



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.1085 OF 2023  
WITH  
INTERIM APPLICATION (L) NO.21485 OF 2024  
WITH  
INTERIM APPLICATION (L) NO.12194 OF 2023  
WITH  
INTERIM APPLICATION (L) NO.10867 OF 2023  
IN  
WRIT PETITION NO.1085 OF 2023**

Nisha Pradeep Pandya alias

Nisha Amit Gor & Anr.

....Petitioners

V/S

Union of India & Ors.

....Respondents

**ALONGWITH**

**WRIT PETITION NO.205 OF 2023**

Mohammed Javid Khan & Anr.

....Petitioners

V/S

Union of India & Ors.

....Respondent

Mr.Vishal Kanade a/w Ms.Tanaya Patankar i/b Mr.Sameer Sawant for the Petitioner in WP No.1085/2023.

Mr.Avinash Gokhale a/w Ms.Amrin Khan for Petitioner in WP No.205/2023.

Mr.Anil Singh, ASG a/w Ms.Savita Ganoo, Mr.Aditya Thakkar, Mr.Adarsh Vyas and Ms.Rama Gupta i/b Ms.Anusha Amin for Union of India.

Mr.Danish Qureshi i/b Mahimtura & Co. for Respondent Nos.4 and 5.

Ms.P.H. Kantharia, GP a/w Ms.Jyoti Chavan, Addl. GP for State.

**CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ**  
**DATE : 4<sup>th</sup> MAY 2026**

**JUDGMENT (PER BHARATI DANGRE, J) :**

1 Writ Petition No.1085 of 2023 filed by the Petitioners Nisha Pradeep Pandya and Pradeep Bajjnath Pandya raise a challenge to the amendment introduced by the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, in the Juvenile Justice (Care and Protection of Children) Act, 2015 alongwith the Juvenile Justice (Care and Protection of Children) Amendment Rules, 2022, insofar as they have replaced the word 'Court' with 'District Magistrate'. A challenge is also raised to the consequential amendments in the Act and Rules by claiming that they are violative of Article 14 and 21 of the Constitution of India and defeat the basic structure doctrine which shall enforce concept of equality and separation of power.

The second Writ Petition No.205 of 2023 filed by Mohammad Javid Khan and Shewar Mohammed Javid Khan is concerned with adoption of the child to the proposed parents, in close relation of Petitioner No.2 who had filed a Foreign Adoption Petition under Section 16(1) of the Juvenile Justice Act, 2015 and the Regulations of 2017 and challenge is also raised to the conferment of the judicial powers from the Collector to the District Magistrate (executive) in the wake of the Juvenile Justice (Care and Protection of Children) Model Amendment Rules, 2022, being introduced and challenge is also raised to the

provisions in the Amendment Act, 2021 to the extent that it contemplate transfer of power from the 'Court' to the 'Collector' and 'District Magistrate' and the claim is, it is ultra vires to the Constitution.

2 On 10/01/2023, the Division Bench noted that there is no stay to the implementation of the amendment and directed the Government to file its Affidavit in Reply and also issued notice to the Attorney General. On the very same day, ad-interim order was granted in terms of prayer clauses (d), (e) and (f), as a result of which the Court stayed the effective implementation and purport of the letter of 30/09/2022, issued by Respondent No.2 and it restrained the Respondents from transferring pending adoption matters before the District Magistrate for adjudication.

3 We have the learned counsel Mr.Vishal Kanade for the Petitioners in Writ Petition No.1085 of 2023 and Mr.Avinash Gokhale for the Petitioner in Writ Petition NO.205/2023, who adopted the arguments of Mr. Kanade and tendered written submission. Respondent-Union of India is represented by the learned Additional Solicitor General Mr.Anil Singh, who would rely upon the Affidavit filed by the Under Secretary, Ministry of Women and Child Development Department, justifying the amendment and he has also placed on record written submissions opposing the reliefs in the Petitions by placing reliance upon various authoritative pronouncements.

4 With consent of respective counsel, we deem it appropriate

to issue 'Rule' and at their request, we have taken up the Petitions for final hearing at the stage of admission.

5 Mr.Vishal Kanade, representing the Petitioners i.e. a married couple in Writ Petition No.1085 of 2023 would submit that they were interested in pursuing the adoption process under the Juvenile Justice Act, 2015 and on being aggrieved by the Amendment effected by the Amending Act thereby assigning the function, which was earlier vested under the provisions of Juvenile Justice Act in the 'Court' being assigned to the 'District Magistrate' and it is a matter of concern as according to him, grant of acceptance of a child in adoption is a judicial function, which could not be delegated to an Executive Authority like a 'District Magistrate' who may not possess the necessary infrastructure as well as necessary expertise in this regard.

According to Mr.Kanade, a District Magistrate, being a Chief Executive Officer of a District may not also be conversant with the niceties of the law and, therefore, by substituting the role played by the Court in the whole adoption process by that of the Magistrate, would have an adverse impact upon the whole process of adoption and since adoption is a legal process of establishing a legal bond between the child and adoptive parents, according to him, the Courts in exercise of its jurisdiction under *parents patriae* are more suitable, as it can ensure the welfare of the child. The issue of adoption being sensitive, according to Mr.Kanade it deserve to be tackled with judicial expertise, as the well being of the children and suitability of the family in which the child is to be given in adoption, would be the focal point.

