



Situating Adoption and Foster Care Practices in Indian Family Formation

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DOI- 10.5281/zenodo.10000610

Abstract:

Child rearing practices in India have been guided by various traditions prevalent since ancient times. Establishing parenthood through adoption, kinship care, sponsorship or fostering has been integral to the India's cultural and social milieu. However, the colonial encounter with practices of fostering, parenting, adopting, family in different religious communities transformed the legality, customs and practices of child rearing and child welfare in India. The recognition of the pre-modern traditions like *Kaflah*, Kinship care as alternatives to Western notions of adoption in United Convention on Rights of Child demonstrates the discursive shift from Western ideas of parenthood, childhood, family to plurality of family structures and traditions prevalent in South Asian countries like India.

Keywords: Family laws, *Kaflah*, Mission Vatsalya, Adoption, Kinship care,

Introduction:

Classified as “Fictive Kinship” by Pitt Rivers, adoption as defined by Keesing refers to a social relationship modelled on ‘natural genealogical link’. (Rivers 1973 and Keesing 1975 cited in Monika and Rao 2000:15). The institution of adoption was a product of what D.C. Manooja terms as a ‘ramification of the parental power of the father over the children under which he could transfer his dominance over them to another’. (Manooja 1993: 5) Adoption as a practice as argued by Asha Bajpai is so widely recognized that it can be categorized as an almost worldwide institution with historical roots traceable into antiquity. (Bajpai 2017: 34). Adoption and fosterage represent customary or optional procedures for taking one's own, a child of other parents. The term adoption usually refers to the legal transformation of a child's familial status, through which individuals permanently assume the major responsibilities of birth parents.

The term fostering usually indicates a temporary, mutually agreed upon delegation of the nurturance or educational elements of the parental role, or both. Fostering also more often concerns the process of child rearing and not necessarily the jural (legal) definition of the child's status or relationships. Adoption and fostering, however, are defined and performed differently depending on the time, location, and societies involved; as such, scholars also sometimes use fosterage to describe substitute parenting arrangements in pre-modern or non-Western cultures. (Stryker 2016: 1).

Discourses on Adoption, Childhood and Parenthood-A Trajectory

The Pre-Modern Notions of Child and Childhood

Children and childhood across the world, have broadly been construed in terms of a ‘golden age’ that is synonymous with innocence, freedom, joy, play and the like. It is the time when, spared the rigours of adult life, one hardly shoulders any kind of responsibility or obligations. (Bhakry 2006: 9). Childhood as a concept is however not a static, objective and universal fact of human nature, but a social construction which is both culturally and historically determined. It is well documented in the history of Hebrews, Greeks and Romans, whose cultures had a great impact upon the Western society, bears testimony to the fact that children, by and large, were taken for granted by their parents and the patriarchal society at large. (Ibid: 10)

The resultant effect of all this was that they were treated as objects of intervention rather than as legal subjects in their own right. (Bhakry 2006: 11). In the context of India, childhood as described by Sudhir Kakar in his book titled *The Inner World: A Psycho-Analytic Study of Childhood and Society in India* identified five stages of childhood of Indian tradition, which were Garbha, or the foetal period; (ii) Ksheerda (0-6 months), when the infant lives entirely on milk; (iii) Ksheerannada (6 months-2 years), the period of early childhood in which weaning takes place; (iv) Bala (2-5 years); and (v) Kumara (5-16 years). Each of these divisions of childhood were associated with major rites and rituals, which marked its transition from one period to another. (Kakar 1981: 114). In traditional India, thus, in comparison to the West, it was early childhood rather than adulthood that was considered

to be the 'golden age' in individual's life history. (Ibid: 114).

