

## **Steering Through Complicated Adoption Laws Amidst the Storm of Covid 19**

Abhilasha Chattopadhyay

PhD Sociology

School of Liberal Studies

National Commission for Protection of Child Rights (NCPCR) [informed](#) the Supreme Court on June 5, that as per data submitted by different states, as many as 30,071 children were orphaned, lost a parent or have been abandoned due to the pandemic. Out of the total, 26,176 children who've lost a parent, 3,621 have been orphaned and 274 have been abandoned.

Subsequently, a Supreme Court bench of Justices L. N. Rao and Aniruddha Bose on 8 June 2021 [ordered](#), directions for care and protection of minors who have become orphans or have lost one parent or were abandoned. The court highlighted that the invitation for the adoption of orphans is contrary to law as no adoption can be permitted without the involvement of the [Central Adoption Resource Authority\(CARA\)](#).

### **What is CARA?**

Central Adoption Resource Authority (CARA) is an institution that deals with the adoption of orphaned, abandoned and surrendered children through its associated /recognised adoption agencies. CARA is a statutory body of Ministry of Women and Child Development, Government of India. It functions as the nodal body for the adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA also manages inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by the Government of India in 2003.

### **Eligibility for Adoption**

Justice (Care and Protection of Children) Act, 2015, issued by the Ministry of Women and Child Development lays down the eligibility criteria for prospective adoptive parents: (i) The prospective adoptive parents “should be physically, mentally and emotionally stable, financially capable and shall not have any life-threatening medical condition.” (ii). A person can adopt irrespective of their marital status and whether or not he or she has a biological son or daughter. (iii) A single woman can adopt a child of any gender but a single man is not eligible to adopt a girl child. In case of a married couple consent for adoption is vital from both spouses, married for minimum two years with less than three children. (iv). Couples with three or more children are considered for adoption only in the “case of special need children”(as defined in Regulation

2(21), “hard to place children” (Regulation 50) and in case of “relative adoption and adoption by step-parent”. Apart from resident and non-resident Indians, even overseas citizens of India and foreign parents can adopt children from the country.

### **Adoption: A Never-ending Wait?**

With the Covid-19 pandemic, the waiting time for parents who were on the verge of getting matched the children was delayed by several months owing to mandated lockdown. The same was expected to be longer for thousands of other parents further down the waitlist. It was during the peak of pandemic, when CARA brought out a changes to address immediate care and relief for children abandoned, relinquished or whose parents had died. Dr. Bhargava a member of Adoption Recommendation Committee at CARA, has described a few distressing aspects of adoption process during the pandemic that influenced many lives of children across the country.

According to the Juvenile Justice Act, adoption cases can be heard by either a district court, or a family court or a city civil court. *But the courts were shut during the lockdown - it was only until mid-June 2021, when the courts began opening up.* In this situation, CARA requested district courts to conduct video conference hearings for adoption cases. Unfortunately this facility was only limited to metropolitan cities.

### **Exacerbated Parents: Navigating Adoption Laws During the Lockdown**

Prospective adoptive parents based in India were permitted to take adopted children home during the foster period before the court grants adoption orders. This foster period usually lasts for two months. *But Dr. Bhargava pointed out that several prospective parents were faced with tremendous pain and anxiety waiting for over two years to be matched with a baby, only to be blocked by Covid 19 lockdown. Non Resident Indian (NRIs) could not leave the country without furnishing necessary documents of the adopted child such as the birth certificate or a valid passport.* As a result they were languishing in hotel rooms for several months waiting for further instructions. In such a situation, CARA could have facilitated inter-state and inter district fostering and adoption as admitted by Dr. Bhargava who also admitted that this process too would have been complicated if implemented. She highlighted other reasons for adopting more urgently – poor nutritional and health issues of most children in Childcare Institutions(CCI)s, she urges, “the sooner a child leaves, the better it is for them”.

### **CARA’s Intervention During the Lockdown**

Procedurally a prospective parent may choose the gender and age group of the child and also select three states from where they could adopt, depending on availability. Additionally, they also select one of CARA's affiliated adoption agencies(CCI) in their city for a procedural Home Study Report (HSR) that determines the suitability of prospective parents. Once their HSR is approved they land on the waiting list. Usually, the moment a child becomes available for adoption in any of the three states selected, the prospective parent is notified and given a 48 hour window to meet the child and make a decision. CARA, during the lockdown increased this window to 96 hours. During this window if the prospective parent does not proceed they lose their spot on the waiting list and move right at the bottom of the list.

