

Diary No.- 19630 - 2021

THE TEMPLE OF HEALING vs. UNION OF INDIA

Case Details

Diary No.	19630/2021 Filed on 23-08-2021 01:08 PM PENDING
Case No.	W.P.(C) No. 001003 - / 2021 Registered on 06-09-2021
Petitioner(s)	THE TEMPLE OF HEALING
Respondent(s)	UNION OF INDIA
Pet. Advocate(s)	PETITIONER-IN- PERSON Dr PIYUSH SAXENA
Resp. Advocate(s)	

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
Under Article 32 of Constitution of India
WRIT PETITION (CIVIL) NO. 1003 OF 2021
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

The Temple of Healing

through its secretary

Dr. Piyush Saxena

S/o Mr. Justice K Narayan

5/1202, NRI Complex, Nerul,

Navi Mumbai - 400706

Petitioner

Versus

The Union of India

through the Secretary

Ministry of Women and Child Development

A 601 Shastri Bhawan,

New Delhi- 110115

.....Respondent

A WRIT PETITION IN PUBLIC INTEREST UNDER
ARTICLE 32 OF THE CONSTITUTION OF INDIA

To,

The Hon'ble Chief Justice of India and his Hon'ble
Companion Justices of the Hon'ble Supreme Court of
India,

The humble petition on behalf of the petitioner above named
MOST RESPECTFULLY SHEWETH

1. That the petitioner herein is filing the instant Writ Petition in the public interest under Article 32 of the Constitution of India for the enforcement of Fundamental Right guaranteed under Article 21 which gives an individual the right to live with dignity. An orphan cannot survive its life with dignity until he/she feels like an orphan.
2. That the petitioner does not have any personal interest in filing the litigation and the petition is not guided by self-gain or for gain of any other person or institution or body and there is no motive other than of public interest in filing the present Writ Petition.

3. Petitioner's Full name Dr. Piyush Saxena

Postal address

5/1202 NRI Complex, Nerul
Navi Mumbai 400706

4. That the petitioner is a charitable trust working toward better health and service to humanity etc. and this organization has been associated with orphans since 1995.
5. **An Orphan – a compromised definition:** Unlike many other countries, orphans in India are not covered separately by any specific Ministry, but are included among all poor children. However, section 2(42) of the J.J. Act 2015 defines an 'orphan' as a child without parents.

Fathers play a vital role in the development of a child's emotional well-being. Children also look up to their father for security, both physical and emotional. Children want to make their father proud and an involved father promotes their inner growth and strength.

A mother's role is to love her children with all her heart and to understand and help the child. One of the most meaningful roles that a mother plays is the role of a nurturer. When a mother nurtures her child well, love and goodness are awakened in the child's heart.

In this petition we have mentioned "Orphan" which covers "Orphans, abandoned and surrendered children"

An orphan has neither of the two, and is a deprived one.

The legislature appreciates the difference between a poor

child and an orphan and has, therefore, purposely segregated them.

However, the executive has clubbed orphans with other children for the sake of administrative convenience.

J J Act 2015, CHAPTER VIII, ADOPTION Section 56. (1)
Adoption shall be resorted to for ensuring **right to family** for the orphan etc.

The need is to implement this right for someone who are neither vote banks nor capable to present their case.

The petitioner urges to kindly consider orphans distinctively from other poor children.

This is especially important when we know that given the right upbringing, orphans can often outshine normal children. The petitioner would like to bring to the notice of Honorable Lordships the examples of a few inspiring orphans of our time.

6. That there are a few Inspiring Orphans of our time. From level zero to the sky heights, they reached when they got opportunity and environment.
 - a) Steve Jobs (American business magnate; Chairman, CEO and co-founder of Apple Inc.)
 - b) Marilyn Monroe (American Actress, Model, and Singer)

- c) Leo Tolstoy (Famous Russian Novelist regarded as one of the greatest authors of all times)

7. Orphan and Infertility Statistics:

That according to the Indian Society of assisted reproduction, infertility currently affects 10 to 14 percent of the Indian population. This ratio is higher among couples in urban areas where it impacts one out of six couples. Sadly, nearly 3.2 crore couples who are actively trying to conceive suffer from infertility. Many of them desperately want to adopt a child e.g. an orphan. Is the corresponding number of orphans (vis-à-vis infertile couples) in India an indication by Mother Nature?

	Number of orphans in India	Crores
a	Govt. of India confirmed that they never had or have this data because this is a state subject.	N.A.
b	State Govts. had or have no such data because they never focused on this issue in the name of administrative convenience.	N.A.
c	INSAMERS Report April 2021 (Annexure p-1 at pages 54 to 55) India, needs to take urgent action in this regard as the official figures put the number of orphans at 31 million. In India, only 41% of births are	3.1

	registered, with diseases and outbreaks caused by social inequality, poverty and other social problems that arise due to the strict caste system being considered the primary reason for the high population of orphans in the country and therefore we need to take urgent action in this regard as the official figures put the number of orphans at 31 million.	
d	About 20 million children, about 4% of their population in India and higher than people living in Delhi, are orphan. Hindustan Times Report published on July 27, 2011(Para 5, Annexurep-2 at page 56).	2.0

As per para 1 and 2, the ministry does not have the statistics. The ministry believes that these figures are exaggerated, and the actual number of orphans is much lower.