Modernity and Child-Parent Relationship:

The traditional Indian family was based on a strict hierarchical principle of age and sex and superiority of males and older persons. Whereas males were accorded a superior status in comparison to females. The prevalence of joint family system represented kinship ties and an individual's identity was associated with the family and caste to which he or she belonged. (Nitisha 2015: 1). Indian families can be categorised as large, patriarchal, collectivistic, joint families, comprising lines of hierarchy and authority clearly drawn, with each hierarchical strata functioning within the principal of "collective responsibility". (Chaddha and Sinha 2013: 300) Regardless of minor variations in definition or the historical and economic dislocation of adults in the family, most Indians spent the formative years of early childhood in an extended family setting. (Kakkar 1981: 115). The advent of colonialism in India brought a transformation in the discourse on family and child and childhood in India. With the introduction of industries and factories during the colonial era, the joint family system began to disintegrate and failed to provide any individual security. Although the joint family was considered a hindrance to individual mobility, still there were many industrial workers who continued to maintain their relations with their joint families. However, an individual status was no more solely associated with his family, village and class. (Nitisha 2015: 2).

The advent of colonialism in India brought a transformation in the discourse on child and childhood in India. The colonial discourse on childhood came to be represented by the Socialization model that sought to follow the ideological trajectory towards adulthood. From being a smaller version of the adult; now the child, in the hands of civilizing mission of colonialism, became an inferior version of the adult who had to be educated and civilized through the newly-expanded period of childhood. (Thelen and Haukanes 2010: 19). It became the responsibility of the adult to 'save' the child from a state of unrepentant, reprobate sinfulness through proper socialization and help the child grow towards the ideal of adulthood and maturity.

Despite the varying ways in which childhood was conceptualized and children's rights were theorized in different cultural and legal traditions, the twentieth century witnessed a slow convergence of conceptions of childhood and children's rights, a phenomenon that some historians have dubbed the "globalization of childhood". (Thelen and Haukanes 2010: 2). In recent years child issues have become a magnet for global mass media and have become a part of discussions concerning cases of care transfer,

international adoption, child labour. (Thelen and Haukanes 2010: 3). Best interests of the child propagated through domestic adoptions, international adoptions, alternative care systems form an integral part of the Convention of Child Rights, an agreement that has come to dictate the welfare schemes of every country in the globalised world. (Ibid: 4). In the case of India, the Convention of Rights of the Child and its confrontation with the Islamic and Hindu tradition of adoptions, fosterage and alternative care system has produced an alternative discourse to until a Western dominated discourse on adoption, fosterage and kinship; exemplified in the Islamic tradition of *Kafalah* or sponsorship and fostering and Mission Vatsalya, emphasising on kin-based or non-institutional mechanisms for raising orphaned or relinquished children.

Adoption and Foster Care in India: A Background

Adoption and Fosterage in Indian and Muslim Traditions

Adoption and Fosterage represent two alternative adaptive mechanisms of child care utilized in many societies when parents are unable or unwilling to care for their children. Adoption and fosterage were widely practiced in Medieval England, Ancient India, among Puritans in colonial America etc. (Bajpai 2018 :33) Hindu Mythology contains, what Bajpai calls 'visions' concerning adoption. (Bajpai 2018 :33). They may not be exact representations of adoption, but they fall within the purview of the 'concept of adoption', that is of bringing up someone's child as one's own. (Ibid: 33). The myth of birth of the mother of the Pandavas, Kunti sheds light on the mythological 'visions' of adoption. King Pandu had two wives, Pritha and Madri. Pritha was of celestial origin, for her mother was a nymph and her brother (Vasudeva) was the father of Krishna and Pritha was 'adopted' by the Raja of Shuranyena, whose kingdom was among the Vindhya mountains. (Ibid:34).

The objective of adoption was mainly to secure performance of funeral rights and to preserve the continuance of one's lineage. (Bajpai 2018: 35). Hindu law recognized 12 different kinds of fictive sonship or filiation, the highest of which involved the adoption of a male grandchild by a man with no sons (*Putrika Putra*). In order for the adoption to be legally recognized, it had to be accompanied by a religious ritual called *Datta Homam*. Given the importance placed on the perpetuation of lineage, adopted sons had the same privileges and obligations in their new family as birth sons but retained a minimal link to their birth family that extended to limitations regarding inter-marriage with blood relatives. (United Nations Report 2009: 25).

