



An Overview of Child Adoption Laws in India

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ABSTRACT

There is no uniform law applicable equally to all sections of society as regards adoption in India. Lack of such uniform Law created different approaches for different religions which resulted in several hardships in adoption. Hindu Adoption and Maintenance Act (HAMA) of 1956 allow only Hindus to adopt. Muslim, Parsis, Christians and Jews can only become legal guardians under Guardianship and Wards Act (GAWA) of 1890. Juvenile Justice Amendment act of 2006 allows non Hindus to adopt but there has to be more clarity about procedures and information how the law should be applied. Elaborate guidelines had been laid by Supreme Court to protect the interest of the child with regards to adoption. CARA is designated as the Central Authority to deal with inter-country adoptions by Government of India in 2003. CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies.

KEYWORDS : Adoption, Cara, SC, Guidelines

Parenting a child is to go through once again the life of the child without building up the unconscious. This is a great blessing. This blessing is much more when you choose to parent a child who needs parents.

Adoption means 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 the rights, privileges and responsibilities that are attached with the relationship.

Adoption Laws in India

There is no uniform Adoption Law in India. Hindu Adoption and Maintenance Act (HAMA) of 1956 allow only Hindus to adopt. Muslim, Parsis, Christians and Jews can only become legal guardians under Guardianship and Wards Act (GAWA) of 1890 which does not give any security to either the child or to the adoptive parents since guardianship can be challenged. Guardianship expires once the child attains age of 18 years. Religious Minorities cannot adopt legally in country, but anyone from outside India can take Indian Children under GAWA and convert their guardianship into adoption under the laws of their respective countries.

Hindu Adoption and Maintenance Act (HAMA) of 1956

Hindu adoption and Maintenance Act of 1956 provides for the adoption of Hindu Children's only.

- This act is applicable to any person who is a Hindu inclusive of Buddhism, Jainism and Sikhism.
- Act does not apply to Muslims, Christians, Parsis and Jews
- Hindu wife does not have right of adoption. She has no right to adopt during her husband's life time even with his consent.
- Hindu wife can adopt only after the death of Husband or if her marriage is dissolved or if the husband has renounced the world or if husband has ceased to be Hindu or if the husband is the person of unsound mind.
- Hindu husband can adopt with the consent of his wife.
- No Hindu can adopt a son or daughter if they already have a child of that sex.
- There should be age difference of 21 years between adoptive parents and adopted child whenever they are of opposite sex.
- All rights of biological parents should be replaced to the adoptive parents
- Adopted child has right of collateral succession both on his adoptive mothers side and adoptive Fathers side .

The Guardians and Wards Act:

Personal laws of Muslims, Christians, Parsis and Jews do not recognise complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, the people belonging to these religions who are desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardians and Wards Act, 1890. The statute does not deal with adoption as such

but mainly with guardianship. The process makes the child a ward, not an adopted child. Under this law, when children turn 21 years of age, they no longer remain wards and assume individual identities. They do not have an automatic right of inheritance. Adoptive parents have to leave whatever they wish to bequeath to their children through a will, which can be contested by any 'blood' relative.

The aforesaid enactments remain silent about the orphan, abandoned and surrendered children. There was no codified legislation dealing with the adoption of the children of these categories. As a result, several misconceptions or irregularities appeared in respect of the custody, guardianship or adoption of these types of children, which were prejudicial to the interest of the children.

Juvenile Justice (care and Protection of children) Act, 2000

The Juvenile Justice Act Provides for the adoption of abandoned and abused children by people of all communities.

Sec 41 (3) of the JJA states that Juvenile justice boards shall be empowered to give children in adoption implying that adoptive powers are not automatic and state government must empower their respective justice board but no state govt. has notified empowerment of its JJBs on adoption matters .

Juvenile Justice Amendment Act 2006

Juvenile Justice Amendment act allows non Hindus to adopt but there is hardly any awareness about 2006 amendment to Juvenile Justice Act.

Secondly, amending the act was not enough there has to be more clarity about procedures and information how the law should be applied.

