

Episode 3: All About the Law

Date: 14 October 2018

Intro:[00:00] Dear Pari, endless paperwork and government offices are somethings that everyone tries to avoid. But of course, we couldn't do any of this when we decided to adopt! Once we made the decision, it meant reading up a lot on the law and the guidelines to understand what your rights would be and what we could do to be selected as your parents.

Rakesh:[0:31] Welcome to Dear Pari, a ground-breaking podcast series presenting facts, busting myths, and tackling stigma around adoption. It will bring to you varied viewpoints from adoptees, parents, adoption experts & government officials. This podcast is being brought to you by Suno India, a podcast platform for issues that matter.

Rakesh:[1:02] See, in adoption, we don't get to choose our child- the system chooses for us. And of course, as with all things linked to government, I was very anxious and spent many hours pouring over every single line in the guidelines, going over and over the paperwork to make sure we had it all. The pyramid of steps in CARINGS portal became my favorite thing to look at and wonder when you would legally become ours. Because for at least 6 months we were on paper just as 'foster' parents.. Finally, we were asked to be present at the district court for the final step-of becoming your legal parents. So along with you and your grandfather, we set off to the district court. We were perhaps the most dressed up people in the court that day. You in a sky blue frock,! You were most fascinated with the dogs running around in the corridors of the court, which was an old building with those squeaky chairs. This was the first time I was in a court, I was not sure if I had to stand at the dock and take an oath or if it was going to be a casual conversation with the judge.

Priya:[2:15] We were nervously waiting for the judge to call us in. It was quite a long wait. We had gone in the morning and our turn came only after lunch. Funny story, I had lost my voice that day due to throat infection-the day i wanted to speak the most with the judge & I couldn't--well not without sounding like a frog. In an in-camera hearing held in a room beside the main court room, the judge spoke to us and asked why we wanted to adopt, why a daughter, how and if we planned to tell you about your adoption. After every answer , he gave a long hard stare. At one point during the hearing, you got cranky and started crying and we both had to step out of the room.. Your dad tells me the judge gave one long final long hard stare, signed the papers..the papers that declared you our legal daughter. The last time we were so happy to get a legal document was when amma and i got our marriage registered!

Priya:[3:22] This episode will bring to you an interview with Colonel Deepak Kumar, which we conducted mid-August. This episode will strive to explain to you the different laws available for adoption in India, the loopholes in them and

challenges in finding families for children with special needs or older children among other things.

Deepak:[3:49] Hi I am Colonel Deepak Kumar. Presently I am tenanted in this appointment of secretary and CEO Central Adoption and Resource Authority which is a statutory body and Ministry of Women and Child Development. And, I am on this appointment for last over 2 years now.

Priya:[4:05] We asked Col Deepak Kumar what it means for a child who has been trafficked and put up for an illegal adoption.

Deepak:[4:11] If you look at the laws and the regulations governing adoption in India, as of now they are only two laws which regulate or under which adoptions can take place. The first one being Juvenile Justice Care Protection Act 2015 which we administer and we got a subordinate legislation under it which is known as Adoption Regulations 2017. Apart from this common law there is only one personal law for Hindus which is known as Hindu Adoption Maintenance Act of 1965 under which an adoption can be taken legally. Otherwise apart from this all other ways or means of taking a child for the purpose of adoption is totally illegal. If you look at the child's perspective the best interest of the child cannot be ensured if somebody is not adopting the child legally because you have to ensure that the child gets all the rights and the benefits which any other biological child gets and that can only happen if you have done it legally. That means inheritance of property and all all those get affected.

Priya:[5:17] Juvenile Justice (Care and Protection of Children) Act, 2015 had been passed by Parliament of India amidst intense controversy, debate and protest on many of its provisions by Child Rights activists. The Act came into force from 15 January 2016.

To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) was given the status of a statutory body to enable it to perform its function more effectively. A separate chapter on Adoption provides detailed provisions relating to adoption and punishments for non-compliance. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption. As of 2018, Ministry of Women & Child Development of Government of India is working towards bringing an amendment, primarily to remove courts from adoption process and to handover it to Executive Magistrates/ District Magistrates. There is a lot of controversy about this a move. We talked to Col Deepak Kumar about JJ Act and how it differs from another existing law called Hindu Adoption and Maintenance Act.