Mr.Kanade would place reliance upon the decision of the Apex Court in case of *Lakshmi Kant Pandey vs. Union of India*<sup>1</sup>, when the Apex Court was confronted with the Public Interest Litigation, complaining against mal-practices and trafficking in children in connection with adoption of Indian children by foreigners living abroad. While issuing the guidelines and determining norms to be followed in cases of such adoption with reference to the Guardians and Wards Act, 1890, Mr.Kanade has emphasized that the Court pertinently observed that while supporting inter-country adoption it is necessary to bear in mind the primary object of giving the child in adoption and it being, the welfare of the child, and great care must be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected and abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to some abuse or forced labour or used for experimentation for medical or other research and may be placed in worse scenario than that of his own country.

According to Mr.Kanade, the Apex Court has identified certain issues to be taken into consideration while undertaking the adoption process and with reference to the Guardians and Wards Act, 1890, which is a statutory enactment providing for adoption of a child as far as India is concerned and the Apex Court had noted that the 'Court' shall mean the District Court having jurisdiction to entertain an Application under the Act for an order appointing or declaring a person to be the guardian.

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1 (1984) 2 SCC 244

Inviting our attention to the observations when the Apex Court contemplated giving notice to the Indian Council of Social Welfare or any other independent, reputed in public or officially recognized social welfare Agency, the Court emphasized upon ensuring that the Application of foreign parents for guardianship of the child with a view to its eventual adoption is properly and carefully scrutinized and evaluated by an expert body having experience in the area of child welfare with a view to assisting the Court in coming to a conclusion, whether it would be in the interest of the child to be adopted by the foreign parents and whether such adoption will provide moral and material security to the child with an opportunity to grow into the full structure of its personality in an atmosphere of love and affection and warmth of a family hearth and home.

While dealing with the procedure evolved by the High Courts of Bombay, Delhi and Gujarat, the Apex Court deemed such procedures to be eminently desirable as they would assist in reducing, if not eliminating, the possibility of a child being adopted by unsuitable or undesirable parents or being placed in a family where it may be neglected, maltreated or exploited by the adoptive parents.

6 Mr.Kanade has also placed before us the historical background of the whole concept of adoption and he would submit that the concept of adoption received legal sanction somewhere between 1851 to 1926 when various countries enacted legislations legalising and defining the process of adoption. He would submit that one thing which was running common through

all the legislations, was the judicial sanction of the adoption and the Courts received the role of being an integral part of the adoption process since the advent of the concept of adoption.

Referring to the 153<sup>rd</sup> Law Commission Report on Inter Country Adoption, he would submit that the Adoption of Children Bill 1980 which never was translated into a law, also provided for judicial supervision and sanction in the process of adoption and though it did not take the shape of statute, it endeavoured of plucking the loopholes in the whole system and particularly when the Indian children were being adopted by foreign parents. The Apex Court treated the letter addressed by Laxmi Kant Pandey an Advocate practicing in the court who complained of mal-practices indulged by social organizations and voluntary agencies in the work of offering Indian children in adoption to foreign parents.

Expressing the concern that the children would be placed in worse scenario if the adoption process is not carried out in proper manner, which shall necessarily include the verification and assessment of the potential of the adoptive parents to adopt the child as their own and care for his upbringing, and notices were issued to the Union of India, the Indian Council of Child Welfare and Indian Council of Social Welfare, to assist the Court in laying down the principles and norms which would be followed in determining whether a child should be allowed to be adopted by foreign parents and if so what shall be the procedure to follow so as to ensure welfare of the child.

7 In the sequence of events, according to Mr.Kanade, the

Juvenile Justice Act, 1986 was enacted which aimed at providing care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for adjudication of certain matters relating to and disposition of delinquent juveniles.

Somewhere in June, 1990 the Central Adoption Resource Agency (CARA) was set up under the Ministry of Welfare, Government of India with an avowed purpose of regulating, monitoring and promoting the adoption of orphaned, abandoned or surrendered children, which was subsequently conferred with autonomous status.

8 The Juvenile Justice (Care and Protection of Children) Act, 2000 repealed the Juvenile Justice Act, 1986 and the new Act widened the scope from neglected children to all children 'in need of care and protection' as defined in the Act. Though the statute did not define the term 'Adoption', it was accepted as one of the four ways of rehabilitation and social integration of the children in need of care and protection. The Juvenile Justice Board (JJB) constituted under the Act, vested with the powers of Metropolitan Magistrate or Judicial Magistrate of First Class, was empowered to give the children in adoption.

The Juvenile Justice (Care and Protection of Children) (Amendment Act), 2006 when enacted, it introduced the definition of 'adoption' and by this Amendment the power was conferred on the Courts to give children in adoption by substituting it in place of the 'Board'.

The term 'Adoption' was defined to mean the process through which the adopted child is permanently separated from

his biological parents and becomes the legitimate child of his adoptive parents with all rights, privileges and responsibilities, being attached to the relationship.

Since adoption was resorted for rehabilitation of children who were orphaned, abandoned or surrendered through the mechanism as may be prescribed, the power to give the children in adoption was conferred on the Court, who after satisfying itself regarding the investigation having been carried out as required for giving such children in adoption also stipulated the conditions subject to which a child can be given in adoption and the parents were permitted to adopt.

