

The idea of adoption or foster care or some kind of legal guardianship is not new. Taking into the family a child who has no family of its own, or is rejected by it, probably dates back to cavemen days, humanity being what it is. Even in these modern days, one hears of stray cases where an animal like a wolf, an ape, or a tiger has adopted and brought up, in an animal fashion, a human baby found abandoned. Guarding minors and providing for some kind of care and education and training is evidenced by the old Hindu Gurukul conception, and in the West by the Guilds of services and apprentices etc. So though adoption and its concepts is not new, still its codification, and its greater necessity dates from fairly recent times. Wherever society has not ostracised the unmarried mother and her illegitimate child, children of the indigenous country are difficult to obtain. Where however ultra marital relations are frowned upon, and social stigma attaches itself to an illegitimate child, abandonment and rejection of unwanted babies abounds. Such is the situation in our country even now. That is why so many orphanages and Homes for unwanted children have had to be established. However, with the explosion of the population and the concepts of necessary family planning being understood by the more privileged classes of society, and slowly percolating into the lowest stratas of society, the numbers of rejected children are likely to decrease during the next few decades. Perhaps this is wishful thinking, but I do not think so, at least from my own experience of 37 years of child welfare, 28 of which were

spent in enforcing child legislation.

I do not propose to talk about Consultancy in Guardianship, and the role of Adoption and Foster Care in child rehabilitation or even much about indigenous adoption laws, because these points have already covered by Gokhale, Sohoni, Ursekar etc. It may be interesting however to give an idea of how the ICSW came to be recognised by the Bombay High Court, as a consultant and screening organisation for adoption in general, and guardianship cases under the Guardians and Wards Act 1890.

It came to the notice of the Bombay Juvenile Court a number of years ago that children were being taken from hospitals, maternity homes, and poor families either under so called adoptions, which had no real status, except that some kind of an agreement would be signed by both parties; or under the Guardianship and Wards Act through the relevant High Court, without any kind of inquiries about the abandoned child or the adoptive parents or guardians. When a remanded child was thus taken away by a foreign couple under the Guardianship and Wards Act while inquiries were proceeding, this proved to be an eye opener. Further, another situation developed where the medical officers in charge of municipal maternity homes approached the Juvenile Court and complained that the children abandoned in the unwanted cradles (each such home has a cradle outside where unwanted children can be just abandoned) were not obtaining admission to orphanages and charitable homes as hitherto. It was then discovered that formerly Mission orphanages and charita-

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ble homes used to receive considerable funds from abroad for carrying out their activities, and these children used to be taken and brought up and then sent forth as ayahs, drivers servants, or into so called adoption by families. A further enquiry revealed that many of these so called adoptions resulted in the child being exploited as an unpaid servant, receiving food and clothes and sometime a little pocket money. When these children became adolescent, or grown up they very often ran away, and heaven alone knows what happened to them. Some of these children were rescued as victims of cruelty, rape, assault, or found in brothels. There being no statistics or inquiries about this type of child extant, and since they came from all corners of India, it is impossible to say what percentage of such abandoned children reached such frightening situations. No doubt quite a number of them were adequately provided for, or launched into society with some kind of preparation and managed to live fairly normal lives. But as I say it is impossible to surmise the number of such children. This was another eye opener.

It was found that in some of the cases the parents or relations could be traced after long and protracted inquiries, and that a child had been thrown as a result of (a) a quarrel between parents, (b) one of the parents being irresponsible or mentally deranged, (c) as an act of revenge, (d) or was lost in a crowd due to exceptional circumstances and in most of *such* cases the children were eagerly taken back by the parents or the guardians. But by far the greater majority were truly destitutes and unwanted, and no one could be traced. One of the lessons learnt was that there *are* a number of people in *this* country *too* who want children whether they have children of their own, or not. Usha Modak has very lightly touched on this type of

foster care programme by the court in her article.

Being appalled by the lack of proper inquiry and security in cases coming under the Guardianship and Wards Act 1890, it was suggested to the ICSW that this matter should be taken up very urgently, which it did, and today a whole new avenue has opened up of inquiries, security, safeguarding, approach, tabulation and recordation of children and their adoptive parents under this Act.

International adoption has taken on much importance and precedence recently, on account at the influx of applications for adoption of Indian children. In fact the concept of adopting children from other countries, particularly under-privileged ones, where there is a surplus quantity of unwanted or abandoned children, whether, due to poverty, or War-torn areas, has come into vogue, and international adoption has come into existence. Taking a broad or racial view it is a good thing. Ultimately the world, particularly the present day world of space travel, on the threshold of finding other planets inhabited by some kind of life, is going to drive all humanity on this earth together, irrespective of race, creed or colour. Taking the far view, international adoption is gradually paving the way to tolerance, love, understanding, in a word — integration. This is one side of facts. The other side is — are these children who are so lovable, so charming when young, really being integrated into the society in which their adoptive parents live? What happens when the children become adolescent and start dating? What happens when they become old enough to work? Do they get the jobs they merit? Or do they have to accept whatever they can get? In many laws of adoption, even a child legitimated by adoption cannot inherit entailed property, only the self-earned property of the adoptive

parent.