Deepak:[6:32] The first act which was made was the Hindu Adoption Maintenance Act of 1956. Now this act was primarily firstly for Hindus and it had lot of other things apart from adoption now, there are a lot of instances where you will find in

Hinduism a child has been adopted now the main reason at that point in time was the family wanted somebody to inherit or somebody who can light their pyre when they die. These were the traditions because of which they wanted some lineage or somebody for them to be there and if family or a couple did not have a vaaris in that sense then they adopted a child so it was a parent centric.

Whereas if you look at Juvenile Justice Care and Protection Act, it has primarily got two basic pillars of this act to deal with the juveniles which is children below the age of 18 where I will just include here in HAMA adoption is only till 15 years of age for a child here in Juvenile it is for all children up till 18. There is no such pre conditions and basically we handle with for the cases of all children who are in need of care and protection that is one aspect and the second pillar is those children who are in conflict with law okay so there are certain things defined for those who are in conflict we keep them in place of safety. The other thing is rehabilitation and looking after children who are in need so there are various methods and ways which are defined in the act like sponsorship, foster care, adoption, institutional care. So looking at the institutional and non - institutional care, we as a government of India we believe that non institutional care is always the best so the child should be placed with the family as soon as possible so that to ensure their childhood because every child has got a right to a childhood and adoption is the best way because all rights and duties and responsibilities everything get permanently and legally established for the parent and the child so this act is basically a child centric act where we look at the best interest of the child whereas HAMA was a parent centric.

Another important thing I would like to add here itself is that nobody is regulating HAMA so since there is no regulation nobody is ensuring whether the provisions of HAMA has met while adopting or not. JJ Act is very safe, secure it is through the court order the adoption order is given and hence all rights are protected for a child and the families are also safe. we have now enabled relative adoption under this act so apart from Hindus even the Christians Muslims and all they can they are able to adopt the relative's children and one more important thing which we added in the regulation was the adoption of stepchildren for which earlier there was no law whatsoever

Rakesh:[9:36] JJ Act is common law which evolved over a period of time which means under this law people of any religion can legally adopt unlike earlier. It is also considered to be fairly child-centric act. JJ Act also places greater emphasis on adoption of children and lesser on institutional care of children. What this means for those children who are not necessarily orphans is that they often languish in poorly maintained and monitored Child Care Institutions. The recent instances of rampant sexual abuse in Child care institutions in Bihar, Jharkhand and other states are pushing the Central government to exert more pressure on State govts to put in place better monitoring mechanisms.

Therefore it has become a scenario of adoption vs institutional care when it is the country's duty to provide safe space for every child who has none.

As of September 30th, as per data collated by Families of Joy Foundation, a non-profit in the adoption space, there are over 27000 parents waiting to adopt around 2000 children. We asked Col Deepak about this disparity

Deepak:[11:02] There are primarily 3 important aspects which we have to look into and ensure not only for the best interest for the child but also for the family for the adoption to be fool proof and legal. The first thing is the sourcing of the child by sourcing we mean that we have to ensure that the child is not trafficked, there is no transaction of money because transaction of money is illegal even in HAMA and as well as JJ Act so it's very difficult prepositions to control things until and unless we have got stringent rules and regulations. So the main responsibility of finding out about the sourcing of the child and declaring the child legally free for adoption is vested with Child Welfare Committee which is there in each district. So, the district Child care protection unit and the officer there he is supposed to make an advertisement file and FIR and do all sorts of social investigation and other things before they bring the case to the Child welfare committee who declares the child legally free for adoption. So, only those children can be placed in adoption who are declared legally free. as I sit here today I would be having generally approximately 2000 children who would be legally free for adoption across various orphanages and child care institutions in India and out of which half of them are special needs who seldom gets placed in India. some are placed in inter-country adoption in abroad but very few Indians would choose to adopt special need children.