It is to be noted that adoption was a parent-oriented practice that mostly took place between families whereby the natural parents physically gave the child in adoption to the adopting couple, usually some kith or kin; a kind of adoptive kinship. (Bajpai 2017: 34). The custom of adopting children, especially sons, was common in pre-Islamic Arabia, but with the founding of Islam and the development of Sharia law, adoption as a legal institution was abolished (Boswell 1988 cited in UN Report 2009: 26). A social obligation (*fard kifāya*) “to rescue abandoned children” remained (Pollack and others 2004 cited in UN Report 2009: 26), but the rescuer was not legally obliged to support the foundling from his own funds. (UN Report 2009: 26). The abolition of adoption in Islam is linked to episode known as the “Zayd incident”. (Buchler and Kayasseh 2018: 36). After having adopted the former slave Zayd Ibn Hāritha, Muhammad desired to marry his cousin Zainab bint Ġaḥṣ who was Zayd’s former wife and his ex-daughter in law. However, the marriage was considered incestuous according to existing customs and rules. (Ibid: 36). According to Islamic tradition, the Quranic verses (33:37-40) were revealed in this context. These verses as well as the later revealed verses (33:4-5) asserted the legality of the Prophet’s marriage to Zainab. It was argued that since adoption was prohibited and had no effect, the Prophet had no male child and therefore Zainab did not become his daughter in law. From then on, “adopted” children could no longer take the name of their adoptive parents and there were no marriage impediments between them and no mutual rights of inheritance. (Buchler and Kayasseh 2018: 36).

However, conditions permitting adoption in Islam are the true identity of the child being disclosed to him at a place where the child’s true identity is known and the rights of inheritance of the natural heirs remain unperturbed. Further, the security of the adopted child may be achieved by following certain methods such as providing *kafala* (maintenance) for the child, making a contribution in the form of a gift in favour of the child or bequeathing up to one-third of the property in his favour. (Bajpai 2018: 35). The so-called “informal adoptions” were and are practiced in various “culturally sanctioned forms”; sometimes by using *hīlah shar’īyah* (legal ruse). (Buchler and Kayasseh 2018: 38). For example, a man may claim an infant of unknown provenance (who is not the offspring of unlawful intercourse) as his legitimate child, provided that there is no evidence to the contrary (acknowledgment – *iqrār*). (Buchler and Kayasseh 2018: 39). As long as the formal elements of the claim are intact, the child will be considered the biological son or daughter of the claimant and acquire all concomitant rights and duties. Furthermore, a man may claim a child was the

legitimate offspring of a former marriage that has previously not been registered under the man’s name. A child may also be adopted secretly by aspiring parents who take in an abandoned baby and then raise him or her as their own child by pretending to have given birth without informing the authorities. (Ibid: 39).

Adoption, Fosterage in Colonial India- Legality and Discursive Shift:

The most influential adoption law of the Modern Era is the French Civil Code of 1804, known also as the Napoleonic Code which influenced profoundly the modern adoption laws of many countries including former colonial country, Britain. (UN Report 2009: 11). Industrial revolution brought about the most important changes in the human history. From 18th to the 19th century major changes in agriculture, manufacturing, mining, transport, and technology had a profound effect on the socioeconomic and cultural conditions starting in the United Kingdom, and then subsequently spreading throughout Europe, North America, and eventually the world. (Meena 2015: 1). In the middle of the nineteenth century, boarding out, a practice that consisted of placing a child with a family, became a popular alternative to institutionalization. (UN Report 2009: 11). This practice gained wide support because, besides offering a more suitable environment for raising children, it provided a source of income to the families that took in children. Other informal arrangements, such as “baby farms,” where unwanted or illegitimate children were looked after for a fee, became common in Australia (Kociumbas 1997), the United Kingdom (Shanley 1989) and the United States. (UN Report 2009: 11).

Adoption, Fosterage, Guardianship Laws in India- A Trajectory Colonial Laws and Enactments:

In the 1920s, the existence of many orphans and abandoned children in the aftermath of the First World War and the influenza epidemic of 1918, combined with concerns over the legal status of children permanently separated from their birth families, prompted many countries to enact new legislation or reintroduce or modify previously existing adoption laws. England and Wales, for instance, passed the first adoption law—the Adoption of Children Act—in 1926. (UN Report 2009: 14). The advent of colonialism in India marked decisive changes in the practices of adoption in India as well. The important shift came in the form of a shift from kinship adoption in the ancient Indian culture to the idea of child welfare reform during the colonial rule. The new colonial concept was first reflected in the shape of the Children’s Act that was enacted in the Madras and Bombay Presidencies in 1920s. These legislations gave the

state the responsibility to look after the destitute and neglected children.