In 2021 census, there is no column for counting the number of orphans. However, in response to petitioner's RTI for the number of orphans, the Ministry of WCD replied vide letter No-CW-II-29/2/2021-CW-II dated 03.06.2021 and suggested him to go through 'Children in India 2018 –A Statistical Appraisal' publication for statistics on various aspects of childhood (**Annexure p-3 at pages 57 to 58**).

Quote “It is informed that Ministry of Statistics and Programme Implementation published ‘Children in India 2018 – A Statistical Appraisal’. **(Annexure p-4 at pages 59 to 205)**. Unquote. Petitioner refers to Page no. 126 of this annexure. **Homeless children/orphans:** NFHS (National Family Health Survey)-4(2015-16) defines an orphan as a child with one or both parents who are dead. As per the NFHS– 4 (2015-16), overall, 5% of children under age 18 years are orphans. “Unquote

41% of Indian population is below 18 years (source:https://censusindia.gov.in/census_and_you/age_structure_and_marital_status.aspx). Hence the number of orphans in India comes to 138 Crores (Current population estimate) X 41% X 5% = 2.82 Crores which matches with media and international reports.

8. THE MOOT QUESTION IS: “AT WHAT NUMBER OF ORPHANS WILL THE MINISTRY TAKE COGNIZANCE OF THE HARSH REALITY AND CHANGE THE POLICY?”

That every single orphan is a citizen of India and is entitled to considerations of a welfare State. The officials in the Ministry have confided with me in their personal capacity their feelings as under:

“ANAATH WOH HAI JISKA KOI NAATH NAHIN HAI” In a welfare state e.g.in India the Govt. has to play the role of

owning up an orphan rather than become a hindrance to adoption using outdated processes.

“We will need to have a much better political will to address this issue. Once the top people order, the bureaucracy mostly falls in line.”

“Our guess is that once the top court takes cognizance of this matter, we will suddenly find the Govt. machinery geared to fight this bias toward orphans.”

9. Adoption Statistics(Source: Central Adoption Resource Authority , Annexure p-5 at page 206)

Year	In-country Adoption	Inter-country Adoption
2010	5693	628
2011 (Jan'11 to March'12)	5964	629
2012-2013 (April'12 to March'13)	4694	308
2013-2014 (April'13 to March'14)	3924	430
2014-2015 (April'14 to March'15)	3988	374
2015-2016 (April'15 to March'16)	3011	666

2016-2017 (April'16 to March'17)	3210	578
2017-2018 (April'17 to March'18)	3276	651
2018-2019 (April'18 to March'19)	3374	653
2019-2020 (April'19 to March'20)	3351	394
2020-2021 (April'20 to March'21)	3142	417
Total intra-country adoptions in India in past 5 years from 01.04.2016 to 31.03.2021	16353	2693
Annual average for past 5 years	3270	539

We have no information about the number of adoptions under Hindu Adoptions and Maintenance Act.

10. Adoption in USA (para 1 of Annexure p-6 at pages 207 to 208)

In contrast, “about 135,000 children are adopted in the United States of America each year”. As a matter of fact, the number of children adopted every year has been almost the same for the past few years.

The key point to note here is that the US has a much better rate of adoption despite stricter laws, simply because the bureaucratic machinery is not a major hindrance there. We can always learn from those practices and discard outdated laws in India too.

11. Adoptions are at a low in India. There are mainly 4 reasons for this which are as follows: -

a. Complex Social Norms

The outlook on orphans in India is that they belong in orphanages. Moreover, there is a stigma that hovers over adoption in India because it indicates infertility among the adopting couple. Indian culture places high value on ideas of fertility and family, disregarding scientific evidence that points otherwise. So much so, that the very idea of adoption suggests a defectiveness or inadequacy in a marriage or an individual. Adoption is an absolutely last resort, with couples even choosing secret gamete donation as a means of bypassing the infertility issue before considering adoption. There are a few noble exceptions, but they are in such small numbers that the society is hardly enthused by the idea. Perhaps, by creating an awareness campaign, the Govt. can easily promote greater awareness for the need to find families for orphaned children.

The rules as stated in the current guidelines above presume that all the adoptive parents are criminals of the first order and that each one of them has to be viewed under a microscope. The State must adopt a view that it is only the first guardian after the loss of a natural guardian and the adopting guardian is acting on their behalf out of sheer love and affection.

Understandably, there will be a few aberrations but those should not deter the authorities from the right course, to either create or support draconian laws restricting adoptions. **Later in this document, we have suggested a few remedies to minimize or eliminate the aberrations.**

The general fear is that adopting parents might use adoption enabling laws to either create bonded labor (in the case of boys) or drive prostitution rackets (in the case of girls). Yes, a few despicable and unworthy parents may still do that – perhaps one in a million - but that is hardly a reason to deprive millions of orphaned children from having a decent life. Yes, we do notice such villains in grotesque Hindi movies, but by and large adopting parents belong to a different value system.

