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# Navigating the Journey of Adoption in India

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## ABSTRACT

*Adoption seems to be the most effective way of achieving the joy of parenting. Adoption can be a loveliest option not only for single- parent and childless couple but also for homeless kids. It enables a parent – child relationship to be established between people not biologically related. In India, there is only one personal law pertaining to adoption which is the Hindu Adoption and Maintenance Act, 1956. Other personal laws like Muslim, Parsi, Christian do not have provisions for other provisions for adoption. This article throws a light on other provisions of laws with respect to adoption and also the lacunae and shortcomings within those acts, acts, it also enunciates the of the judiciary in shaping the adoption scenario in India.*

**Keywords:** *Hindu, personal law, inter- country, parent child.*

## I. INTRODUCTION

According to Richard Bach “The bond that links your true family is not one of blood, but of respect and joy in each other’s life”. It is considered by many that for the utmost development and betterment of a child, adoption is the best option. Whis is adoption important? Who does it affect? Adoption has an impact on more than just the adopting family. Adoption is an act that not only impacts the child who is being adopted, but their family, extended family, and community. It is also generations of the family

As times have changed so adoption during the recent years with the advent of judicial activism and proper enactment of laws, adoption is no longer seen as a tool for a couple to “normalize” marriage but to give a homeless and parentless child his/her right to have a parent and standard of living. To ease the process of adoption of orphaned children and bring in greater clarity in the process, the government of India has issued revised guidelines for adoption of children in August 2015. In consonance with the provisions of the constitution and international commitments the Indian government formulated national policy on children, enacted juvenile justice act and ratified the UN convention on the rights of the child and the nation plan of action on children to ensure that childhood is protected against exploitation and against moral and

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material abandonment.<sup>3</sup>

## II. RESULT AND DISCUSSION

In India, the adoption process is governed by three distinct legal systems: the Guardians and Wards Act of 1890, Hindu Law, and Muslim Law.

Adoption is a legal attachment of a kid that falls within the purview of many personal laws in India. The Guardian and Wards Act of 1890 only requires groups, such as Muslims, Christians, and Parsis, to appear in court. Only one kid may be placed in foster care.

Once a minor, or when he or she turns 18 years old, a child is free to sever all ties. Such a child also has no legal claim to an inheritance. Let's examine the adoption rules in India under several personal laws:

### Stakeholders in adoption process

1. Central Adoption Resource Authority (CARA) - CARA ensures smooth functioning of the adoption process from time to time, issues Adoption Guidelines laying down procedures and processes to be followed by different stakeholders of the adoption programme.
2. State Adoption Resource Agency (SARA) - State Adoption Resource Agency acts as a nodal body within the State to promote and monitor adoption and non-institutional care in coordination with Central Adoption Resource Authority.
3. Specialised Adoption Agency (SAA) - Specialised Adoption Agency (SAA) is recognized by the State Government under sub-section 4 of section 41 of the Act for the purpose of placing children in adoption.
4. Authorised Foreign Adoption Agency (AFAA)- Authorised Foreign Adoption Agency is recognised as a foreign social or child welfare agency that is authorised by Central Adoption Resource Authority on the recommendation of the concerned Central Authority or Government Department of that country for coordinating all matters relating to adoption of an Indian child by a citizen of that country.
5. District Child Protection Unit (DCPU) - District Child Protection Unit (DCPU) means a unit set up by the State Government at district level under Section 61A of the Act. It

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<sup>3</sup> Akshita (2023) *Child adoption in India: A comprehensive study*, The Law Brigade Publishers (India). Available at: <https://thelawbrigade.com/family-law/child-adoption-in-india-a-comprehensive-study/> (Accessed: 07 December 2023).

identifies orphan, abandoned and surrendered children in the district and gets them declared legally free for adoption by Child Welfare Committee.<sup>4</sup>

### **Capacity of The Indian Male And Female Relating To Adoption**

As already discussed, there are two legislations that deal with the adoption of a child. These legislations are:

1. The Hindu Adoption and Maintenance Act, 1956 and
2. The Juvenile Justice (Care and Protection of Children) Act, 2000

Capacity of the Hindu male and females to adopt a child is discussed under section 7 and 8 of the HAMA respectively.