In the sphere of adoption and guardianship, the Guardians and Wards Act was passed during 1890s arising out of concern to recognise guardians equipped to care for poor orphans. According to the Act a person who cares for an unrelated child has only guardianship status, and this legal relationship ceases to exist when the child turns twenty-one years of age. Hence, the child is only a ward and is not given the full status or the legal rights equal to that of a biological child, rights which are granted in adoptions carried out according to HAMA. In other words, a child placed under GWA is not entitled, by right, to the (fostering) family name or to inherit the (fostering) family property. (Kennedy 2007: 35). The Guardians and Wards Act 1890 is generally invoked by communities other than Hindus to become guardians of children during their minority. (Bajpai 2018: 36).

Adoption Laws, Judgments in Post-Independence Era:

In India, at the time of the partition, both India and Pakistan had their religion-oriented personal laws. Hindu Adoptions and Maintenance Act 1956 governing Hindus in matter related to adoption marks a transition from guardianship to adoption, because the practice of adoption becomes more liberal. One example is that HAMA permits the adoption of an orphaned child outside the family or caste group of unknown origin. Yet, the most interesting aspect of HAMA is its restrictiveness. The Act permits a couple to adopt only one child of each sex, and if the couple have a biological child, they cannot adopt a child of the same sex as their biological child. (Kennedy 2007: 35). It also includes any legitimate or illegitimate child who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh. (Meena 2015: 3). Following the Hindu Adoptions and Maintenance Act 1956, Hindu Succession Act 1956 was implemented as a codified law dealing with matters of succession applicable to adoptive children. The law was a reformation on Hindu personal law on adoption and succession, which granted all adopted children to be treated as equals of the biological children of parents when it came to inheritance and succession. (Bajpai 2018: 36)

Laxmikant Pandey Case 1984- The Landmark Judgement:

In 1982 the advocate Lakshmi Kant Pandey filed a petition, inaugurated by social workers, to the Supreme Court of India “complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents” (Writ Petition No. 1171/1982: 1). Pandey filed this petition due to some incidents that revealed

malpractice in the field of adoption. The incidents that triggered this petition concerned the death of children placed in foreign adoption and large sums of money unaccounted for as mention before in this chapter. At the time the NGOs mainly placed children in transnational adoption. (Kennedy 2007: 36). According to the Pandey petition (and hence the court rulings) these incidents in transnational adoption revealed a great need for state bodies that could regulate the practice of adoption. The most apparent normative value detected in the judgement is that concerning the ‘best interest of the child’ and the Hague Convention. The judgment states: “The adoptive parents would be the next best substitute for the biological parents. The practice of adoption has been prevalent in Hindu Society for centuries and it is recognised by Hindu Law. It is not merely ancient Hindu Law which recognises the practice of adoption but it has also been legislatively recognised in the Hindu Adoption and Maintenance Act 1956... Now when the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for it within the country, because such adoption would steer clear of any problems of assimilation of the child in the family of the adoptive parents which might arise on account of cultural, racial or linguistic differences in case of adoption of the child by foreign parents. If it is not possible to find suitable adoptive parents to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, it might have to lead the life of a destitute, half clad, half hungry and suffering from mal-nutrition and illness.” (Writ Petition No. 1171/1982: 14, 15). (Kennedy 2007: 47).

Following the Laxmikant Pandey verdict, guidelines were laid down for domestic and inter-country adoptions. Accordingly, the Central Adoption Resource Agency (CARA), had been set up under the Ministry of Welfare in 1986. It is an apex body to deal with adoption matters in the country. At the local level, two voluntary agencies are now in charge of regulatory functions. One is the Voluntary Co-ordinating Agency (VCA), and the other is the Scrutinising Agency. The VCAs perform the tasks of co-ordinating placement work of the member adoption agencies and promote domestic adoption. They are charged with the responsibility of ensuring priority to children’s placement within the country and issuing clearance certificates for the international placement after due efforts for domestic adoption have failed. (Apparao 1997: 3).

