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STEPHANIE JOAN BECKER VERSUS STATE **AND OTHERS**

AUTHORED BY - RUHI AMIN SAITH

FACTS

Court	In the Supreme Court of India
Citation	Civil Appeal Bo. 1053 of 2013 (Arising out of SLP (Civil) No.29505 of 2012)
Hon'ble Judges/ Coram	P. Sathasivam, Ranjan Gogoi & V.Gopala Gowda

BACKGROUND

The appellant was a 53-year-old single prospective adoptive parent (at the time of application), who seeking an order from the court filed two applications under Section 7 and 26 of the Guardians Act, 1890. The appellant wished to adopt a 10-year-old female orphan child, Tina, and wanted to take her out of the jurisdiction for the purpose of inter-country adoption. Both the applications were rejected by the Trial Court and High Court, despite the possession of a No Objection Certificate by the appellant. The age of the appellant was the factor for rejection, according to the 2006 Guidelines for Indian Adoption, a single parent must be at least 45 years old to be granted guardianship of an orphan minor female child for an overseas adoption.

ISSUES

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- 1) Is the Pre-Adoption process as extremely tedious one?
 - 2) Section 26 and Child Trafficking?
 - 3) Does JJ Act, 2015 recognize same sex adoptions?
 - 4) Why is there an increase in rate of disruptions?

RULE-S

Section 7 of the Guardians and Wards Act, 1890 – Appointment of Guardian

Section 26 of the Guardians and Wards Act, 1890 – Removal of ward from Jurisdiction (Inter-Country adoption)

Rule 33 (2) of JJ Rules 2007 - States that for all matters relating to adoption CARA guidelines and notified by Central government under Section 41 (3) of JJ Act, 2000 will apply

Section 41 (3) of JJ Act, 2000 – Power has been conferred to the court to give a child in adoption upon satisfaction of State guidelines or CARA and notified by Central Government.

LACUNAE IN THE LAW

1) “Racket Busted?”

Trafficking disguised as Adoption?

In 2018, Mother Teresa's Missionaries of Charity from Ranchi came under fire for their role in a baby-selling ring.¹

Two businesses were shut down by the Maharashtra Police in 2016 for selling infants for between Rs. 2 and Rs. 6 lakhs.²

We observe that rather than supporting adoption, these organizations are raising future adoptive children. These organizations have the ability to do it by provoking the biological parents with money offers. There must be special laws addressing these crimes because the trafficking in disguise of adoption involves the commission of multiple offences, not just one. Appropriate legislation should be offered in order to better understand the intricacy of this crime.

Despite the fact that over 29,000 prospective adoptive parents are anxious to adopt, there are only 2,317 children available for adoption.³

¹ Dharambir Kumar Sinha, Now CID to probe baby-selling racket of Ranchi's Mother Teresa charity <https://www.indiatoday.in/india/story/now-cid-to-probe-baby-selling-racket-of-ranchi-s-mother-teresa-charity-1291932-2018-07-21> (Feb 21 2023 10:40 PM)

² Roli Srivastava, Reuters, <https://www.reuters.com/article/us-india-babies-trafficking-idUSKBN14H0S9> (Feb 21, 2023, 10:40 PM)

³ Ambika Pandit, Why the wait to adopt a child could get longer, Times of India [Why the wait to adopt a child could get longer | India News - Times of India \(indiatimes.com\)](https://www.indiatimes.com/Why-the-wait-to-adopt-a-child-could-get-longer-India-News-Times-of-India-indiatimes.com) (Feb 21, 2023, 10:40 PM)

This discrepancy results from the fact that, of an estimated 30 million, only 261,000 abandoned children are being cared for in institutions.⁴ However, not all Child Care Institutions in India have a valid registration. Inadequate care and human trafficking are all possibilities for children residing in unregistered facilities

2) LGBTQ+ Adoptions

Homophobic tendencies catching up?

The Centre recently opposed the same-sex marriage PIL, asserting that marriage is primarily a socially recognized union of two persons that is controlled by written statutory law or unwritten personal traditions⁵

The JJ Act of 2015 offers a secular form of adoption, and CARA is in charge of it. The regulations only allow couples who have been married for two years to adopt, despite the fact that same-sex adoption appears to be permitted on the surface.⁶

At that time, their only option is to adopt under the names of the partners. The same can complicate matters pertaining to custody and maintenance

3) Inter Country vs. In Country Adoptions?

The tug of war between social and cultural milieu and inter country adoptions?

The administration made decisions based on unfounded assumptions. The prevailing belief is that it is ideal to function in a comfortable cultural and social setting.

The idea that in-country adoption will help the child keep his or her biological social and cultural traditions is baseless given the diversity of India. Contrary to popular belief, domestic adoption exposes kids to 'foreign' social and cultural norms in a manner similar to those of international adoption.

