



Shocking Judgement

on The Rights of Adopted Children

by
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In June 1992 the Kerala High Court delivered a judgement upholding the state government order excluding adopted children from the categories of those eligible for job assistance to dependents of government servants dying in harness. It was with a great deal of shock that I read a report on the judgement in the *Indian Express* of June 14, 1992. According to Justice K.P.S. Marar, adopted children cannot be considered eligible for job assistance as the scheme applies only to blood relatives, apart from widows and widowers. Of course he brings dependent nieces and nephews of government employees within the

purview of this scheme as they are after all the blood relatives of the deceased! Apparently the learned Justice K.P.B. Marar and the Kerala government are only against that category of adopted children (such as orphans) who are not blood relatives.

Isn't it surprising that while, on the one hand, the government pretends to encourage adoption especially of an orphan, so that the child can have a new beginning, on the other hand, the Kerala High Court says that adopted children cannot be considered as one's own children and entitled to all the rights and obligations of a biological child. Also,

on the one hand, the government wants to limit natural birth in the interest of population control, advocating the norm: "Have one and adopt another," but, on the other hand, parents who are progressive enough to adopt a child (especially an orphan) are told that the adopted child will not get government benefits otherwise enjoyed by a child born to that parent.

This particular order of the Kerala High Court has instilled fear in my heart (a Karnataka government employee) because if I die tomorrow what will be the fate of my adopted daughter? I, an unmarried woman, had adopted her from an orphanage when

she was barely four months old. She is now only three and a half years old. At the time of adoption, I had to declare in the Deed of Adoption that my adopted daughter would be entitled to the same rights and obligations as a naturally born daughter in my family. I have a court order declaring that she is my daughter. At that time I felt very happy that in the eyes of the law she was regarded as my legal heir and would legally get all the benefits to which a naturally born daughter was entitled. Now this order of the Kerala High Court says that for some benefits she cannot be considered as my daughter! What other hidden surprises is our prestigious judiciary going to spring at me in future? I do not want any law to come in the way of ensuring that she gets all the benefits that a legal heir would get.

Why this obsession with blood

relatives? Any fertile male or female can make a baby. It is not a very difficult or responsible task. The real responsibility starts only after the child is born. A person can be called a parent only when he/she can give the child love, security, understanding, compassion, education, social status and a home, among other things. Who is the blood relative of my daughter? Is it me or those parents who created her and left her in front of the orphanage to live or die?

In 1856-57 when the British passed an order saying, 'Adopted children have no rights', the Indians had revolted en masse. This is supposed to have been one of the causes for the first war of Independence. In free India against whom should we revolt when such discriminatory orders are passed? My full sympathies are with the adopted son of the government servant against whom the Kerala High

Court passed this order.

This order has dealt a death blow to orphans, orphanages, infertile couples, couples who have lost their children and cannot have children, unmarried women and so on. It is hard to understand the rationale behind such an order. Where is the natural justice in this case? Are orphans and adopted children second class citizens of this country?

One should keep in mind the fact that the legislature is only a law making body, but the merits and demerits of the law should be examined by the judiciary. The court cannot wash its hands off the matter by stating that it cannot examine the merits and demerits of an Act, even though it is illogical and illegal. If that is the case, it will be a mockery of justice and people will definitely lose faith and confidence in the judiciary.

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