The moment a natural guardian is lost due to any reason, the Welfare State ends up extending its hand to shelter the minor/orphan. As your Lordships can well understand, an

institutional system can hardly substitute for the love and affection of a family. Otherwise, we would all be living in a utopian world of institutions.

The role of institutions in adoptions should be limited to one of supervision at best, not on determining the “level of affection” which will remain a subjective issue. No one can exhaust the list of affectionate behavior. The role should then be limited to that of a watch dog. It is a much easier job than maintaining millions of orphans in jail-like conditions. The Govt. can easily ensure that the adopting parents have the capability to look after the adopted child and provide basic education. We can suggest a number of milestones wherein an adopting parent must report about the welfare of the child, making it easy for the Govt. machinery to track the progress.

b. Outdated Adoption Law(s)

Technically, there is only one relevant adoption law in India - the adoption regulations of 2017 based on the Juvenile Justice (JJ) Act of 2015 and Juvenile Justice (JJ) Rules of 2016. However, there are many old religious practices, sometimes useful and sometimes not so useful, that further complicate matters by adding to interpretation.

c. Lack of Financing for Background Checks

Our estimate is that it currently costs about Rs 1000 per child to run background checks of prospective parents, as it also involves medical testing by a doctor and verification of documents submitted by adopting parents.

An all-too-common story is that when someone finds on the streets a child who can't even communicate who his or her parents are, and places the child into an orphanage, "parents" of the child may not want to terminate their rights. The background check is expected to help ensure that this isn't the case before a child is adopted.

Your Lordship can easily spot the irony of this provision. When parents or a parent has abandoned the child in a heap of garbage, how likely are they to come back running to "all" the orphanages to "identify" the child after so many months and claim paternal rights? Tattoos? And do they really have any paternal right over the abandoned child in the first place? This is a classic narrative that only logically inconsistent movies can promote.

Unfortunately, there's no official financing available for these background checks, and the orphanage directors certainly cannot afford it. By some estimates, it would cost more than Rs 100 crore to run such background checks for every orphaned child in orphanages alone.

Currently, a child can be legally free for adoption only after a newspaper advertisement, and no claim for 60 days. The Govt. advertises once in a year or when they have “enough”, say 5-6 children to save on costs. The clock however keeps ticking.

d.Failing Systems and Infrastructure

When potential parents look to adopt, they fill out a form stating what a “perfect match” for them will be (e.g. a male baby with no medical issues and light skin, for instance). The Central Adoption Resource Authority (CARA) of India doesn’t have a department or agency to follow up with prospective parents on these matches. Without a division to follow up, CARA doesn’t have the means to check if these parents would be interested in adopting a child that does not “exactly” meet the original specifications. Parents are placed on a waiting list until their “exact category” is found. A simple portal having the basic details of the child meant for adoption, and perhaps even a photograph, can solve this mess and speed up the process.

Additionally, orphans living in shelter homes usually have no access to employment news, computers, Wi-Fi, internet and information about job opportunities. While in the age group of 14-18 years, many of them put in hard work into their studies, but may still end up going in the wrong direction

because there is no guidance available to them. After reaching 18 years of age, they are required to vacate the shelter home as per rules. It is horrifying to even imagine their difficulty!

We are aware that a centrally sponsored scheme of the Govt. – Civil Society Partnership Para 3.3 Procedure for sanction and release of funds under the sponsorship program – offers sponsorships of Rs 2000 per month per child, subject to further guidelines, as laid down by the MWCD.

The desired results are not forthcoming as envisaged by the ministry.

12. Proposed Solutions:

Indian Demography:

May 30, 2018

1	Total Districts	736
2	Total Tehsil	5572
3	Total Blocks	6612
4	Population	138 crore
5	Orphaned and abandoned children	3.2 crore
6	Infertile couples	3.2 crore

As can be seen, the number of infertile couples in India approximately matches the number of children for adoption. Is this Mother Nature's way of indicating that we should try to find a happy middle ground?

We propose that:

All 6612 blocks in 5564 tehsils across 736 districts in India must organize a 2-hour career counseling session for orphans in their respective blocks every month. These sessions must be conducted by an officer, e.g. Block Education Officer/ Assistant Basic Shiksha Adhikari or equivalent. Two-hours a month is not a big ask but the results can be amazing. There are a significant number of ways in which they can also involve the leading citizen of the block in these meetings to increase awareness.