This distinction is very important because although though the latter is not prohibited, it is actively discouraged throughout the entire procedure with the aid of the working state apparatus. This is also clear in the situation that follows. Before an overseas adoption can happen, ACA must spend 30 days looking for suitable Indian parents. Any legitimate Indian placement agency must

⁴ Namita Bhandare, Abuse of Children in India's Institutions Reveals Nation wide Crisis of Reform, Quint [Abuse Of Children In India's Institutions Reveals Nationwide Crisis Of Reform \(thequint.com\)](https://www.thequint.com/story/2023/02/21/abuse-of-children-in-india-s-institutions-reveals-nationwide-crisis-of-reform) (Feb 21, 2023, 10:40 PM)

⁵ Abhijeet Iyer Mitra v. Union of India, WP (C) No. 6371/2020 & CM Appl. No. 22554/2020.

⁶ Adoption Regulations, 2017, §5(3).

mandate that 50% of all adoptions be completed by Indian families. Evidently, the 50% requirement has nothing to do with the declared objective of ensuring children's wellbeing.

After the similar pre adoption stage, CARA tracks only foreign adoption in the post-adoption scenario, which explains why there are so many instances of trafficking in India. CARA is also mandated with corresponding with Indian diplomatic posts adoption. Under the post-adoption follow-up requirement, the agency is only required to communicate with the Family for three years in cases of in-country adoptions.

Because the process for domestic adoption is so straightforward, there is a very real risk that the safeguards are dangerously minimal. This situation cannot be accepted and is intolerable. No effort is made to relax procedural restrictions or even to promote foreign adoptions. The current procedural safeguards ought to apply to all adoptions.

4) “Disruptions” in the process?

Healthy baby syndrome

CARA reports an unusually high number of adoptive parents returning children soon after adoption, or what they refer to as "disruption."

In order to avoid the drawn-out adoption procedure, CARA introduced a new category of children suitable for "rapid placement" in 2016. These kids were "hard to place," possibly because of a small physical defect or because they were older, but they weren't classified as having special needs.⁷

Annual figures show a decrease in domestic adoptions of children with special needs. More and more children with special needs are being adopted by foreigners concurrently.⁸

Of the 278 adopted children who were given back to their parents, only three were foreign-born. According to specialists in the sector, this illustrates how adaptable immigrant families are as well as the support system that surrounds them.

⁷ New method of 'immediate placement' helps orphaned kids find new family, Indian Express ([New method of 'immediate placement' helps orphaned kids find new family | Lifestyle News, The Indian Express](#)) (Feb 22, 11:00 AM)

⁸ Jagriti Chandra, Indians averse to adopting children with special needs [Indians averse to adopting children with special needs - The Hindu](#), (Feb 22, 11:00 AM)

AFTERTHOUGHTS?

In the case National Textile Workers' Union v. P.R. Ramakrishnan⁹, Justice Bhagwati maintains that the law cannot be silent. It must adjust to the evolving social values and precepts.

In England, the Adoption and Children Act, passed in November 2002,¹⁰ interpreted 'couples' as two people living as partners in an enduring family relationship irrespective of their sex.

We must aim for a more child centric approach and make our laws more inclusive, we must recognize LGBTQ+ unions, so more kids are given homes, which upholds the provisions of adoption.

It must first begin the adoption process for the kids it already possesses, as well as ensure that they are being taken care of, even if that means giving them to recognized, licensed organizations both inside and outside the state. It is crucial to conduct a thorough analysis of the current legislation and their implementation. We must avoid children losing their childhood over fights between government and adoption agencies. Therefore, a more diligent pre adoption process must be established in in country adoption.

We also notice in the following case, that Stephanie Becker was not allowed adoption because she was 54 at the time of application, the courts spent two years to come to a decision, she further aged in that process, therefore the entire system is acting counterproductive.

Establishment of Tribunals, to dispose adoption cases fast, to ensure that kids are not losing a good chunk of their childhood waiting for court approvals.

We need to have more psychologists, that help kids and parents. Older kids and kids with special needs, do not require immediate placement plans, but require therapy, where they get an opportunity to come to terms with their traumatic childhood. Parents who return the kids, must also undergo therapy and pay some compensation for adding to the mental agony of the child.

We must also have a safe post in country adoption process, where there are regular checks on the

⁹ National Textile Workers' Union v. P.R. Ramakrishnan, 1983 AIR 750

¹⁰ Adoption and Children Act 2002, §144(4)(b).

adopted children.

BIBLIOGRAPHY

Kumari, V. (2016). THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING. *Journal of the Indian Law Institute*, 58(1), 83–103. <http://www.jstor.org/stable/45163062>

Masson, J. (2001). Intercountry Adoption: A Global Problem or a Global Solution? *Journal of International Affairs*, 55(1), 141–166. <http://www.jstor.org/stable/24357675>

Pat Moodley. (2006). Inter-Country Adoptions and Child Trafficking: A Fine Line Indeed. *Agenda: Empowering Women for Gender Equity*, 70, 145–148. <http://www.jstor.org/stable/4066750>

Bartholet, E. (1993). International Adoption: Current Status and Future Prospects. *The Future of Children*, 3(1), 89–103. <https://doi.org/10.2307/1602404>

Johnson, K. (2002). Politics of International and Domestic Adoption in China. *Law & Society Review*, 36(2), 379–396. <https://doi.org/10.2307/1512181>

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