### **Single Women as Prospective Parents: Reported Gendered Stereotypes in HSR**

It has been [reported](#) single women are often discouraged to adopt even though the number of applicants in this category has increased considerably. In 2015-16, 412 single women registered for adoption with CARA. By the end of 2017, the numbers almost doubled to 817<sup>4</sup>. While this was only one-twentieth of the 18,000 registrations that year, the numbers are growing consistently. Seventy five single women adopted a child in 2015-16, 93 in 2016-17, 106 in 2017-18, and 121 in 2018-19. Still, it has not been easy for several single prospective women, who complain that specialised agencies — conducting HSR— have been reported to be biased towards them. However, CARA has the last word on any adoption-related matter, the agencies have the right to raise objections, often turning what could be a seamless process into an even longer and tedious procedure. ([Economic Times 2019](#))

### **“Best Interest of the Child”: A Need for Re-Evaluation of Adoption Policies**

Dr. Bhargava also highlighted the emotional and social well-being of children impacted by loss of parental jobs, death of family members, education disruptions, domestic violence, forced home confinement, sexual violence, trafficking, child marriage, excessive digital exposure, distorted human interactions. These areas are often left out of policy discussion and decisions for adoption and child care. In her experience, she described how some single parents wanted to return their children to the agency when they feared that they may lose their lives due to Covid. Many of them faced severe financial struggles.

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<sup>4</sup> In July 2017, this law became favourable for single women over the age of 40 owing to the increase of single women applicants. Their waiting period for adoption was fast-tracked by six months two years or other prospective parents.

[https://economictimes.indiatimes.com/news/politics-and-nation/despite-a-favourable-law-why-do-single-women-and-men-struggle-to-adopt-a-child-in-india/articleshow/70621618.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/despite-a-favourable-law-why-do-single-women-and-men-struggle-to-adopt-a-child-in-india/articleshow/70621618.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

The immediate need remains the safety of the children especially girl children and reaching them in time because of lockdown and the next priority is to create more support groups. The Department of Women and Child Development Government of N.C.T of Delhi [organized](#) a program, where students talked to children orphaned due to Covid, on a regular basis talking about their grief and trauma. These are very valuable steps to reach out to distressed children in need, however, there is plenty of ground to cover with regard to adoption laws and practices keeping the child's needs in mind. There is no doubt that adoption laws and procedures must follow the best interest of the child, but what if following these "best interests" may prove to be counterproductive?

### **Communal Child-rearing: A Possibility?**

A lengthy cumbersome adoption and screening process, on one hand, may ensure 'suitable' prospective parents enter the waitlist but, the same cumbersome process may keep a child in childcare institutions (CCI) longer than it is required, which has proved to be detrimental to a child's health. It is also pertinent to engage with the functioning of registered and unregistered CCIs and their settings for a better understanding of childcare needs and protection that may have a bearing on adoption related priorities. The longer the procedure, longer is the wait time for children in CCIs. *However, outside of institutional care such as CCIs and familial settings can we imagine building a community based model of care?* My Sociology Master's classroom discussion from the course Relationships and Affinities reminded me of a captivating discussion on communal or collective childrearing as alternatives to familial settings. Can we imagine extending services that are only accessible to families available in these community based model of child care in the least restrictive setting possible. The communal child-rearing or establishing a collective of caretakers that raise children in a familiar setting with financial support from the state may prove to be useful and is being widely discussed across the world<sup>5</sup>.

Dr. Bhargava emphasized on the need to look at the policy from the perspective of the best interest of the child and not necessarily of the parents adopting the child. She urged, if laws related to taxation can change so seamlessly then a change in some of the rules for finding homes quickly should be a priority. But unfortunately the waiting time for both children and prospective parents tells us a different story. These issues have exposed the worst of Indian bureaucracy, especially during Covid. It revealed lack of initiative to offer any procedural ease or

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<sup>5</sup> Taj Lalwani May 22, 2021. Communal Child-Rearing: An Exploration Could collective childcare be the future of parenting? Source:

<https://storymaps.arcgis.com/stories/086c3282dd714f6d85a7828a6136fa1f>

Child Welfare Information Gateway. United States.

<https://www.childwelfare.gov/topics/management/reform/soc/history/community/>

alternatives to inaccessible institutions that grant adoption and furnish relevant legal documentation. It instead prioritised lengthy and cumbersome paperwork above safety and care of children for the sake of securing the 'best interest of the child'.

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