- i. All orphans who are living in shelter homes (operational since 2015 with a minimum of 5 children) should be encouraged to participate.
- ii. The Child Adoption Resource Information and Guidance system may appoint a few trained "Adoption Preparers" on the lines of Income Tax Preparer scheme of 2006. They can help prospective parents complete the cumbersome paperwork required for adoption. Presently this job is being done by social workers voluntarily. Officially they do it selflessly but they claim hefty donations as a matter of

right. Petitioner proposes that suitable press releases be used to invite graduates to work as 'adoption preparers'. Selected candidates can undergo an official training for a week covering all adoption rules and process. They can pay Rs 5000/- for the training. Upon successful completion, they can get a certificate. Their names may be put on a central website for verification and fraud prevention. They should be allowed to charge Rs 2000/- from each parent for guidance in adoption. Many parents as of today are seeking help for filling up the forms and paying hefty fees to advocates who have little knowledge about adoption practices.

iii. Sometimes, solutions to complex problems such as this one are quite simple indeed. We propose setting up of empowered local Advisory Bodies of respectable people, along the lines of Jury Duty of the US, wherein we can invite at least 25 respectable people to decide on adoption cases. This system will work in the following process:

- a. Couples desirous of adopting children must register their request on a central portal, along with their identifiers and other details.
- b. Depending on the areas from which these requests have come in, Jury members should be asked to convene regular sessions in which prospective parents must be

present to put forward their requests and how they plan to take care of the child they are adopting. They can be offered their requested choices from local orphanages.

c. If the 3/4 majority of the Jury members agree to their request for adoption, they can allow the parents to fill in the required forms and complete the paperwork necessary within a week.

There are several advantages of such a system. First, a social network from the area where the prospective parents reside can ensure someone or the other has an oversight on how they are bringing up the adopted child almost at all times. Second, it moves the responsibility from the Govt. and puts it squarely on the people/society. This itself allows the bureaucracy to facilitate quick decision making. Third, it creates a lot of awareness about the adoption issue and removes taboos around it. Fourth, it improves people accountability in the management of social problems. Fifth, it reduces the burden on the judiciary and other branches of the Govt. and reduces unnecessary expenses. Sixth, it expedites decision making and smoothens the adoption process.

We are aware that this is an out-of-box suggestion requiring out-of-box thinking. We are willing to provide

a blueprint on how this new system works so that the bureaucracy does not sit on this issue for years.

If 27.5 million infertile couples (**Last line of Annexure p-7 at pages 209 to 210**) could adopt 27.5 million orphans, it is God's job done.

The situation is getting worse by the day.

As stated earlier, CARA's system only holds 2000 children at one time. It is indeed pathetic. This also means crores of children can't become legally adoptable because the Govt. has not applied adequate resources towards getting the children registered.

Therefore, the system can't generate a profile for them until the first 2000 are adopted which of course, is at a standstill, since there is no department to check with parents about potential matches outside of the original specifications. Therefore, crores of children are left forever without a chance of being adopted by a family.

13. How the Ministry has reacted?

We appreciate the WCD Ministry's initiatives for addressing gaps in state action toward issues of women and children, and in promoting inter-ministerial and inter-sectoral convergence to create gender equitable and child-centered legislation, policies, and programs.

However, petitioner's search for orphans leads to 0/0 results in Child Related Legislation in legislation and policy on the ministry's official website. Screenshot of the website regarding this fact is attached as Annexure p-8 (**Annexure p-8 at page 211**).

14. We also appreciate the concern of the Govt. for the subject. The Lok Sabha on Wednesday, March 24, 2021 passed the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021. The Bill inter alia, seeks to re-define the category of "serious offences" under the Juvenile Justice (Care and Protection of Children) Act, 2015 and further, empower the District Magistrates to pass adoption orders.
15. This is unlikely to have any impact and the reason is clear. Delays in the overburdened judiciary have long been cited as a reason preventing empowerment of the administration to take this responsibility, whereas the actual cause of delay is the requirement of the tricky and lengthy paperwork.

The reasons for stringent rules for adoption are that the Govt. intends to exercise caution, lest even one child falls prey to either bonded labor or child abuse.

In fact, to earn maximum TRP, the media exaggerates such rare incidents by blowing them out of proportion.

In response to petitioner's RTI, seeking number of adoptions every year under HAMA (Hindu Adoption and Maintenance Act 1956), the Ministry of Law and Justice replied vide letter dated 9th July, 2021(**Annexure p-9 at page 212**) that no such information is available with them. The Law Ministry is administratively conceived with HAMA as regards legislation alone. For further information, we have been advised to contact respective State Govt. who too do not have this information.

16. **Childline 1098 - NGOs India**

ngosindia.com › help-support › childline-1098

The CHILDLINE India Foundation, by the department of Tele communication, Ministry of Communication & IT, has set up a four-digit telephone number - 1098 - nation-wide toll-free helpline for children in distress. The CHILDLINE service is developed and implemented across the country by CIF.

Petitioner's 6 calls to them confirm that they are active and also willing to take up matters of individual child harassment. All 6 calls also revealed that they had absolutely no clue about adoption, its rules and practices, as only the **Central Adoption Resource Authority "CARA"** of the Women & Child Development Ministry, Govt. of India is the sole authority to frame policies related to adoption and execute them in India.

The Ministry sometimes intends to follow tough guidelines as provided by

The Hague Convention on Intercountry Adoption.

Incidentally they need not be applied on in country adoptions.

