

Reforming the law relating to adoption of children – for whose interests?

N.R. Wijeyesekera*

Department of Private and Comparative Law, University of Colombo

Adoption of children in Sri Lanka is regulated mainly by the Adoption Ordinance of 1941. The few amendments made to the Ordinance thus far, particularly to address large-scale trafficking of children, were *ad hoc*, and the statute retains ideals and mechanisms inconsistent and inadequate to address the lived realities of the country. The paper identifies two main reasons for the inconsistency: (a) its failure to

gauge the present socio-cultural structure, which has transformed during the last eight decades, and (b) the child rights governance which fluctuates between central and provincial authorities resulting in a tug-of-war between multiple authorities entrusted with the same task. Amidst insensitivities, adversaries and corruption, the system fails to ensure the best interests of the child. Underlining the necessity to uphold the significance that the Sri Lankan Constitution bestows upon the concept of *'family'*, and the state obligation to protect the rights of the child, the paper stresses the need to relocate the adoption law within a child-rights-centered framework. Being mindful of the multi-faceted and large-scale exploitation and trafficking of children, and the powerplay between central and provincial authorities entrusted with probation and childcare as well as child protection, it emphasizes the necessity to overhaul the law and the institutional framework. The research uses a mixed method based on statutes; international documents; regulations and circulars; and documented empirical studies; and engages views of experts in psychology. Aiming to strike a balance between human rights issues; psychological and psychosocial issues; and issues relative to governance, the study recommends introducing substantive and procedural mechanisms that protect rights of the child while upholding the Sri Lankan family value system. It also emphasises that due to the nature of adoption of children, legality must interact with non-law concerns, and adhere to globally accepted standards.

Keywords: adoption, child-rights-governance, reform

* Email: rose@law.cmb.ac.lk