I know that there is a feeling around in some places, that India, Korea, Africa, etc. etc. should be grateful that children who might otherwise die of mal-nutrition and neglect, are adopted often through humanity, or through a christian feeling, and that the countries of origin make too much fuss, and too much delay in letting these unwanted children go. The thing is, we are thinking of the far ahead life of the children. Unless a sufficient number of years lapse, and we can all see with our own eyes what has happened to the adults that the already adopted children have become, it is difficult to say or sway either this way or that way, on international adoption. The proof of the pudding is always in the eating. But if you never have the pudding you can neither miss it nor yearn for it. Taking for granted that these children die in India or have to be committed to institutions, is the known better than the unknown, or is it better to die in one's own gutter rather than in another's?

There is another problem in international adoption. If society in the country of adoption accepts colour and race difference, well and good. But suppose there are such a large number of coloured children adopted, and they inter marry, and the whole of the country starts being affected, would it lead to fear? Because it is always fear—fear of seeing what is one's own being swamped by strangers, and made into *their* own, that leads to race discrimination. Witness what is happening in England by and large. Mind you, I am not decrying the magnificent efforts being put in by devoted and zealous bands of workers, and whole villages, and areas in England who are doing a tremendous job in rehabilitating the enormous influx of immigrants from the West Indies, Pakistan, India, and the African-Indian Communities. But it cannot be denied that *their* young

men and women are immigrating to South Africa, Australia, America, in fact, all countries where whites are in predominance or in power. There was recently an article in the Indian Express by Prafulla Patel who is an Officer of the Co-ordination Committee in Great Britain, of the coloured and the English population, which makes interesting reading as he too mentions this fear that has been pointed out by me. One can only wait and see.

Meanwhile, let us examine the foreign laws of adoption studied in this article, and try to find out the similarities and dissimilarities according to the following heads:

- A. Adopters — and the rules that govern them.
- B. Adoptees — and the rules pertaining to them
- C. Results of Adoption.

A) In Belgium the adopter/s may be —Belgian, Belgian and foreigners, provided that they satisfy all the conditions imposed on them legally and personally. Only people married for over five years, non-separated, one of which is at least thirty five years old, except if the child is a natural one of one of the adopters whereupon the adopter must be 21 years old.

In France the same age conditions pertain except that the adopter must be at least fifteen years older than the adoptee or at least ten years older, if the adoptee is the natural child of one of the spouses. *NB* An adoption that has taken place in Belgium is legal in France, but nowhere else according to French law. In the Netherlands adopters must have cared for the child for at least two years before, adoption (Foster Care or Guardianship). Each adopter must be 18 to 50 years older than the adoptee. Applicants must have been married five years and non-separat-

ed. They can be naturalised citizens of the Netherlands. In Canada any Canadian citizen, including a foreigner who has gained citizenship, can adopt a child under 21 years of age, provided they themselves are adults. They may adopt the legitimate/illegitimate child of either spouse. They must satisfy all the conditions imposed on them by the court. In Italy (with reference to adoption of Indian children) there is no special provision for the age of the adopter; only that the adoptive family must apply to the juvenile court with all the documents of the foreign court which has given the adoptee. If the family is found fit, the Italian court ratifies the adoption that is general adoption involving no Italian citizenship) if it is special adoption citizenship is gained after one year in the case of a childless couple, and three years for a couple with bio-children. The CIAI makes inquiries and supervises the child. In England, single persons 25 years old or over 21 years if they are relations of the child and married people of over 21 years can adopt a child, however the adoptive parents and the child must be residing in England itself (U.K.). In West Germany the adopters must be over 35 years of age and the adoptee under 21. Adopters can adopt more children even if they already have adopted children, however, they cannot adopt a child, if a legitimate natural child already exists; but German Courts can waive the age of the adopter and grant adoption even if a natural child exists, provided they think it fit. In Denmark the adopter must be over 25 years of age. A married couple must adopt a child jointly unless one of them has disappeared or is insane, or mentally deficient or is an irrational person. Married people can adopt each others natural or adopted child. Only married people can be joint adopters. In Sweden

any man/woman 25 years old or over may adopt a child with the permission of the court. And if the child is related to, or is the natural child of the adopter, or that of the spouse, the minimum age is 20 years. Married people must adopt jointly unless one of them is untraceable or mentally ill or retarded.