9 Mr.Kanade would place heavy reliance on the report of the Department relating to the Parliamentary Standing Committee on Human Resource Development in relation to the Juvenile Justice ( Care and Protection of Children) Bill, 2014, as the Parliament proposed to consolidate and amend the law relating to children in conflict with law and those in need of care and protection by catering to the basic needs of proper care, protection, development, social integration and this report according to him addressed the problematic areas in implementation of the Juvenile Justice Act, 2000 and this included; delays in various process under the Act such as decision by Child Welfare Committee(CWC) and Juvenile Justice Board (JJB), leading to high pendency of cases.

This development was followed by enactment of Juvenile Justice (Care and Protection of Children) Act, 2015 which comprised of the definition of the term 'Adoption' and defined the

'Authority' to mean the Central Adoption Resource Authority (CARA) constituted under Section 68 of the Act. It also defined 'Court' in Section 23 as below :-

(23) "Court" means a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Court."

10 Inviting our attention to the Scheme of the Act, Mr.Kanade has submitted that Chapter VIII pertaining to adoption, set out that it shall be resorted for ensuring right to family for the orphaned, abandoned and surrendered children and all inter country adoptions to be carried out as per the provisions of the Act and the Adoption Regulations framed by the Authority. The Authority was given statutory status under Section 68 which was established with an intention to promote inter country adoptions and facilitated inter state adoptions in coordination with State agencies and to regulate inter country adoptions.

11 By the amendment introduced by the Amendment Act, 2021, the function which was assigned to the Court is now entrusted to the District Magistrate, a limb of executive in allowing the adoptions, substituting the Judicial Officers. Mr. Kanade would place reliance upon the 118<sup>th</sup> Report of Parliamentary Standing Committee on personal, public grievances, law and justice and in particular, the following observations therein :

"3.28 The Committee notes that Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 authorizes the District Magistrate (including Additional District Magistrate) to issue adoption orders and provides that any person aggrieved by an adoption order passed by the

District Magistrate may file an appeal before the Divisional Commissioner. The Committee is of the considered opinion that Judges have the competence, experience and skills to determine whether adoption is in the best interest of the child. When deciding on adoption, Courts review documents, ensure necessary procedures have been complied with, and conduct an inquiry of the child and adoptive parents and ensure that adoption is for the welfare of the child. The Committee feels that it is not appropriate for an administrative authority to issue adoption orders instead of a judicial body. However, since the Act has been amended and the new system is yet to be tried and tested, the Committee recommends that appropriate training should be imparted to District Magistrates & Additional District Magistrates and Divisional Commissioners as well. The Committee recommends the Ministry of Women and Child Development to review the functioning of the new system after a year and present an Assessment Report to the Committee accordingly.”

12 It is the specific contention of the Petitioners that the impugned Amendment substituting the functionary under the Juvenile Justice Act and specifically in relation to adoption by the District Magistrate is manifestly arbitrary. According to him, in case if an order is passed by the Court, it becomes enforceable and executable through the machinery of the Court, but there is no provision for enforceability/execution of the adoption orders if at all they are passed by the District Magistrate. It is his specific contention that the order granting a child in adoption is a judicial function and the Civil Courts are best suited for exercise of this power and the purported reasoning behind the amendment that there are large number of pendency of adoption cases in High Courts and Civil Courts which result in its disposal, according to Mr.Kanade is not backed by facts. He would submit that merely because the District Magistrates are now entrusted the task, no way lead to an inference that the process to be adopted shall be expeditious as substituting the Magistrate by the Court would in fact defeat the very purpose of conferring the powers on an

Authority, in allowing the adoption as Civil Courts who have the judicial power would be more competent to deal with the procedure of adoption.

The Juvenile Justice Board, which was also constituted, comprised of Metropolitan Magistrate or Judicial Magistrate First Class, alongwith two social workers of which at least one had to be a woman.

Mr.Kanade's emphasis is also on separation of power as he would invoke Article 50 of the Constitution of India and submit that when a judicial function is sought to be transferred by virtue of creation of an alternative forum or a Tribunal, such forum must have judicial trappings and must be occupied by persons with judicial, technical and administrative members and definitely the District Magistrate is not an appropriate substitute. His main concern is enforceability/execution of the orders and in order to have workability and practical implementation, it is his submission that the District Magistrate who is the Revenue Officer and with limited powers being conferred under the Code of Criminal Procedure as well as other statutes is otherwise overburdened with several executive functions being required to be discharged by him as he is the Head of the administration of the revenue district and also responsible for law and order situation. Therefore, according to Mr.Kanade, there is no assurance/guarantee, that if the functions are entrusted to District Magistrate, the process will consume less time or that it will be functioned as if through a 'Magic Wand' as the procedure that is contemplated must be necessarily followed and if the process is time consuming, it cannot be short circuited in the manner which

the Union of India expect it to be.

13 Mr. Anil Singh, Additional Solicitor General, representing the Union of India, strongly opposes the relief sought in the Petition, and he raise an objection that the challenge raised in the Petitions is academic in both the Petitions and neither of the Petitioner has a cause of action, as they have failed to demonstrate as to how they are affected by the said amendment. Inviting our attention to the pleadings in the Petition, it is the contention of Mr Singh that neither of the Petitioners have taken any steps for adoption, nor do they have any proceedings pending, and therefore, in no way, the amendment has impacted them. Therefore, according to him, the challenge is merely academic, and the Petitions, not being filed in public interest, do not deserve to be entertained.

Apart from the aforesaid submissions, Mr. Singh would submit that a statute is presumed to be constitutionally valid and the burden rests on the person raising a challenge to the same. In raising a challenge to constitutionality, according to him, the grounds must be specific, and must set out the manner in which the rights of the petitioner are affected.

