

Legislative Brief

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 was introduced in Lok Sabha by the Minister of Women and Child Development, Ms. Maneka Gandhi on August 6, 2018.

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Highlights of the Bill

- ◆ The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final on the issuance of an adoption order by the court. The Bill provides that instead of the court, the district magistrate will issue such adoption orders.
- ◆ The Bill seeks to transfer all pending matters related to adoption before any court to the district magistrate having jurisdiction over the area.

Key Issues and Analysis

- ◆ Currently, there are 629 adoption cases pending in various courts. In order to expedite adoption proceedings, the Bill transfers the power to issue adoption orders to the district magistrate. An issue to consider is whether the level of pendency justifies shifting the load to the district magistrate.
- ◆ Adoption of a child is a legal process which creates a permanent legal relationship between the child and adoptive parents. Therefore, it may be questioned whether it is appropriate to vest the power to issue adoption orders with the district magistrate instead of a civil court.

PART A: HIGHLIGHTS OF THE BILL

Context

The Juvenile Justice (Care and Protection of Children) Act, 2015 addresses children in conflict with law and children in need of care and protection.¹ It replaced the Juvenile Justice (Care and Protection of Children) Act, 2000. In particular, it provides a comprehensive process for domestic and inter-country adoption of orphan, abandoned and surrendered children. Adoption is a legal process by which a child becomes the lawful child of his adoptive parents and is therefore permanently separated from his biological parents.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 was introduced in Lok Sabha on August 6, 2018 to empower district magistrates to issue adoption orders in order to expedite adoption proceedings.² The Statement of Objects and Reasons of the Bill states that 629 cases related to adoption orders are pending in various courts across the country.²

Key Features

- The Bill amends the Juvenile Justice (Care and Protection of Children) Act, 2015.
- **Adoption under the 2015 Act:** Under the Act, once prospective adoptive parents living in India or abroad accept a child, an adoption agency files an application in a civil court to obtain the adoption order. The adoption order issued by the court establishes that the child belongs to the adoptive parents.
- In cases where a person living abroad intends to adopt a child from his relative in India, he is required to obtain an order from the court and apply for a no objection certificate from the Central Adoption Regulation Authority.
- The Act requires the court to ensure that: (i) the adoption is for the welfare of the child, (ii) due consideration is given to the wishes of the child, and (iii) no party to the adoption has received any payment in consideration of

the adoption. Further, adoption proceedings have to be disposed of by the court within a period of two months from the date of filing an application.

- The Bill transfers these duties from the court to the district magistrate.
- **Transfer of proceedings:** The Bill transfers all pending matters related to adoption before any court to the district magistrate having jurisdiction over the area.

PART B: KEY ISSUES AND ANALYSIS

Empowering the district magistrate to issue adoption orders

Act: Section 2(2), Section 61, Section 63.
Bill: Clause 2

The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final once a civil court issues an adoption order. The Bill provides for the district magistrate to issue such adoption orders. In this context, we examine certain issues that may arise out of the Bill.

Necessity of transferring the power to issue adoption orders from the court to the district magistrate

The Statement of Objects and Reasons of the Bill states that courts are unable to issue adoption orders in a timely manner due to heavy workload.² Therefore, in order to expedite adoption proceedings, the Bill empowers the district magistrate to issue such orders.² About 11,000 children have been adopted in the three years till March 2018, which works out to an average of 300 adoptions per month.³ As on July 20, 2018, there were 629 adoption cases pending in various courts.² This raises a question whether the level of pendency of adoption cases is significant enough to warrant a shift in the power to issue adoption orders from the court to the district magistrate. It may be argued that empowering district magistrates to issue adoption orders may lead to further delay as they are already burdened with several responsibilities such as maintenance of law and order, land and revenue administration, disaster management, general administration, and implementation of several government schemes and programmes in a district. (It has been noted that a district magistrate chairs about 75 committees which are spread across 23 departments).⁴

Appropriateness of empowering district magistrates to issue adoption orders

Under the Act, adoption of a child is final once a court issues an adoption order. As a result, the child becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are afforded to a biological child. The Bill amends this provision to empower the district magistrate to issue such adoption orders. This raises a question on the appropriateness of vesting the power to issue adoption orders with the district magistrate instead of a civil court.

Adoption of a child is a legal process which creates a permanent legal relationship between the child and adoptive parents. In doing so, the court is required to review documents presented to it, ensure necessary procedures have been complied with, and conduct an inquiry of the child and adoptive parents. This is done to ensure that the adoption is for the welfare of the child, and that due consideration is given to the wishes of the child. It may be argued that determining whether the adoption is in the best interests of the child requires judicial training and competence. Also, district magistrates are trained to be administrators and perform functions of the government. Therefore, they may not have the competence to issue adoption orders. Further, vesting of such core judicial functions with the district magistrate may raise concerns of separation of powers between the executive and the judiciary.

Note that, since the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force, the power to issue adoption orders has rested with the courts. Similarly, in countries such as United Kingdom, Germany, France, and several states in the United States of America, adoption orders are issued only by the court.⁵

1. The Juvenile Justice (Care and Protection of Children) Act, 2015.

2. The Statement of Objects and Reasons of the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018.

3. Lok Sabha Unstarred Question No. 3665, 'Adoption of Children', Ministry of Women and Child Development, answered on March 16, 2018.

4. 'District collector: superman or stopgap solution?', Rashmi Sharma (Former IAS officer), Mint, October 2, 2018, <https://www.livemint.com/Opinion/wUF3NfRYLUCdwXeW4S4qRM/Opinion--District-collector-superman-or-stopgap-solution.html>.

5. United States of America (governed by state specific laws): The Family Code, California, Division 13; The Revised Code of Washington Title 26, Chapter 33; United Kingdom: The Adoption and Children Act, 2002; Germany: The German Civil Code, 1900; France: The Napoleonic Code, 1804.

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