Legislative Reforms Post Laxmikant Pandey Judgment

The Juvenile Law in India:

After the independence of India, the constitution provided some provisions under the fundamental rights and Directive principles of state policy to protect and develop children. The Government of India passed the Children Act 1960. This act prohibited the imprisonment of children in any circumstances and provided care, welfare, training, education, maintenance, protection, and rehabilitation. (Lawyered 2021: 1)

The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the Act of 2000 or the JJ Act, 2000 or the 2000 Act) was enacted to consolidate and amend the law relating to juvenile in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this law. The Juvenile Justice Act of 2000 was an attempt to follow the principles outlined in United Nations Conventions. This Act was primarily concerned with minors' rehabilitation. In addition, the Juvenile Justice Board is established under section 4 of the Juvenile Justice Act of 2000. (Lawyered 2021: 2).

Juvenile Justice (care and protection of children) Act, 2015 was introduced in the country and replaced the Juvenile Act 2000. This act was passed by the parliament after much controversy and protest. It has introduced many changes in existing juvenile law in India. This act allows juveniles involved in the heinous crimes age group between 16-18 are treated as adults. Making the juvenile justice system in India more responsive and according to the changing circumstances of society. The Act gives a clear definition of orphaned, abandoned, surrendered children and provides an organized system for them. Define the heinous, petty, and serious offences by the children. (Lawyered 2021: 3).

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 act is a recent legislative reform in the sphere of adoption in India. The act modifies the Adoption Regulations of 2017 and also amends various provisions of Juvenile Justice Act, 2015. The act has substituted various terms in Section 2, pertaining to adoption such as clause 14's sub-clause vi, that is, (vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;"; in sub-clause (ix), for the words "is likely to be", the words "has been or is being or is likely to be" shall be substituted. (Ministry of Law and Justice 2021: 1). Further in clause (17), for the words "Children's

Home", the words "child care institution" were substituted. In respect to the authority dealing with inter-country adoption, clause 26 has been amended to include the words "which is the focal point", with the words "which shall function under the supervision of the District Magistrate" and insertion of clause 26(A) after clause 26 which states "District Magistrate" includes Additional District Magistrate of the District. (Ibid: 2). Under the Act, once prospective adoptive parents 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. The amendment further provides that instead of the court, the district magistrate (including additional district magistrate) will perform these duties and issue all such orders. (Ministry of Law and Justice 2021: 2).

In matters pertaining to appeals by any person aggrieved by an adoption order passed by the district magistrate may file an appeal before the Divisional Commissioner, within 30 days of such order. Such appeals should be disposed of within four weeks from the date of filing of the appeal. The 2015 Act provides that there will be no appeal for any order made by a Child Welfare Committee concluding that a person is not a child in need of care and protection. The amendment removes this provision. (Ibid: 2).

The Adoption (Amendment) Regulations 2021 shall apply to

- a) all adoption cases under the Hindu Adoptions and Maintenance Act, 1956 (7g of 1956) by prospective adoptive parents or adoptive parents residing outside the country.
- b) all adoption cases pertaining to countries outside the Hague Adoption Convention. (NIPCCD 2021: 3).

The amendment to the provisions of Juvenile Justice Act 2015 has been made as a result of delay in civil courts and adoption processes being non-contested litigations which the amendment seeks to rectify. Under the Juvenile Justice Act 2015 (JJ Act), all CARA approved adoptions require an adoption order from a court, which under the JJ Act "means a civil court, which has jurisdiction in matters of adoption and guardianship, and may include the district court, family court and city civil courts." Section 61 of the JJ Act mandates that before issuing an adoption order approved by CARA, the court shall satisfy that the adoption is for the welfare of the child, as per the wishes of the child and without consideration, payment or reward for the adoption. (Malhotra 2022: 1). The pivotal role of a judicial court under Section 61 of the JJ Act to x-ray an adoption, before passing an adoption order cannot be delegated to executive courts, the fundamental concept of determining the best interest and the welfare of the vulnerable child by making it

an administrative exercise by delegating powers to District Magistrate to issue adoption order for domestic as well as inter-country adoptions. (Ibid: 1).