#### **Hindu Male**

**Under Section 7 of HAMA, following conditions are to be fulfilled so as to allow a Hindu male to adopt a child:**

1. He is a major
2. He is of sound mind

# The person who wants to adopt a child must not suffer from idiocy or insanity.

# The person who wants to adopt a child must have the capacity to understand the provision of the Act.

# A strong presumption regarding favouring of mind is there.

# A person is said to be a person of sound mind if such person is deaf and dumb but possessed with the capacity of expressing themselves through gestures or signs.

3. As per the declaration of the competent court, he shall not adopt any child if he has a wife living at the time, except with her consent unless and until the wife has renounced the world or her Hindu religion or has become unsound mind.

# The consent is not necessary in case of divorce but such consent is mandatory in case of judicial separation.

# Prior to the civil adoption, the consent must be obtained and not later on where the proviso is disregarded adoption is not valid.

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<sup>4</sup> *Overview of Child Adoption process in India* (no date) *Vikaspedia*. Available at: <https://vikaspedia.in/social-welfare/women-and-child-development/child-development-1/child-adoption/overview-of-child-adoption-process-in-india> (Accessed: 07 December 2023).

4. At the time of adoption, if a person has more than one wife, it is necessary to take the consent of all wives.

In the case of **Bhooloram & Ors.v. Ramlal & Ors**, (AIR 1989 MP 198)<sup>5</sup> a question was raised before the court whether it is necessary to take the consent of all wives, if a person has more than one wife living at the time of adoption?

It was held by the court that if a wife has absconded to any unknown place, she cannot be construed as dead unless the ingredients of section 7 of the Act are complied with.

### **Hindu Female**

**Section 8 of the HAMA enables the wife to adopt a child by fulfilling the following conditions:**

1. She is a major

# A woman gets the capacity to adopt a child even if she is herself unmarried after she has completed the age of eighteen years.

# She is of sound mind.

# She is unmarried or in case she is married, her marriage has been dissolved or her husband is dead or has renounced the world or has been declared as incompetent by the competent court.

### **The 1980 Guardian and Ward Act**

Islamic, Christian, and Parsi personal laws and other laws in India do not recognize a full adoption. In India, there is no legal way for non-Hindus to adopt a kid; instead, they are only able to take on a “guardianship” under the 1980 Guardian and Ward Act.

Guardianship, however, does not grant the same status as being a biological kid. Contrary to what was previously said, an adopted kid does not have a legal right to inherit property under the Hindu Adoption and **Maintenance Act** of 1956. This Act only acknowledges the guardian-ward connection and lasts only until the ward turns 21.

### **In Parsi and Christian Law Adoption:**

Similar to Muslim Law, but Parsi Law in India does not recognize adoption. However, with the permission of the appropriate court and following the Guardian and Ward Act of 1980, Parsis can adopt a child from an orphanage.

Adoption is not acknowledged in Christianity either. Since adoption is a child’s legal affiliation,

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<sup>5</sup> AIR 1989 MP 198

it is a topic of personal law. Christians can adopt a child from an orphanage with the permission of the relevant court following the Guardian and Ward Act of 1980, just like Muslims and Parsis can. According to the Act, a Christian can only adopt a child. When the child turns 21, he or she can stay with the guardian or sever all ties. Additionally, such a child is not entitled to inherit the property by law. <sup>6</sup>

### **Capacity Under Juvenile Justice (Care and Protection of Child) Act, 2015**

If a child is an orphan, abandoned and surrendered, a couple or a single parent can adopt him or her. Where any adoption has been made under HAMA, the provisions of this act shall not apply.

As per section 38 of JJ Act, 2015 and Regulation 6 and 7 of AR, 2017, Child Welfare Committee can legally declare an OAS child free for adoption and the Children up to the age of 18 years can be adopted.