For seeking a declaration that the provision is unconstitutional, according to Mr. Singh, the challenge must be based on cogent reasons and establish violation of fundamental rights or that the legislature has no power to introduce the said provision. According to Mr. Singh, the amendment of 2021 has replaced 'Courts' with the 'District Magistrate', and he would submit that there is no factual foundation laid down in either of

the Petitions demonstrating violation of the fundamental rights of either of the Petitioners, if at all the power is now exercised by the District Magistrate. According to him, the challenge is sought to be mounted on a historical perspective by claiming that such powers have always been exercised by the Courts, but it is not demonstrated as to how the transfer of this power in the 'Juvenile Justice Board' to the 'District Magistrate' is beyond the legislative competence, or that it suffers from manifest arbitrariness and what impact it has upon the whole process.

14 Highlighting the process contemplated for adoption in the scheme of the Juvenile Justice Act, Mr. Singh would submit that the statutory mechanism prescribed has involvement of several authorities and bodies, all aimed at a singular objective i.e. the welfare of the child, and in the adoption process, ascertaining the suitability of the adoptive parents, their home and monitoring the child post-adoption to ensure that adoption has been in the interest of the child. Highlighting the statement of objects and reasons in introducing the amendment in the Juvenile Justice (Care and Protection of Children) Act by Amendment Bill of 2021, Mr. Singh would rely upon the following object :-

“(a) to strengthen child protection at district level by empowering District Magistrate including Additional District Magistrate to effectively coordinate and monitor the functions of various agencies responsible for implementation of the provisions of the Juvenile Justice Act.

(b) to empower District Magistrate including Additional District Magistrate to authorise orders of adoption, in order to address issues of delay in adoption and to propose that appeals on the orders of adoption may be preferred to the Divisional Commissioner.”

Thus, according to him, the delay in the process with the involvement of the Courts was one of the issue which warranted the substitution of 'Court' by District Magistrate including the Additional District Magistrate, and since the District Magistrate was considered to be in a position to effectively coordinate and monitor the functions of various agencies responsible for implementation of the Act, intention of the legislature according to Mr. Singh, was laudable.

Reliance is also placed by Mr. Singh upon the Adoption Regulations 2022, focusing upon the timelines envisaged under the Act and it is his categorical submission that the steps to be followed pre-adoption and the actual steps to be taken for adoption do not require any specific judicial approach and in any case, according to him, the District Magistrate, being the Chief Executive Officer in the district, is suitably placed to ensure effective coordination amongst stakeholders for facilitation of necessary services for children rehabilitation/ re-integration. Keeping in mind the timelines for disposal of adoption proceedings, and the underlying emphasis on adoption cases being non-adversarial in nature, according to Mr. Singh, the legislature deemed it appropriate to culminate the adoption process at the level of the District Magistrate, who is envisioned as the 'Child Protection Head', who will monitor every stage of implementation of the process of adoption in the Act. He would submit that the District Magistrate, (i) shall be the Nodal Officer in the district for the implementation of the Acts and Rules (ii) function as head of Child Protection Services in district for promotion, facilitation, monitoring and regulation of adoption

programme (iii) When required, in the best interest of a child, call for any information from all stakeholders including JJB and CWC (iv) monitor the functioning of various agencies including the DCPU and CWC that are responsible for implementation of the act and to hold quarterly review meetings with the stakeholders to discuss the issue related to children in the district. (v) Can act as Grievance Redressal Authority of functioning of CWC and the affected child. (vi) Make recommendations for registration of Child Care Institutions, (CCIs) based on inspection.

15 According to Mr.Singh, the District Magistrate performs various administrative and quasi judicial functions under various statutes and he has highlighted the list of statutes, where the District Magistrate is empowered to adjudicate and this include the Appellate Tribunal constituted under Section 15 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which is presided by an Officer not below the rank of the District Magistrate and this Tribunal is empowered to adjudicate the Appeals against orders of the Tribunal constituted under the Act empowered to decide on the issue of maintenance under Section 5, and is vested with the power to record evidence. Similarly, under Section 31 of the Maharashtra Stamp Act, 1958, according to Mr. Singh, the Collector is the Authority to determine the stamp duty payable on an instrument and he performs administrative as well as quasi-judicial functions under the Act.

According to Mr. Singh, the District Magistrate is not a new entrant in the Act, as he was performing various functions even

prior to the amendment, and no grievance was made. According to him, as per Section 101, the District Magistrate was exercising the power of the Appellate Forum against the orders passed by CWC and the JJB in relation to foster care and sponsorship Aftercare.

16 In addition, Mr. Singh would submit that in accordance with the recommendations of the Parliamentary Standing Committee, appropriate training shall be imparted to District Magistrate and Divisional Commissioners, by the Ministry of Women and Child Development with the involvement of CARA and more than 27 orientation programmes have been arranged between February 2022 and December 2022, to make the District Magistrates equipped with discharge of their duties in the wake of the amendment of 2021. It is categorically submitted by Mr. Singh that as child protection head, the District Magistrate is conversant with the child protection issues, including adoption, in the district and he is also oriented on key features of the Juvenile Justice Act to ensure smooth implementation of Child Protection Scheme, titled as 'Mission Vatsalya' and therefore, according to him, the District Magistrate has the competence and expertise to deal with adoption matters, and in any case, the assigned role of the District Magistrate in no way, diminish the judiciary's authority to oversee the overall operation of the Juvenile Justice System. According to him, amendment merely confers the duty to permit adoption by the District Magistrate in place of the Court and therefore, there is only a change in the forum and in any case, according to him, the Courts who were competent to exercise the

said function, were not required to determine the rights of the parties, but merely restricted its role to assist whether the mandatory requirement under the Acts and Regulations are adhered to before the adoption is allowed and the same power and duty being now case upon the District Magistrate, who shall consider the applications for adoption and follow the same procedure which was done by the Court.