The amendment by transferring the authority for issuing orders for adoptions from the judicial courts to the District Magistrate undermines the principles of Article 11 of the Hague Convention requires the accredited body to be staffed by those with ethical standards and expertise in adoption. Article 22 of the Convention requires the competent authority to “meet the requirements of integrity, professional competence, experience and accountability of that State”. (Malhotra 2022: 2). Further, Article 22 of the Beijing Rules emphasizing upon training, professional education and refresher courses for the staff. (Ibid: 2).

Kafalah, Mission Vatsalya and Family Formation in India:

In many countries with large Muslim populations, such as Sudan, Tanzania, and India, different laws regulate adoption and kafala for non-Muslim than for Muslim children. (Shura Council 2011: 10). In India, the custom of adoption is valid amongst Mohammedans, and Shariat law does not prohibit such custom of adoption. It cannot, therefore, be said that the Holy Quran prohibits adoption. Though the prophet has prohibited adoption, it cannot be assumed that what is prohibited by the Holy Quran can be permissible by custom and usage. The conclusion, therefore, is that the Holy Quran nowhere prohibits adoption. (Meena 2015: 5). The Hon’ble Supreme Court of India in the case of Shabnam Hashmi vs Union of India & Ors. on 19 February, 2014 held, that Juvenile Justice Act, 2000 as amended on 2006 is a secular law and applies on all including the Muslim and the act has been enacted for the welfare of children and it enables any person to adopt a child. (Meena 2015: 7). Thus, a Muslim also even if he is governed by Muslim Personal law can adopt a child. The existence of the Muslim Personal law will not prevent a Muslim to apply JJA. Thus, a Muslim may choose to be governed by Muslim personal law and hence may not adopt a child or he may choose to be governed by the JJA and may therein adopt a child. It was also held that as if today the right to adopt or to be adopted is not a fundamental right. (Ibid: 8). However, importance of children growing up within a family environment makes the subject of alternative care for children without parental care very pertinent and all avenues to ensure this ought to be explored. (Nielsen and Assim 2014: 323). The legislation and policies promoting proper childhood always entail the requirement of ‘proper’ parents and ideas on what constitutes a good and proper family, which constitutes a fundamental part of prerequisites of adopting or fostering a child in India. (Thelen and Haukanes 2012: 9).

Kafalah - Sponsorship or Legal Fostering:

Kafala literally means “sponsorship” and comes from the root word meaning “to feed.”

It is most accurately translated to mean “legal fostering” or “foster parenting” (Kutty 2014: 29) With kafala comes the responsibility of upbringing the adopted child as your own. It tries to achieve a balance between raising the child as your own all the while ensuring the adopted child’s identity is not absorbed into the identity of the adoptive family. Negation of the biological identify would be considered *haram* or forbidden. (Ibid: 30). The practice of kafala also developed out of the particular care and concern for the maintenance and upbringing of orphans and foundlings inherent in Islamic teachings. Kafala is touted by many Muslims as an Islamic practice that best resembles adoption as it is practiced in the West. However, there are a few key differences between *kafala* (as well as the other Islamic alternatives to varying degrees) and the contemporary understanding of adoption in the non-Muslim world. These are: 1) identification and protection of bloodlines and lineage, 2) rights of inheritance, and 3) possibility of marriage partners. (Kutty 2014: 30)

Though there are differences between *Kafala* and contemporary understanding of adoption, but the inclusion of *kafalah* in CRC is the first time an exclusively Islamic concept is recognised in a binding international instrument. (Nielsen and Assim 2014: 324). Prior to this development, however, *kafalah* as a subject of international law, was first mentioned in the 1986 UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (1986 Declaration). (Ibid: 325).

The 1986 Declaration contains the first internationally agreed upon standards of care for children whose parents are ‘unavailable’ or ‘inappropriate’. *Kafalah* is also recognised in the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. It is provided as one of the measures that can be taken to ensure the ‘protection of the person or property of the child’. In the UN Guidelines, *kafalah* is recognised as an ‘appropriate and permanent solution’ for children who cannot be kept in, or returned to, their original families. In effect, *kafalah* can be regarded as an internationally-recognised form of alternative care for children deprived of their natural family environment as well as one of the measures for providing ‘a global system for improving the

protection of children in international situations'. (Nielsen and Assim 2014: 325).