Priya:[12:45] Colonel Deepak told us that of the 3200 domestic adoptions that happened last year, there were only 47 children with special needs whereas of the 651 inter-country adoption, almost 50 percent of children adopted were those with special needs. .

Deepak:[13:02] and if you look at the balance half 1,000 again 600-650 would be older children. Older children means those who are above 6 years of age. Again, these are the ones who are very difficult to be placed in India and generally we place them again in inter- country adoption So in a month we are able to place between 300- 350 children in adoption whereas the number of parents who register in a month on an average crosses 1,000.

Priya:[13:33] Colonel Deepak further explained to us how HAMA, while legal is also being used by many to traffic children and the lack of regulation of adoption under HAMA means there are potentially tens of thousands of children being "adopted" under this act. Since there is no database of adoptions happening under HAMA, anti-trafficking experts says that it is tough to estimate the number of children being trafficked under this law. So why does the government not remove this loophole we asked Colonel Deepak?

Deepak:[14:05] HAMA had a different concept altogether but then the most important and the difficult part is that there is nobody who is regulating it. Now the state government must have some mechanism to monitor and regulate and this act was made simpler primarily because the aim was different. Here the giver was actually supposed to be the biological parent, the act believed that the second most important thing apart from the sourcing is checking the eligibility and suitability of the respective adoptive parents. So, the government when the HAMA was being enacted was of the view that who would be a better judge than the biological parent to ensure that the adoptive parent is suitable and eligible. There is a provision of going to the court and taking permission for adopting a child under HAMA if the giver is not there an orphan child. So court in HAMA only gives permission. Finally you undertaken adoption through a deed and deed can even be unregistered so nowhere it is written that it should be registered. So people are just utilizing this provision and even from the nursing homes & other places where they may be unwed mother or somebody who is from a poor family who is not wanting to look after the child so there because of this gap in demand and supply though I should not be using these term because these are children not commodities but if we can understand this through general economics then we find whenever there is a gap there will be a lot of middle men floating around the market. And now with social networking and so such things they will offer that they will be able to place the family with valid deed birth certificate and all other things and that is how the whole trafficking networking is flourishing in various states.

Priya:[15:59] When we asked what can be done with this child trafficking, he said the onus is on every state government along with other enforcement agencies such as police. A sincere effort to stop the traffickers is the only way forward he said. Adding an unregulated act such as HAMA wasn't making matters any easier.

Deepak:[16:18] There is nothing wrong with the provisions of the HAMA. What is wrong is that people are mis-utilising it, its implementation is improper, there is nobody to regulate and monitor or check it so that is where everything about HAMA is wrong. So, one has to government has to take a considerate decision whether some path is broken whether to repair it or just close that path. There is always two solutions to a problem which the authorities have to think about it.

Rakesh:[16:53] Like Col Deepak Kumar said, the misutilisation of HAMA has meant that only a small number of children are being adopted under the JJ Act. However, the other reasons for the lengthy wait time is also the reluctance of parents to adopt those children with special needs and children older than 6 years are almost impossible to find a home domestically. We asked him what CARA is doing to tackle the challenges of placing special needs and older children for adoption in country.

Deepak:[17:21] So very recently this NGO Families of Joy, they also suggested measures to be undertaken based on which we formed a committee which was chaired

by Dr. Professor from AIIMS and we are somehow rehashing the assessment of the special child and their sub categorisation. We are sub categorizing into 15 different sub categories and within that we would be defining what all conditions come here and with small details of the requirement as well so when parents look at the profile of the children with special need we will accordingly we will have to make changes in the medical report of the child as well and instruct the adoption agencies to fill in more details so that this they can be placed under proper sub categories so once that is done people find or look at the profile on caring's I think they would be better informed to take a decision on whether they will be able to handle such kind of special need or not.