17. Our efforts

That we have made 7 presentations, replied to various arguments, citing the plight of prospective parents who are desirous of adopting orphans, abandoned, and surrendered children, during the months of November and December 2020, as well as on January 14, February 15, 18, and 19, 2021 and on April 23, 2021 before the Ministry of the Women and Child Development, New Delhi.

Finally, on their suggestion, we have also submitted to them a brief to act upon.

I, the petitioner, had also recommended providing monthly vocational guidance to orphans for two hours in every block before they turn 18 years old. This will ensure that the children are able to seek jobs even in the absence of adequate education, infrastructure, or resources.

1. Hence, it should be given adequate publicity through a separate new website: <http://hama.nic.in>, the existing CARA site: <http://cara.nic.in>, press releases, and through multimedia efforts.

2. Childline 1098 service should include information about orphan's registration, information about HAMA and orphan adoption.

18. Home study report schedule VII (**Annexure p-10 at pages 213 to 223**) must be scrapped. This 11-pages report seeks lot of information which.

Page No.	Number of particulars needed by Social Worker
1	7
2	5
3	34
4	19
5	7
6	8
7	6
8	5
9	4
10	11
11	9
Total	115

The prospective parents very carefully fill this form lest one mistake make them miss the bus. This form is tricky to complete. It serves one and only one purpose. It gives an opportunity of interpretation to the “social worker” who invariably expects a donation in cash for his/her guidance. This amount is only for the guidance to fill the form. It does not guarantee adoption of a child. The parents are clandestinely advised that in total the normal waiting period for a successful adoption through the J.J. Act exceeds 2 years and direct expenses exceed Rs 4 lakhs. In many cases, prospective applicants who have finally failed to get a child, this unofficial investment of up to Rs 4 lakhs goes down the drain. The parents wish to adopt a baby. By the time the process of adoption is complete the baby becomes a child.

The District administration is required to publish a notice in the local newspaper for a child to be legally free for adoption. It involves cost and hence the advertisement is procrastinated to a date when 4 to 6 children could be clubbed together. Interestingly our personal enquiries at 4 places revealed on condition of anonymity that in none of the cases, a reply has ever come in response to such an advertisement.

Logically too, if an unwed mother has abandoned her baby to a dustbin, why should she come to claim it? Section 2(16) of J.J. Act defines “child legally free for adoption” means a

child declared as such by the Committee after making due inquiry under section 38. Section 38 of the Act requires the process of declaring LEGALLY FREE to be completed in two months but **it has never stipulated the need of an advertisement.**

The solution however is simple. Instead of an advertisement in newspapers, the committee can put it up on a portal of the District Administration, thus involving no cost. To save on the mandatory (as told by officials but I found it nowhere in statute) waiting period, it may be reduced to 7 days. We can also take an undertaking from the prospective parent to give back the baby, if the true parent happens to claim it within 60 days.

In one particular case, an overly dedicated social worker concerned for the future welfare of the child, even sought a confirmation in writing from at least one reference of the adopting parents to take care of the child in case the adoptive parents do not live long! The prospective mother was heartbroken but she managed this undertaking. For a moment, please think of the plight of an infertile lady who is already suffering all sorts of humiliation from mother-in-law, sister-in-law, friends and relatives in an Indian family, going around begging from pillar to post, lest the social worker should write a note against her.

While the form does not ask for this certificate, the social worker is free within his/her rights to ask these questions for his/her sincere concern for the child to be adopted. Concerns such as these are directly related to the amount of donation in cash expected/ receivable by the social worker. Please look at the questionnaire in the self-study report. True information is not likely to come. False information gives no result. Does it really affect the child Adoption eligibility in a true sense? Normally this is treated for bribery. This adds to corruption.

The social worker must say YES without recording any reason. Record reasons if he says NO.

By laying down one basic principle of parenthood – the parent will feed the child first before they eat, for the protection of the adoptive orphan – the executive has virtually stopped adoptions. The measures are akin to stopping all transport services to avoid accidents. Low adoption rate is a result of such warped approach.

The ability to adopt a child is judged on the basis of donation and not on the basis of futile documentation. Therefore, instead of this form, the social worker might as well take a decision based on the bank account statement of the proposed parents, IT returns, CIBIL rating (www.cibil.com), and telephone calls to three references. Based on this

information, the social worker may recommend one of the following:

- i) Prospective adoptive parents to adopt (no reasons required), or,
- ii) Prospective adoptive parents cannot adopt (reasons to be listed)

Matching the data of missing persons with the database of children up for adoption

The prospective parents will have to give an undertaking in advance to surrender claim on a child, in case a genuine claimant appears in a rare case.

Documents required as listed on CARA site:

- a. Current Family Photo: Yes
- b. PAN Card: Yes
- c. Birth Certificate (Where is the need if Aadhaar/PAN is given)
- d. Proof of Residence (Where is the need if Aadhaar number is given; unless there is a change)
- e. Proof of Income: No need, it can be made IT-return based. Non-tax payers may not be eligible to adopt. The CIBIL rating is another source to verify status. However, in the case of people with agricultural income, only the social network model may work.