The parents who have the capacity of male/ female under JJ Act, 2015 can be commonly grouped under the umbrella term Prospective Adoptive Parent (PAP) as per section 57 of JJ Act, 2015 and Regulation 5 of AR, 2017 as:

- 1.The prospective adoptive parents (PAP) should be physically fit, financially sound, highly motivated and mentally alert in order to adopt a child so as to provide a good upbringing to him.
- 2.The consent of both the spouses for the adoption shall be required in case of a couple.
- 3.Subject to the fulfilment of the criteria, a single or divorced person can also adopt in accordance with the provisions of CARA.
- 4.A single male is not eligible to adopt a girl child.
- 5.Only when the couple in a stable marital relationship for at least two years, a child can be given in adoption.

After all the above mentioned requirements are fulfilled, the requisite documents are submitted and the Adoption order has been obtained from the court, the adoption will be completed in consonance with the procedures described under Section 61 of the JJ Act, 2015.

### **Can Homosexual Couples Adopt in India?**

The legal framework for adoption in India is regulated by the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Guidelines Governing Adoption of Children, 2015. The Act aims to ensure that every child in need of care and protection is provided with a safe,

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<sup>6</sup> Desk, S. (2022) *Adoption laws in India*, *Vakilsearch*. Available at: <https://vakilsearch.com/blog/adoption-laws-in-india/> (Accessed: 07 December 2023).

stable, and nurturing environment, while the guidelines provide a comprehensive framework for the adoption process. However, the current legal framework in India does not explicitly permit or prohibit homosexual couples from adopting children.

Currently, same-sex couples are not allowed to adopt children in India. The adoption laws in India only recognize heterosexual couples as eligible for adoption. The adoption process is governed by the Juvenile Justice (Care and Protection of Children) Act, 2015, which defines "couple" as a "married man and woman" who have been living together for at least two years.

However, the Supreme Court of India has acknowledged the rights of LGBTQ+ individuals and has recognized that they are entitled to equal protection under the law. In a landmark judgment in 2018, the court ruled that the right to sexual orientation is an integral part of the right to privacy and dignity guaranteed by the Indian Constitution. This ruling paved the way for the decriminalization of homosexuality in India.<sup>7</sup>

- ***Shabnam Hashmi V. Union of India***

In this case, religion was considered as no bar for adoption. It is a very important case when it comes to adoption. In this situation, the petitioner was a Muslim who had embraced a young girl when she was a little girl. She requested recognition of the right of an individual belonging to any religion to adopt a child because the Muslim law did not allow adoption. A three-judge bench of the Supreme Court comprising of P Sathasivam CJI, Ranjan Gogoi and Shiva Kirti Sing J.J decided this case which dealt with the right to adoption by virtue of the juvenile justice Act, 2000, the Rules of 2007 and the CARA guidelines. The All-India Muslim Personal Law Board asserted that adoption was only one of the techniques envisaged under the JJ Act, 2000 and Islamic Law did not recognize the Adoption idea. They objected to Thai Islam not recognizing adoption, but rather acknowledging Kafala's notion that was comparable to adoption. The Supreme Court ruled that the JJ Act was an enabling law and seeks to achieve a Uniform Civil Code objective. Thus, it was held that any individual belonging to any religion could adopt a mies-framed kid. It hesitated but acknowledged the statutory right to adopt on the point of giving Adoption the status of a fundamental right. (AIR 2014 SC 1281)<sup>8</sup>

### III. CONCLUSION

There is a tremendous improvement in the adoption laws for Hindu and so the position of women in the society. But in case of Muslims, just because of lack of uniform civil code on

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<sup>7</sup> *Adoption laws in India* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-721-adoption-laws-in-india.html> (Accessed: 07 December 2023).

<sup>8</sup> AIR 2014 SC 1281

adoption, they cannot legally adopt a child. Only by enacting uniform civil code, other religions in India will be allowed to adopt a child legally and it will further help to improve the health of a childless parents. The adopted child will get proper care and protection and will have a bright future. No doubt, this is a complex process but if such thing is implemented, every parentless child will go to school and will have a life which he would have never dreamt of.

As of now, the adoption laws in India only allow married couples to adopt a child, regardless of their sexual orientation. This means that single individuals, including single homosexuals, are not permitted to adopt a child in India.

However, some homosexual individuals have found a way around this restriction by adopting as a single parent, as single individuals are legally permitted to adopt a child in India. For instance, in 2016, a homosexual man in Mumbai adopted a child as a single parent, becoming one of the first single homosexual men to legally adopt a child in India.

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