(b) to approve the annual budget, annual accounts and audit reports as well as the action plan and annual report of Authority;

(c) to adopt the recruitment rules, service rules, financial rules of Authority as well as the other regulations for the exercise of the administrative and programmatic powers within the organisation, with the prior approval of the Central Government;

(d) any other function that may be vested with it by the Central Government from time to time.

(4) The Steering Committee shall meet once in a month in the manner as may be prescribed.

(5) The Authority shall function from its headquarter and through its regional offices as may be set up as per its functional necessity.

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LOK SABHA

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further to amend the Juvenile Justice (Care and Protection of Children)
Act, 2015.

(Shri Bhanu Pratap Singh Verma, M.P.)