- f. Certificate from a medical practitioner (No need; it should instead be declaration based, seconded by three references based on general information of prospective parents)
- g. Divorce Certificate, if applicable, to be uploaded because this information does not appear on Aadhaar Card or other documents.
- h. Two reference letters: No need, the prospective parents should instead provide three recommendations from persons who have their mobile numbers linked to their Aadhaar Cards. A system generated SMS can go on their mobile numbers to confirm their recommendation.
- i. Consent of the adult children: Yes, if applicable
- j. After the adoption, instead of regular visits by a social worker to the parents' home, we propose daily uploading of child's photo for a week, then weekly uploading for a month, then monthly uploading for six months. Failure to do so should be system advised to the three references.
- k. Proposal application for adoption by a prospective parent.

Prohibited adoptions will continue to be prohibited.

Please also consider the following suggestions to simplify procedure.

19. Agenda 1

The prospective parents submit an online application on the CARA website based on his/her Aadhar Card and linked mobile number. He/she then receives an ID and password, downloads the adoption form, and submits the following information online:

1. Name of self
2. Married, divorcee, or widowed
3. Existing children (son and/or daughter)
4. Religion: Hindu, Jain, Sikh, Arya Samaj
5. PAN number (IT)
6. General health forms for self (Declaration) and spouse (if applicable)
7. Married since
8. Aadhar numbers of both
9. Aadhar linked mobile numbers of both
10. Bank account numbers of both, as linked to Aadhar
11. Address of both
12. Date of birth of both

Online declaration: We are physically, mentally, emotionally and financially sound and stable.

- Preferred gender of an orphan: Male/Female

No uploading of documents at this stage. All documents in a proper file will be submitted while the application goes to the court.

Agenda 2

Section 31. (1) of the J J Act 1956 - "Any child in need of care and protection may be produced before any of the responsible persons (as per list) within a period of twenty-four hours. To simplify this. all orphans in the country must be enrolled. The states will be responsible through:

1. Gram Pradhan
2. Gram Panchayat
3. Block Development Officer
4. Tehsildar
5. City Municipal Corporations
6. District Magistrate
7. State Govt.

Any citizen with the knowledge of an orphan should and must report him or her to their respective Gram Pradhan/ Municipal Corporation. Inaction by the Gram Pradhan must be reported to a higher authority in the hierarchy as committing a non-cognizable offence.

The following particulars are needed for the registration of an orphan:

1. Date of Registration*
2. Address of place where he/she lived the previous night*
3. Gender*
4. Photographs (4, i.e., 1 of front face, one each from left and right view, and one full body) *
5. Basic health, as it appears*
6. Deformity, if any, as it appears*
7. Name (if known)
8. Birth details (if known)
9. Orphan brought by ... (optional)

*Items 1-6 are mandatory but a medical certificate is not needed.

In addition, the registration may be done using the available technology and Childline1098 service. Within a year, we will have data of orphans and prospective parents.

Agenda 3

The Child Adoption Resource Information and Guidance system may appoint a few trained 'Adoption Preparers' on the lines of Income Tax Preparer scheme 2006. They will help prospective parents complete the cumbersome

paperwork required for adoption. Another specialized honorary post may be created for leading civilians to whom these Adoption Preparers can locally report. He/she can be a retired, Senior Class 1 medical doctor who empathizes with the pain of adoptive parents. Adoption preparers name should be published in the report of the concerned respective Govt. officer at the District level.

We have the conviction that within two years of implementation, legal adoption in deserving cases will grow up to 60% from the current 0.1%. Moreover, many more orphaned children will live better childhoods and secure a job when they reach 18 years of age. The additional burden to the exchequer is nil for this exercise.

Let the Children Belong in Families

There are millions of orphans who are waiting for a loving family. It doesn't have to be that way.

Our efforts at the Ministry

We had an opportunity to interact with most of the top officials at the Ministry, specifically those below, on one or the other occasion.

Sr No	Name of the Officer	Desig.	Email & Phone
	Shri Indevar Pandey	Secretary	secy.wcd@nic.in 011-23383586, 011-23386731
2.	Sh. Ashish Srivastava	Additional Secretary	jswmn-mowcd@gov.in 011-23381654, 011-23384482
3.	Ms. Aastha Saxena Khatwani	Joint Secretary	aastha.khatwani@nic.in 011-23388576
4.	Shri Manoj Kumar Singh	Director	mksingh.ofb@nic.in 011-23386553
5.	Sh. Manoj Kumar Singh	Member Secretary and CEO	ceo-cara[at]gov[dot]in ps2ceo[dot]cara- mwcd[at]govcontractor.in 011- 26760301

6.	Sh. Sanjay Barshilia	Director (Program me)	cooltiger[dot]18[at]gov[dot]in 011- 26760402
7.	Dr.Jagannth Patl, MSW, LL.B, Ph.D.,	Joint Director (Admin)	j[dot]pati[at]nic[dot]in 011- 26760310

Petitioner is proud and happy to confess that they have all been working very hard. Fortunately, they have not only appreciated the problem but have shown their keenness to sort out this mess. They are however, not prepared to take a chance with the black sheep and they are scared of consequences if a few or even one child goes into wrong hands.