17 In the backdrop of the challenge raised to the 2021 amendment introduced in the Juvenile Justice (Care and Protection of Children) Act, 2015, by the amending Act of 2021, the term 'District Magistrate' is introduced in Section 26-A, by providing that 'District Magistrate include Additional District Magistrate of the district'. Sub-section (4) is added in Section 16 empowering the District Magistrate to call for any information for all the stakeholders including the Board and the Committee as and when required in the best interest of the child.

In Section 27 pertaining to Child Welfare Committee, sub-section (8) is substituted and the provision where the District Magistrate was authorised to conduct a quarterly review of the functioning of the CWC, is substituted by providing that the CWC shall submit a report to the District Magistrate in such form as may be prescribed and the District Magistrate shall conduct a quarterly review of the functioning of the Committee. In addition, sub-section (10) has been substituted by empowering the District Magistrate to be the 'Grievance Redressal Authority' to entertain any grievance arising out of the functioning of the Committee and the District Magistrate is empowered to take cognizance of the

action of the Committee and pass appropriate order.

The amending Act also introduced an amendment to Sections 54 and Section 55, where a specific role is assigned to the District Magistrate authorising him to take action upon the inspection being carried out of the institutions registered under the Act.

18 In connection with Chapter VIII pertaining to adoption, and which is the subject matter of challenge before us, in Section 56, sub-section (5) has introduced the 'District Magistrate' as the authority to pass an order, in absence of which any person who takes or sends a child to a foreign country, or to take part in any arrangement for transferring the care and custody of the child to another person in a foreign country, is punishable as an offence. In Section 58, which has set out the procedure for adoption by Indian prospective adoptive parents living in India, the application shall lie before the District Magistrate for obtaining the adoption order by substituting the term 'Court' and in sub-section (4), in place of certified copy of the order passed by the Court, the specialised adoption agency shall act on the copy of the order passed by the District Magistrate. Similarly, in section 59, sub-section (?), the role of the Court is substituted by the District Magistrate and similar is the case of sub-section (1) of Section 60.

As regards the procedure for the disposal of adoption proceedings which determine the factors to be considered by the Court while considering the adoption application, the 'Court' is substituted by District Magistrate, who shall before issuing an adoption order, satisfy itself that the adoption is for the welfare of

the child; due consideration is given to the wishes of the child and neither the prospective adoptive parents had given or agreed to give; nor the specialised adoption agency or the parent or guardian of the child has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the Adoption Regulations. Similarly, in Sections 63 and 64, there is substitution of the word 'Court' by 'District Magistrate'.

Thus, by the Amending Act of 2021, there is substitution of the Authority of Court by that of District Magistrate.

The statement of objects and reasons of the amending Act reads to the following effect :-

"1. The Juvenile Justice (Care and Protection of Children) Act, 2015 (the Juvenile Justice Act) came into force with effect from the 15th January, 2016, by repealing the Juvenile Justice Act, 2000, with a comprehensive provision for the children alleged or found to be in conflict with law and children in need of care and protection. The Juvenile Justice Act has been made in pursuance of the Constitution of India which mandates equal rights for children and also mandates upon State, inter alia, to take suitable measures for protection of children. The Act also fulfils the India's commitment as a signatory to the United Nations Convention on the rights of the child, the United Nations Standard Millennium Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (1993) and other related international instruments.

2. Sub-section (1) of section 56 of the Juvenile Justice Act provides that adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of the said Act and the rules and regulations made thereunder. Section 63 of the Juvenile Justice Act stipulates that the adoption is final on the issuance of the adoption order by the Court. Sub-section (2) of section 61 of the said Act also provides that the adoption proceedings shall be disposed of by the court within a period of two months from the date of filing of an application. It was observed that there is significant delay in finalisation of adoption cases in Courts. Besides, these adoption cases are non-adversarial in nature and to be dealt according to well laid out process. Hence, it is proposed to culminate the adoption process at the level of District Magistrate in the District.

3. District Magistrate, being the Chief Executive Officer in the District, is suitably placed to ensure effective coordination among the stakeholders for facilitation of necessary services for children's rehabilitation/re-integration. By further empowering District Magistrate to deal with child protection and adoption process, it aims to facilitate a coordinated and effective response of District Administration to various issues pertaining to children, including adoption.

4. The Juvenile Justice Act deals with "Petty", "Serious" and "Heinous" categories of offences. Hon'ble Supreme Court in the matter of Shilpa Mittal Vs. State of NCT of Delhi (Criminal Appeal No. 34 of 2020), vide its judgment dated the 9th January, 2020 has observed that the Juvenile Justice Act does not deal with the fourth category of offences viz., offence where the maximum sentence is more than seven years imprisonment, but no minimum sentence, or minimum sentence of less than seven years is provided and treated the same as "serious offences" under the Act."

