

JUVENILE JUSTICE ACT-CHILD BORN IN LIVE-IN RELATIONSHIP TO BE CONSTRUED AS A CHILD BORN TO MARRIED COUPLE: KERALA HIGH COURT

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[BALLB]

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In a significant ruling, the Kerala High Court on Friday held that a child born in a live-in-relationship would be treated as a child born to a married couple for the purpose of surrendering of a child for adoption under the **Juvenile Justice (Care and Protection of Children) Act, 2015.**

'Law does not differentiate unwed couple and legally wed couple to recognize biological parents.'

"Under Regulation 7(5) of the Adoption Regulations, if a child born to a married couple is surrendered, both parents have to sign a deed of surrender. If surrender is by one parent and the whereabouts of the other parent are not known, the child shall be treated as an abandoned child [Regulation 7(6)]. In this case, no such procedure was to be followed. Admittedly, the procedure applicable to an unwed mother alone was followed. That is legally unsustainable as the child has to be treated as born to a married couple," the Court ruled.

Pertinently, the Bench opined that the procedure employed by the Child Welfare Committee (CWC) in the present case while giving the child up for adoption was legally unsustainable. In its judgment, the Bench found that the procedure applicable to an unwed mother alone was followed.

A woman gave up her child to the Committee when her live -in partner moved to another State and called off the relationship for a while. The woman even executed a Deed of Surrender in June to give up her child in adoption.

Treating the woman as an unwed mother, the Committee proceeded to give the child in adoption to a couple under provisions of the *Adoption Regulations, 2017 and Section 38 of the JJ Act.*

However, the couple later approached the High Court by way of a Habeas Corpus plea, seeking the return of their child after they were denied the same by the Committee.

WHAT WAS HELD BY THE COURT?

"In the matter of married couple, the procedure ensures that both the parents execute deed of surrender and; if the child born to a married couple and surrendered by one of the biological parent, and whereabouts of the other parent are not known, the child shall be treated as an abandoned child and procedure under Regulation 6 (of the Adoption Regulations) will have to be followed. This procedure mandates an inquiry to trace out the biological parents or the legal guardians," the Court said.

"In a live-in relationship, a couple acknowledges the mutual rights and obligations. It is more of a contract. Offspring in such a relationship is acknowledging biological parental rights of both."

"Once it is found that the child is born to a couple, for all practical purposes of JJ Act, inquiry must be initiated as though the child belonged to a married couple", the Bench ultimately underscored. Thus, any deed of surrender would have had to be signed by both parents, it was stated. Where both parents did not sign and the whereabouts of the other parent are not known, the child was to have been treated as an abandoned child and steps taken to find out the whereabouts of the biological parents," the judgment said.

Therefore, the Court held that newly adoptive parents accrued no right since the process itself was illegal.

With these observations, the Court set aside the adoption and ordered that the child be restored to the couple.