Juvenile Justice (Care and Protection of Children) Amendment Bill 2021(**Source: The Times of India Report published on 28 July 2021; Annexure p-11 at pages 224 to 226**).

Lok Sabha passed bill in March 2021, Rajya Sabha passed bill on 27th July 2021. Adoption orders which as of now are issued by district courts will be issued by district magistrates ones the amendments are notified as law (Para 1 of the Annexure p-11).

Even as there have been concerns raised by certain civil society groups working on child rights over the decision to give the DM the power to issue an adoption order, its implications and the on ground implementation, the Govt. has been strongly defending the move, claiming that it will enable speedy disposal of adoption cases, curtail delays and enhance accountability.

The WCD minister said, “the children of our country deserve a united house in support of the amendments proposed, the amendments that empower the district magistrate, empower CWC and enhance accountability. Hence, sir, through you, I beseech that this House, irrespective of political differences, stand together in the service of our children.” Justifying the need for the amendments, the WCD minister in her speech in Rajya Sabha cited information collected by the National Commission for Protection of Child Rights through a survey of child care institutions that found extreme delays on the part of CWC in completing paperwork for declaring children free for adoption. Elaborating on the data, Irani made a strong case for the amendment where the Govt. has had to “for the first time, give conditions under which CWCs now need to function and report to the district magistrate”.

For those questioning why the Govt. was becoming a bit

stringent about the functioning of CWCs, Irani cited examples. “There is a case pending in the Madras High Court where the biological parents of a child were frequently quarrelling and the Child Welfare Committee just came, took the child and suddenly gave up the child for adoption,” she said. She cited another case from Madhya Pradesh where a mother is fighting for her rights in an adoption matter.

She went on to point out that many cases of adoption are pending in the courts. It is true. I had an opportunity to speak to 4 judges who have been dealing with adoption cases. It is absolutely wrong to attribute this delay to the judiciary. Every judge is a father or a mother. They know the urgency of the matter. They are willing to conduct a day-to-day basis hearing to pass an order because they are aware that the child is growing. The truth is that the legislature and executive wish to permit fool proof process for adoption. Why should we not make our roads, drivers and vehicles fool proof before permitting public movement of transport? Media is concerned about TRP. Tragic news sells more. We have nearly stopped adoption process by making it so difficult. The fear of media has done more harm than good. The poor orphans and the pitiable parents have no one to look at for support.

20. That the Petitioner-in-person has not filed any other Petition either before this Hon'ble Court or any other court seeking similar relief.

21. That the petitioner had 7 meetings with the ministry and the ministry was positive for all the suggestions of the petitioner but they have no time frame for any implementation.

22. FACTS OF THE CASE: -

- A. Data of orphans not available with ministry
- B. Reputed surveys count 3 crores orphans in India
- C. Reputed surveys count 3 crores infertile couples looking for adoption of Indian orphans in India and abroad.

23. QUESTIONS OF LAW: -

- a) Conservative, obsolete and impractical approach of the ministry is holding up the issue.
- b) India is a welfare state. Orphans have a right to survive and survive with dignity.
- c) Hence guidelines of the ministry need revision.

24. GROUNDS: -

- a) Many rules had been modified in past 25 years to make life simple for citizens. The govt trusted them. For example issuance of international credit cards, self-certification of documents, issuance of passports,

clearance of baggage at airports, transgenders identification, issuance of learners driving license and jandhan account, nothing went wrong.

b) However, for adoption all citizens have been treated as scoundrels and more and more stringent impractical laws have been enacted.

c) MINISTRY OF WOMEN AND CHILD DEVELOPMENT
NOTIFICATION New Delhi, the 4th January, 2017 –

Para 6 for adoption procedures. In fact, with each subsequent amendment the loopholes for faulty adoptions have been plugged. But in the process the number of adoptions has come down.

d) In welfare state orphans too have a right to a caring home. The parents have a desire to adopt an orphan.

e) The black sheep should be harshly punished but the rules should be to facilitate life of orphans and not to make it nearly impossible to adopt.

Examples of when the Govt. has trusted citizens and how the outcomes have turned out well

For instances how similar fears had been overcome in the past in favor of citizens, changing the life of Indians forever.

1	International Credit cards	In 1997, the RBI feared that it may lead to massive flight of capital. However, the Govt. took a risk and issued ICCs to all who desired. Nothing adverse happened. All are happy.
2	Self-Certification of documents	All of us have faced difficulty in getting true copy attested by a Gazette officer. The Govt. took a risk and permitted self-certification. Nothing adverse happened. All are happy.
3	Issuance of passports	We used to get it in 3-4 months ordinarily. For urgent need we used to take a certificate from a senior Govt. officer. The Govt. trusted citizens. Now the passports are issued in less than 2 weeks.
4	Clearance of baggage at airports	Long back, baggage tags were checked before delivery of bags at the airports. The Govt. trusted citizens. Now it is hassle free.
5	Transgenders identification	Long debates were held for identification of the transgenders. In October 2020, the Govt. trusted

		citizens and permitted transgenders to have identity certificate based on declaration. All are happy.
6	Issuance of learners driving license	Vehicle driving Learning license has been issued without test. The Govt. trusted citizens.
7	Jandhan account	The Govt. trusted citizens
8	Orphans/ adoptions	The Govt. needs to trust citizens

Incidentally the country faced a similar dilemma for above mentioned 7 actions. But the leaders took a chance. India moved forward at each step. The Govt. trusted its citizens and made the process simple and now the outcomes have come out well. For orphans the Govt. needs to trust citizens and make the process simple.