Mission Vatsalya the Foster Care /Non-Institutional Alternative:

Mission Vatsalya is an initiative for child protection especially towards orphan, surrendered and abandoned children by providing them with non-institutional/ kinship care. The principle of subsidiarity forms the foundation of the mission by the Ministry of Women and Child Development in India. The principle of subsidiarity, as applied to child welfare, states that it is in the best interest of children to be raised by family or kin. (NIPCCD 2021: 3). Mission Vatsalya emanates from the priority accorded to family-based options such as foster care, *Kafalah* and adoption while making institutional care a subsidiary option where necessary, thereby making it a secondary form of alternative care in the hierarchy of options by CRC, the African Children's Charter and the UN Guidelines. (Nielsen and Assim 2014: 330). If immediate family/kin is unable, or unavailable, domestic placement with a foster or adoptive family is the next best option. Finally, if neither of these alternatives is viable, then permanent placement with an appropriate family in another country through intercountry adoption is best.

Mission Vatsalya is an effort towards recognizing foster care/kinship care and apply it to the Indian context. In the Indian social context, where the family bond and ties are strong, Foster Care or non-institutional care may take the form of kinship care, where a relative or a family member with financial assistance can be motivated to care for the child in need of care and protection. However, a child may also be placed with an unrelated family if such an arrangement is found to be in the best interests of the child. (Foster Care India 2013: 2). The mission retains the provisions enlisted in the Juvenile Justice (Care and Protection of Children) Act, 2015 such as the State Child Protection Society (SCPS) that shall ensure the implementation including mapping, planning of Mission Vatsalya scheme. (Ministry of Women and Child Development 2022: 6). Mission Vatsalya is the culmination of three schemes devised prior to 2009-10, that were Programme for juvenile justice for children in need of care and protection, and children in conflict with law, Integrated programme for street children and Scheme for assistance to homes for children (Shishu Greh), categorized under Child Protection Scheme. (Ibid: 10). In matters pertaining to domestic adoptions or inter-country adoptions undertaken by Central Adoption Resource Agency (CARA), Mission Vatsalya would provide for supporting the State Adoption Resource Agency (SARA) in every State/UT. The Mission Vatsalya will support State and NGO run Specialized Adoption Agency (SAA) where adoptable children

of below six years of age are provided residential care. Further, it envisages setting up Cradle Baby Reception Centres in at least one SAA (preferably government run) per District whose primary objective shall be to rescue the abandoned children and look after them with due care and affection till he/she is given in adoption. (Ministry of Women and Child Development 2022: 22-23).

Non-Institutional Care mechanisms stressed upon by the mission include sponsorship, Foster Care, adoption and After Care in a family and community-based alternatives for Care. Sponsorship in the form of financial support for education, nutrition to vulnerable children, foster care in the form of an unrelated family bearing the responsibility of the child, Adoption facilitated by Specialised Adoption Agencies (SAA) and After Care through financial support to children above the age of 18 describe the mechanisms of Mission Vatsalya. (Ibid: 28). The mission also aims at involving civil society, Private Aided Sponsorship wherein interested sponsors including individuals, institutions, companies, banks, industrial units or trusts, etc. can support the children through the Mission Vatsalya scheme and hopes to open an opportunity to advance path of an Alternative Care Reform in India that encourages deinstitutionalization of children and expands opportunities for more children to be placed in family-based care, including foster or kinship care. (Ibid: 30).

Conclusion:

Adoption and parenthood in India are undergoing transformations in the current scenario. Adoption formerly associated with permanence of home for an orphan, abandoned or surrendered child and parenthood for a childless couple has come to be replaced by traditional kinship or alternative care systems, opening the gates for couples, single parents to foster or sponsor children and provide family-based care to the orphan, destitute and surrendered children, which have been recognized by Western countries. Fosterage and sponsorship prevalent in Hindu and Islamic legal traditions like *Kafalah* in Islamic traditions and kinship care in Hindu tradition are being revived to provide alternatives to adoption and establish family-based care system for children in need of homes. Such practices offer perspectives from countries in Global South such as India on adoption, parenthood, family; discourses until dominated by the homogeneity of Western concepts on the same.

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