In Luxembourg the adopter must be over 40 years of age and if married and non-separated for 8 years, one of the spouses must be at least 35 years of age and the marriage must be childless. The Chief-of state may waive the condition of eight years of marriage if he thinks fit. The adopters can have no legitimate child nor any natural recognised child but may have an adopted child already. Adoptions by two people is possible only if they are married and non-separated. If they are separated, the consent of the remaining spouse is required. In Tunisia there are four kinds of guardianship (i) Foster care (ii) Public guardianship (iii) Unofficial guardianship (iv) Adoption. In the case of adoption, the adopter must be adult, married, enjoying civil rights, be of good moral standing, be physically and mentally healthy, and in a position to meet the needs of the child. The difference in age between the adopters and adoptee must be fifteen years, and an exception is made if the adoptee is the child of the adopter's wife. A Tunisian can adopt a foreigner.

B) With reference to rules regarding the adoptees or the child to be adopted, the following are the conditions in the various countries enumerated above.

In Belgium the child's age of consent is fifteen and his age of majority is twenty-one and the consent of real parents, relations or guardians is necessary unless waived under the exceptions already mentioned. In France the age of consent is fifteen, age of majority twentyone and consent of parents etc., is necessary as

already stated. In the Netherlands the age of consent is fourteen, age of majority twentyone and consent of parents necessary with the exceptions already given above. In Canada the age of consent is twelve years, the age of majority twentyone years, and consent of parents like the other countries already mentioned. In Italy the age of consent is fourteen years, and if the child is eighteen its approval must be secured, the age of majority is twentyone and the consent of parents necessary as above. In England (U.K.) the age of consent is not stated, but the age of majority is eighteen and the consent of the real parents etc., is necessary as in other countries. In West Germany the age of consent is not stated, the age of majority twentyone years and the consent of parents necessary with the exceptions already mentioned. In Denmark the age of consent is twelve years, and that of majority twentyone years and the consent of parents as already mentioned. In Sweden the age of consent is twelve years, and the age of majority is twenty years, and the consent of parents is necessary except for the exceptions already stated. In Luxembourg the age of consent is not stated, and the age of majority is twentyone years and the consent of parents is as stated above. Tunisia—the age of consent is not stated nor is the age of majority but presumably it is eighteen years, as in most eastern countries and the consent of parents etc., is necessary.

C) The results of adoption are self evident since the child acquires a home, a name, adoptive parents, certain rights of inheritance, and citizenship of the adopted country in most cases.

A study of the legislation of these twelve countries shows that most of them have some kind of foster care or guardianship and provide for general adoption,

provisional adoption, and official tutorship. Actually all these can be placed under the heading of foster care or guardianship, that means that the child does not necessarily change his name, religion, or acquire citizenship or rights of inheritance. In fact in some countries like Italy, Belgium, West Germany, France, etc., even in the case of full adoption the child is not entitled to entailed property; that would go to the legal heirs, or legal and legitimate children if any. The child however has a right to some of the self earned property of the adoptive parents.

In every law of adoption there is a provision for annulment of (a) Guardianship (b) Foster Care (c) Adoption on the application of (a) the real parents (b) the child if old enough (c) the inspecting authority or youth welfare service. There is also provision for enquiry prior to adoption, and prior to annulment by the relevant youth welfare society, children's aid society, or any other organisation either governmental; or authorised by the government as described by each Act. Most countries seem to agree that the detailed objective, selective home study of the adoptive or foster parents is most necessary. Not only that, but supervision of the child by such an agency is also provided for in most cases.

As there seems to be more and more childlessness in some parts of the world, and over population in others, the desire to adopt is natural. This is also the case where family planning obtains mostly among higher classes and a superfluity of children among lower communities, results in desire for adoption among the higher classes and rejection of children among lower classes. Wherever there is a cause or need, effect has to take place. Nature it is said abhors a vacuum. Is it right to hand over children because they are wanted *now* irrespective of their

ultimate fate, or ignorant of it? As I have said before it is impossible to give a correct or accurate estimate at the moment. Only scrupulous research of adoption, domestic and international, fifteen, twenty or even fifty years hence can supply the answer, the statistics that are necessary to give the correct picture. It is quite true that thousands of children in countries like India die of malnutrition, abandonment or exposure. Or in countries like Korea, Vietnam, Cambodia the existence of war or civil war as it may be called also leads to death, deprivation and orphanship. Many countries like the Scandinavian countries make no discrimination of race or colour. Others want Asian children as they look upon it as christian charity, or an act of humanity. Yet other countries like America, England and only recently as

in Hitler's Germany keeping the purity of the race, was considered as almost as a religion. If countries can change within one or two decades what is going to happen to these children, if the country does not change for the better? Ultimately all countries and races will have to become one if they are going to stand united, otherwise there will have to be a line of demarcation between the whites and the non-whites. In the meanwhile should we go on exporting our unwanted children merely hoping for the best without correct or adequate knowledge? That is the crucial question. However, it is quite clear that the Indian adoption Act needs to be passed very urgently. Most countries, even small ones, have an Adoption Act, why should we be the exception?

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