19 Though Mr.Kanade has placed before us the history of the process of adoption which has emerged through various statutes including the Adoption of Children Act 1918 Bill, which never took the shape of a statute but the importance of the judicial system of the adoption process was highlighted through the judgment of the Apex Court in **Lakshmi Kant Pandey vs. Union of India** (*supra*). We note that the Juvenile Justice Act, 1986 which was the initial statute focusing on the care, protection, treatment, development and rehabilitation of delinquent juveniles with the introduction of Central Adoption Resource Agency (CARA) which was constituted for regulating, monitoring and promoting adoption of the orphan, abandoned or surrendered children, to achieve the object of the Act, being rehabilitation of the Juveniles.

In the Juvenile Justice Act, 2000 which repealed the Juvenile Justice Act, 1986, 'Adoption' was recognised as one of the mechanisms of rehabilitation and the powers were conferred

on the Juvenile Justice Board with the presence of the Metropolitan Magistrate or a Judicial Magistrate First Class. It is only in the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, the power to give children in adoption, was taken away from the Board and conferred on the Courts. This provision then continued even in the Juvenile Justice Act, 2000 which assign the definite meaning to the Court and it cover Civil Court having jurisdiction in the matters of adoption and guardianship and include the District Court, Family Court and City Civil Court.

The Court played a crucial role in the mechanism of adoption, but in the background of the SOR, highlighting the intention of the legislature to bring the change when the 'Court' was substituted by the 'District Magistrate' for the reasons, deemed appropriate by the legislature, the said amendment is subjected to challenge before us.

20 The foundation of the adoption system in India, which has surfaced through provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 which was repealed by Juvenile Justice (Care and Protection of Children) Act, 2015, with adoption being accepted as one of the modes of rehabilitation, followed a child centric approach and recognised adoption as one of the most effective mode of rehabilitation of the orphans, abandoned and surrendered children and the whole process of adoption was made subject to the provision of Juvenile Justice Act and the adoption Regulations framed by the authority i.e. Central Adoption Resource Authority constituted under Section

68. All inter-country adoptions are carried out as per the provisions of Juvenile Justice (Care and Protection of Children) Act and the Regulations of CARA. The adoption process contemplate a valid order from the Court and this provision is now substituted by contemplating a valid order from the District Magistrate.

From time to time, CARA which is the statutory body, have framed Regulations governing adoption, so as to ensure that it is in the best interest of the child. When the District Magistrate is introduced in the Scheme involving adoption of abandoned, orphaned and surrendered children, he is expected to discharge his powers and functions in the same spirit, keeping in mind the spirit of Chapter VIII being in the interest of the child.

21 Upon the amendment being introduced by the Act No.23 of 2021 with effect from 1/9/2022, the Ministry of Women and Child Development also formulated Juvenile Justice (Care and Protection of Children) Model Amendment Rules, 2022.

The Rules also came into force from the date of its notification i.e. 1/9/2022 giving effect to the amendment introduced in the Act of 2015 which assigned a specific role to the District Magistrate at various stages in implementation of the Act of 2015 and this included the substitution of the Authority with whose permission the child can be given in adoption.

22 The objection on behalf of the Petitioners, is to the discharge of the power by the 'District Magistrate' in place of the 'Court' which played a crucial role in the adoption system, which aimed

at ensuring better interest of the child.

The apprehension expressed that the order passed by the District Magistrate would not be capable of execution, as an order passed by the Court and post-adoption the District Magistrate will not be in a position to ensure that the child is in a comfortable atmosphere and is well accommodated in the adoptive family, according to us is completely unfounded.

It is worth to note that the Amendment of 2021 has introduced the District Magistrate into the system as in contrast to District Collector who have different functions in administrative hierarchy. The District Collector is the highest Collector in charge of Revenue administration in a District and is responsible for overseeing issues related to land revenue, taxation and the management of resources. In terms of the revenue related matters, the District Collector is answerable to the Government through the Divisional Commissioner.

As against this, the District Magistrate holds the position of senior-most Executive Magistrate who is responsible for general administration in the District which includes maintaining of law and order, enforcing government policies and coordinating various developmental activities. The District Magistrate is the principal authority for smooth functioning of district governance and apart from over all administration, he plays an important role in law enforcement and its implementation at district level. His role in the revenue administration may be restricted, but he is cast with several responsibilities which include exercise of judicial powers, he being a senior most Executive Magistrate. The District Magistrate is entrusted with functions of significance in

the Code of Criminal Procedure, 1973 and the present Bharatiya Nagarik Suraksha Sanhita, 2023. Under Section 144 Cr.P.C. (new Section 163 of BNSS), the District Magistrate is empowered to issue orders to restrict public movements or assembly of 5 or more people to prevent public disturbance. Similarly, in Statutes like National Security Act, 1980 it is the District Magistrate who is competent to order detention of a person to prevent him from acting in a manner prejudicial to State security or public order and he has the power of preventive detention. Similarly, he acts as a licensing Authority under the Arms Act, 1959 and is conferred with the power to grant, renew or revoke Arms and Ammunition License.

In the proceedings under Section 107-110 of the Cr.P.C., the District Magistrate is empowered to ensure security of good behaviour and by demanding security and peace and as a remanding Authority, he is authorized to detain accused in police or judicial custody. It is not uncommon under special statute to confer powers on the District Magistrate, which are in the nature of quasi judicial functions and this include the power to grant licenses for cinemas under the Cinematograph Act, 1952 and an Authority competent to issue orders for relief and rehabilitation under the Disaster Management Act, 2005.