Now with regards to older children, the Indians have got a very stringent mindset wherein they think that if a child has got a memory of the past it is difficult for the child and the family to get integrated and there are a lot of issues. So, this is a preconceived notion or whatever we find with the Indian parents which is very very difficult to dispel unless and until we are able to provision for the counselling. So counselling plays a very important part in adoption both for the parent before adoption, post adoption and also for the older children. We find a lot of disturbing number of disruption in the older children adoption because neither the parents are counselled nor the children have been prepared in the orphanages so there is a critical lack of counselling, We will be providing the support whatever we can.

Priya:[19:25] One another confusing aspect for parents waiting to adopt is the seniority system. This was briefly discussed in episode 1. We asked Col Deepak to provide more clarity on this and he said that CARA is planning to change the way this information is being provided to PAPs.

Deepak:[19:40] Waiting period as of now for normal children less than 2 years old is somewhere around 1 year 9 months and for 2 to 4 years old it is around 1 years 6 months and for 4 to 6 it is somewhere around 1 year 3 months and beyond 6 it is just about 3 months. So chances of a child adopted domestically drastically reduces once the child crosses 6 years of age so that's what the current scenario is. I talked about the numbers and figures it is confusing to me as well and many a times I have told NIC and the caring team to remove this altogether and just leave the date of seniority and the date of seniority covered for that particular choice. So, like you registered in in November 2016 and if I tell you for your choice I have covered till September 2016 you will get a much fairer idea and then you can see the movement of the cut-off date till when these particular similar choices have been covered rather than looking at the number. So say you have registered on 16th November 2016 with anywhere in India and I have registered in July 16 with 3 particular states, I have got an option to change my states, the moment I change my state to anywhere in India I come in front of you, you in the queue in all other states since I have registered before you. So if 10 people do this, you will find that

you have gone back by 10 in the numbers okay so that is how it is not only depending on your choice or the day when you have registered but it gets affected by the changes in the choice made by all other people who have registered prior to you. Similarly when you make a change everybody who has registered after you gets affected so that's why the number keeps moving sometimes back or sometimes forward but yes your date of seniority does not get changed it is fixed on the date when you have registered.

I would urge the society to consider these the best interest of these voiceless children because they don't have voice so if we as a society don't look after them we let them being trafficked, we let them being sold from nursing homes and other places then we are not doing justice to them it's a crime. Please look at section 32 - 34 it is every citizen's duty to mandatory report even if you find that your neighbour was a childless couple and has bought a child from somewhere then you must inquire what is the sourcing of the child if you got a doubt please report because this is by large happening in 1000s and unless until we as a society try and contain it, children will get trafficked

Priya:[22:42] Conclusion: The revised JJ Act focuses on adoption as the sum all and end all of child care. It has streamlined the process of adoption and steps have been taken to ensure that the child adopted under this Act has equal rights as a biological child. What it has also done is to highlight the gaps in HAMA. However, the Act isn't perfect. Detractors contest that JJ Act focuses a lot on adoption and not on providing institutional care to any child who may need care. What they say is that the Act by focusing on adoption doesn't necessarily help those children who don't fall into any of the three categories- abandoned, surrendered or orphaned. In fact, there continues to be a greater push to put up more children for adoption to feed the growing demand for children, thereby leading to commodification of children. With this interview, we brought to you the legal and government perspective. But there's more to this. And in our upcoming episodes, we will try to throw light on the complex world of adoption in India.

We all love shortcuts. But we urge each one of you to follow the law. The process may seem complex and the wait time lengthy. In the best interest of the child, please don't go looking for the easy way out and play your part in child trafficking. If we as prospective adoptive parents don't do our bit then who will?

Rakesh:[24:09] This brings us to another question, Her birth certificate will tell her only one part of the story and the other half, before she became our Dear Pari, is a story, we don't know much about... so we ask, is a child's identity shaped by her present & future or also by her past? How do we acknowledge her biological parents about whom we know nothing about? We will discuss more about this in our next episode which deals with this specific topic of identity. Don't forget to check out some interesting articles written by our contributors at blog.sunindia.in

We would like to thank Nikhil Rao of Indian Ocean for original music, Priyanka Kumar for artwork, Tarun Nirwan, our digital lead & Kunika Balhotra, our communication officer

Pari:[26:17] Amma, Nanna, Pari.

DEAR
PARI