

Standing Committee Report Summary

Review of Guardianship and Adoption Laws

- The Standing Committee on Personnel, Public Grievances, Law and Justice (Chair: Mr. Sushil Kumar Modi) submitted its report on ‘Review of Guardianship and Adoption Laws’, on August 8, 2022. Key observations and recommendations of the Committee include:
 - **Single law on adoption:** Currently adoption is regulated by two laws- Hindu Adoptions and Maintenance Act, 1956 (HAMA) applicable to Hindus and Juvenile Justice Act, 2015 (JJ Act). The Committee observed certain inconsistencies between the two laws such as difference in upper age limit for adoption, and adoption timelines and requirements. The Committee recommended bringing in a single law on adoption that is applicable to everyone irrespective of religion. The law may prescribe separate adoption procedures for institutionalized children and children living with family and also cover the LGBTQ community.
 - **Single Law on guardianship:** Currently guardianship is regulated by the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956 (applicable to Hindus). The Committee recommended bringing in a single law regulating guardianship. The Act must contain provisions for facilitating guardianship for senior citizens. It should also provide for supported decision making. In such a system, the person appoints trusted advisors, such as friends, family, or professionals, to serve as supporters.
 - **Implementation of JJ Act:** After amendments in 2021, the JJ Act authorises the District Magistrate (DM) (including Additional DM) to issue adoption orders. Person aggrieved by an adoption order passed by the DM may file an appeal before the Divisional Commissioner. The Committee observed that judges have the competence to determine whether adoption is in the best interest of the child. It is not appropriate for an administrative authority to issue adoption orders instead of a judicial body. It recommended that since a new system is in place, adequate training should be given to DM, Additional DM, and Divisional Commissioner. The Ministry of Women and Child Development should review functioning of the new system after a year and present a report to the Committee.
 - **Adoption data:** The Committee observed that the Central Adoption Resource Authority (CARA) maintains data pertaining to adoptions under the JJ Act. However, parents adopting a child under the HAMA are not required to register the adoption deed with CARA. The Committee recommended mandating registration of adoption deeds with CARA under the HAMA.
 - **Child care institutions (CCIs):** Between 2018-19 and 2021-22, 762 children died in Specialised Adoption Agencies. The Committee recommended the Ministry of Women and Child Development to investigate causes of child deaths and conduct a third-party study of all CCIs. The JJ Act mandates the registration of CCIs with state governments. A study in 2018, revealed that 29% CCIs were not registered. The Committee recommended the Ministry to amend the JJ Act/ Rules to empower DMs to close down unregistered CCIs functioning in their jurisdiction.
 - **Single Ministry:** Currently adoption related matters are dealt by the Ministry of Law and Justice and Ministry of Women and Child Development. The Committee recommended to bring adoption laws under a single Ministry for better monitoring and implementation.
 - **Children in adoption agencies:** The Committee noted that over the past few years the number of children coming to adoption agencies has been declining. This points to trafficking or a thriving illegal child adoption market. The Committee recommended increasing surveillance, especially on unregistered CCIs and adoption agencies/hospitals with a past record of trafficking.
 - **Hindu Minority and Guardianship Act, 1956:** Under the Act, in case of a Hindu minor boy or minor unmarried girl, the father is the natural guardian and ‘after’ him the mother. Further, it states that that the natural guardianship of an adopted son (minor), passes to the adoptive father and ‘after’ him to the mother. The Committee noted that the Act does not provide for joint guardianship nor does it recognise the mother as the guardian unless the father is deceased or found unfit. Since, the Act gives preference to the father, it goes against the Right to Equality and Right against Discrimination. The Committee recommended amending the Act to accord equal treatment to both the mother and father.

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