Similarly the most important function discharged by the District Magistrate is under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, under which the Appellate Tribunal constituted under Section 15 is presided by an Officer not below the rank of District Magistrate. The Appellate Tribunal is competent to adjudicate Appeals against the orders of

Tribunals which decides maintenance of senior citizens.

23 The apprehension expressed by the Petitioners about the District Magistrate not being competent to deal with the adoption process, which is purely judicial function is also *dehors* any merit as the District Magistrate in various situations, exercises quasi judicial functions and in fact he was already in the system, as under Section 101, as the District Magistrate was exercising the power of the Appellate forum against the orders passed by CWC and JJB in relation to foster care and sponsorship after care.

We have no doubt in our mind that the District Magistrate is well suited to act and assist in welfare of the children and the Petitioners' assumption is wrong, as it expects the sensitivity of implementing the child placement process in the course of adoption.

The robust mechanism which exist under the Juvenile Justice Act, with the aid of the Authority, constituted for the said purpose and the process of adoption being well guided by the Statute itself, we see no difficulty in the District Magistrate implementing the provisions of the Statute and determination of the eligibility of the prospective adoptive parents, which is the most significant stage in the whole process, is well guided by the Regulations framed by CARA Authority. It is this Authority which is fully involved into the process of adoption and it shall act on the Home Study Report of the prospective adoptive parents and upon finding them eligible will refer a child declared legally free for adoption alongwith the Child Study Report and Medical Report in the manner as provided in the Adoption Regulations

framed by the Authority.

The whole process of adoption is well chartered by the Statutory Authority CARA, which is constituted under Section 68 of the Act to regulate inter-country adoptions and promote in-country adoptions and facilitate inter-state adoptions in coordination with State agency.

24 In exercise of powers conferred upon CARA, it has framed the Adoption Regulations, 2022 in supersession of the Adoption Regulations, 2017 and the said Regulations which focus on the fundamental principles governing adoption, has determined the eligibility criteria for the prospective adoptive parents and has also set out the procedure relating to children for adoption, which includes the orphan or abandoned children as well as the surrendered child. The Regulations have exhaustively provided for the procedure to be followed which include registration and home study of the adoptive parents and has also provided for pre-adoption foster care by the prospective adoptive parents within 10 days from the date of matching, after signing the pre-adoptive foster care undertaking in the format prescribed.

In the wake of the amendment introduced in the year 2021, Regulation 13 has clearly prescribed that the specialized adoption agency shall file an Application with the District Magistrate of the District through the District Child Protection Unit (DCPU) where the child is located alongwith the relevant documents prescribed in Schedule 9 within 10 days from the date of matching of the child with the prospective adoptive parents and the Application shall be filed in the prescribed format.

The District Magistrate, shall, thereafter, hold the adoption proceedings in-camera and dispose of the case as early as possible not exceeding two months from the date of filing of the adoption application by the specialized adoption agency as provided under sub-section (2) of Section 61. Thereafter, the Agency shall obtain certified copy of the Adoption Order from the District Magistrate through the DCPU and forward it to the adoptive parents and is shall also be uploaded on the designated portal, which could be downloaded by the prospective parents. The Specialized Adoption agency, shall, thereafter, submit an Affidavit to the District Magistrate as per the prescribed format.

Not only this, Regulation portal also provides for follow up of progress of adoptive child and this take care of the apprehension expressed by Mr.Kanade that there is no mechanism of the follow up action when the child is adopted and Regulation 14 prescribe thus :

14. Follow-up of progress of adopted child. (1) The Specialised Adoption Agency which has prepared the Home Study Report, shall prepare the post-adoption follow-up report on six monthly basis for two years from the date of pre-adoption foster placement with the adoptive parents, in the format as provided in the Schedule XII and upload the same on the Designated Portal along with photographs of the child within ten days from the conduction of such report.

(2) In case the adoptive parents relocate, they shall inform the agency which has conducted their home study and the District Child Protection Unit of the district where they relocate.

(3) The District Child Protection Unit of the district of the current residence of the prospective adoptive parents shall prepare the post-adoption follow-up report and upload the same on the Designated Portal within ten days from the conduction of such report:

Provided that first follow-up report of the adopted child shall be done within three months from the date of pre-adoption foster care.

(4) In case of non-adjustment of both the child and the adoptive family

with each other, the Specialised Adoption Agency or the District Child Protection Unit shall arrange the required counselling for such adoptive parents and adoptees or link them to the counselling services available within the district or state within seven days with due intimation to the State Adoption Resource Agency and the District Magistrate:

Provided that in case of non-compliance for three consecutive post adoption follow-ups the District Child Protection Unit shall prepare the social investigation report and inform the Child Welfare Committee for further action as may deem fit.

(5) Procedure of disruption- In case of disruption in in-country adoption.-

(a) at the stage of pre-adoption foster care before filing an adoption application, the child shall be taken back to the Specialised Adoption Agency with information to District Child Protection Unit and State Adoption Resource Agency;

(b) at the stage of pre-adoption foster-care after the application has been filed with the District Magistrate through District Child Protection Unit, the child shall be taken back by the Specialised Adoption Agency and adoption application shall be withdrawn with prior permission from the Child Welfare Committee with intimation to the District Child Protection Unit and the State Adoption Resource Agency and the status of the child on the Designated Portal shall be updated by the Specialised Adoption Agency accordingly:

(c) where the child has been taken to another state during the adoption process, the relocation of the child shall be coordinated by the State Adoption Resource Agency in the state where the child is currently residing and the State of origin.