The petitioner is aware that there cannot be a fool proof solution which the ministry has so far been trying to search since many years. It looks unfair for an orphan to wait indefinitely for practical guidelines by ministry in time.

Therefore, there is a lot of procrastination and no time frame.

The problem needs urgent solution now because due to Covid -19 many parents have lost their lives, leaving behind many orphans who are waiting to be adopted.

THE FACTS CONSTITUTING THE CAUSE OF ACTION

That the petitioner had 8 meetings with the Ministry as under

S. No.	Date	Meeting with
1	November 2020	The Secretary
2	December 2020,	- do -
3	January 14, 201	- do -
4	February 15, 2021	- do -
5	February 18, 2021	- do -

6	February 19, 2021	- do -
7	April 23, 2021	Zoom meeting presided over by the Additional Secretary
8	March 24 th 2021 July 27 th 2021	Juvenile Justice (Care and Protection of Children) Amendment Bill 2021 Lok Sabha passed bill Rajya Sabha passed bill

Petitioner had 8 very elaborate meetings with the Ministry as above. He filed an application on 1st March 2021 to the Ministry of Women & Child Development (**Annexure p-12 at pages 227 to 231**). The matter was discussed with him. However, no concrete action has so far been taken to improve the number of adoptions in the country. **Hence This Petition.**

The petitioner seeks the Hon'ble Courts' intervention to at least decide on a time frame for the Ministry to find a solution, if they are not convinced by our proposals.

We have placed our arguments in brief and we are always prepared to elaborate any of our suggestions as needed by the Ministry.

25. That the issues arose in this petition are related to the Central Acts which affect not only a specific person or group of persons rather all citizens of the nation and therefore the injury is to the public.
26. That there is no any civil, criminal or revenue litigation, involving the petitioner, which has or could have the legal nexus with the issues involved in the Public Interest Litigation.
27. That no other writ petition arising out of the same issues or for the same relief has been filed by the petitioner earlier before this Hon'ble Court, any Hon'ble High Court or any other Hon'ble Court of law.
28. A change may happen to the country. What if?
 - a. Every child felt loved, valued and safe.
 - b. No child aged out of the system.
 - c. Every orphan becomes a son or daughter.
 - d. You could change a child's life.
 - e. We could create a world without orphans.
 - f. We make an orphan's journey to a family.
 - g. We make nobody's child to a beloved son.

h. The fatherless... who are within your towns, shall come and eat and be filled, that the LORD your God may bless you in all the work of your hands that you do.

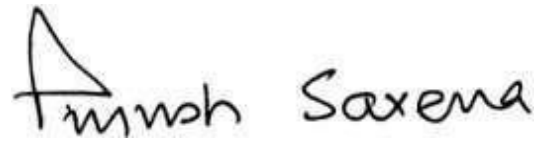
PRAYER

In view of the facts and circumstances stated above it is prayed that this Hon'ble Court may graciously be pleased to

- a. Issue a writ of mandamus or any other appropriate writ, order or direction to the Union of India for improving the number adoptions in our country ,
- b. Direct the Ministry of Women and Child Development to give adequate publicity to HAMA (Hindu Adoptions and Maintenance Act, 1956) even though the Act has been formulated by the Ministry of Law,
- c. Direct the Ministry of Women and Child Development to make Adoption procedures simple, superfluous and to scrap the duplicate information ,
- d. Direct the Ministry of Women and Child Development to digitalize the registration of orphans,

- e. Direct the Ministry of Women and Child Development to introduce a scheme for Orphan Adoption Document Preparers,
- f. Direct the Ministry of Women and Child Development to introduce some vocational training at block level,
- g. Direct the Ministry of Women and Child Development to reduce the number of pages of the home study report schedule VII to reduce paperwork to make the adoption process simple and corruption free,
- h. Fix the accountability of the Ministry of Women and Child Development for extremely low adoption rates, which is less than 0.1% i.e. 1 adoption per 1,000 (One adoption per thousand orphans),
- i. Direct the Ministry of Women and Child Development to create a social framework to decide on the adoption cases, along the lines of the Jury Duty by leading citizens across the country which also increases the social cohesion, awareness and contribute to general law and order situation ,
- j. Pass such other or further order as this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

Filed By

Piyush Saxena

The Temple of Healing

through its secretary

Dr Piyush Saxena
(Petitioner-In-Person)

Filed on: 21-08- 2021
Place : New Delhi