(6) Procedure for dissolution-In case of dissolution in in-country adoption.-

(a) In case of dissolution, the application for annulment of adoption order shall be filed by the Specialised Adoption Agency with the District Magistrate through District Child Protection Unit;

(b) No application should be filed until two counselling sessions have been completed by the local Specialised Adoption Agency or District Child Protection Unit before making any decision concerning disruption or dissolution;

(c) Post dissolution order, the child shall become legally free for adoption;

(d) The Specialised Adoption Agency or the District Child Protection Unit shall update the child's status as legally free for adoption on the Designated Portal within three days.

(7) Where the Indian adoptive parents move with the child abroad, within two years from the date of pre-adoption foster care, the concerned Indian Diplomatic Mission in the country of arrival in case of Non-Hague countries and Authorised Foreign Adoption Agencies or Central Authorities in Hague countries, shall be intimated at least fifteen days in advance through a written communication for the purpose of remaining follow up reports by the adoptive parents with their full contact details at the new place.

(8) The onus of getting the balance post-adoption follow-up is with the adoptive parents and they have to bear the professional charges on their own, and further the adoptive parents shall give an undertaking to the Authority to that effect.”

25 Apart from this, there is also provision for dissolution on in-country adoptions as the Application for annulment of adoption order can be filed by the Specialized Adoption Agency before the District Magistrate through DCPU and post-dissolution order, the child shall become legally free for adoption.

In order to give efficacy to the Amendment, the Ministry of Women and Child Development, Government of India, has also published a brochure on adoption for the District Magistrate with the emphasis on role and responsibilities of the District Magistrate, by clearly providing information about the process. The Ministry has also created a Designated OnLine Portal in form of Child Adoption Resource Information and Guidance System (CARINGS) for creating links through a robust fresh management system designed to bring transparency in the adoption system and for curtailing delay at various levels.

The Specialized Adoption Agency (SAA) is directed to update the child pre-adoption foster care information and

adoption application information is directed to be reflected on CARINGS-DCPU in module where the DCPU scrutinize requisite documents within 5 days of receipt of the documents from SAA before forwarding case to the District Magistrate for issuance of adoption order. The District Magistrate is directed to issue Adoption Order within a period of two months from the date of filing of Application with CARINGS-DM Module and District Magistrate is also directed to generate and upload Adoption Order from the Portal.

We find the process to be now implemented with timelines and has made the same meaningful as expediency in passing of the Adoption Orders is the real success of the Juvenile Justice Act, as it intend to rehabilitate the subjects i.e. abandoned, orphaned and surrendered children by rehabilitating them through adoption process.

26 With the Regulations framed by CARA, governing the entire process of adoption, being set out with all minute details, we do not find any ground to believe that the District Magistrate will not be in a position to exercise its role in an effective manner as what function was entrusted to the 'Court' is now handed over to the 'District Magistrate', who with the aid and assistance of the Regulations framed by CARA, in exercise of the power conferred under Clause (c) of Section 68 read with Clause (3) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015, has framed the Regulations governing the whole arena of the process of adoption which has involved various other Agencies and has determined the eligibility of the adoptive

parents and the availability of child for adoption being declared free to the prospective adoptive parents by setting out the criteria for both of them.

Apart from this, since the Affidavit filed by the Union of India has categorically stated that upon the District Magistrate being envisioned as Child Protection Head, as per the recommendations of the Parliamentary Standing Committee, appropriate training shall be imparted to the District Magistrates and Divisional Commissioners with involvement of the Ministry of Women and Child Development, CARA and National Institute of Public Cooperation and Child Development (NIPCCD) and we find that with the introduction of the said Provision in the year 2021, by this time the District Magistrates have equipped themselves with the necessary knowledge and the niceties which are required to be followed under the guidance of CARA in implementing the wholesome object of giving and taking of a child in adoption.

27 The argument that by appointment of the District Magistrate, the doctrine of separation of powers is violated, is also without any merit and substance as under various statutes, the Executive Authorities are conferred with quasi judicial functions and since it is well expected that a strict separation of powers is neither possible nor desirable and there are some overlapping functions, which are required to be discharged, we do not find substance in the said argument.

As indicated by the statement of objects and reasons of the 2021 Amendment, the procedure for adoption was intended to be

expedited and if the Parliament deemed it necessary to bring any change in the system of adoption with an intention of expediting the process by replacing the previous court base system, by conferring the powers upon the District Magistrate to act as a Competent Authority to issue final Adoption Orders and to supervise the Adoption Agencies, check compliances and ensure the child-base interest, we find no illegality in the said proposed action.

28 We have noted that though the Bombay High Court had granted stay to the transfer of pending adoption matters to the District Magistrate, by directing that ongoing cases shall continue in the Court, in other States the Amendment of 2021 has come into force and has yielded success.

In light of the aforesaid discussion, since we do not find any merit and substance in the challenge raised by the Petitioners, both the Petitions stand dismissed.

Pending Interim Applications also stand disposed of.

At the same time, we vacate the interim order dated 10/01/2023 and permit the matters to be dealt with by the District Magistrate.

We must also clarify that in the interregnum the orders which are passed by the Court in adoption matters shall be treated as legally and validly passed.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]