Instead of getting approval of higher courts like district court and high courts (in case of the inter country adoption. Adoption should be done locally by child welfare committees and juvenile justice boards.

There are no rules or infrastructure in place nor is there clarity on related issues like if the law will apply to Muslims.

Juvenile Justice Amendment act will apply to all Indians but it is not clear how this law would override the provisions of other personal laws.

Central Adoption Resource Authority (CARA)

CARA is an autonomous body under the Ministry of Women & Child Development, Government of India. It functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter- country adoptions in ac-

cordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by Government of India in 2003. CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies.

Adoption Statistics 2001 to 2014

Year	In country Adoption	Inter country adoption
2010-2011	5693	628
2011-2012	5964	629
2012-2013	4694	308
2013-2014	3924	430
2014-2015	3988	374

Source: CARA (Central adoption resource agency)

Who Can Adopt?

1. Prospective Adoptive Parent(s) should have a reasonable and regular source of income to support the needs of the child within the family.
2. PAPs should not suffer from major health hazards that can come in the way of parenting.
3. No child shall be given to a couple unless they have 2 years of stable marriage.
4. Neither of them should have a criminal record.
5. Couples in live-in relationships cannot adopt. The law may need to be amended in this area since so many couples opt for live-in relationships even in India nowadays and they should be given the option of bringing up a child in a loving and caring home environment if they are found competent to do it.

Similarly, same sex couples are not given children in adoption. This may also need to change if the law has to keep pace with the changing patterns of society and if we wish to call ourselves a broad minded and aware nation.

6. Composite age should not exceed 90 years for adopting children in the age group of 0-3. The individual age of the PAPs should not be less than 25 years and more than 50 years. To adopt children above three years of age, the maximum composite age of the PAPs should be 105 years wherein the individual age of the PAPs should not be less than 25 years and more than 55 years.
7. A single parent can also adopt. However, a single or unmarried male person is not permitted to adopt a girl child. The law is discriminatory against men in this regard. While the possibility of abuse of a girl child by a male may seem something to be protected against, there should be no general rule that single men cannot make good fathers for adopted girls.
8. Age difference between single PAP(s) and adopted child should be at least 21 years if they are of opposite sexes.
9. A single parent should be at least 30 years of age and upto 45 years to adopt a child in the age group of 0-3. The maximum age for adopting a child older than 3 years is 50.
10. Single parent should have additional family support.
11. Older couples can adopt an older child.

From where you can adopt?

- # RIPA (Recognised Indian Placement Agencies)
- # ShishuGrehas getting grant-in-aid from Central Government
- # LAPAs (Licensed Adoption Placement Agencies by respective State Governments)
- # Adoption Coordinating Agencies and State Adoption Cells may also be contacted

Procedure for Adoption

1. Prospective Parents should register with the local Licensed Adoption Agency or Adoption Coordinating Agency or State Adoption Cell. Interest of the PAP(s) in adoption is ascertained at this stage.
2. A home study of the Prospective Adoptive Parents is conducted by a social worker of the Agency.
3. After initial survey, PAP(s) submit documents related to their financial status and health status to the agency.
4. A child is then shown to the parents.
5. A social worker tries to place the child according to the expectations of the parents.
6. After acceptance, the child is placed with the family. Meanwhile the Agency files a petition for obtaining necessary orders under the relevant Act.
7. Fees, as prescribed by Government, will be charged, by the licensed agency for maintenance and legal costs.
8. The above process is completed within 6-8 weeks once the child has been matched with the family. There are regular follow-up visits and post-adoption counseling by the social worker till the child adjusts in his or her new environment.

Children who can be adopted

1. He or she maybe a child relinquished by his or her parents or guardians.
2. He or she maybe a child found abandoned. Such a child must be referred to the Child Welfare Committee through the Police. Child Welfare Committee has the sole authority to declare a child fit for adoption under The Juvenile Justice Act, 2000

Lakshmikanth Pandey v Union Of India (AIR 1984 SC 480)

SC held that since there is no Statutory enactment in our country providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to the provisions of Guardians and wards act 1890 for the purpose of facilitating such adoption.

SC also held that if it is not possible to provide children in India decent family life such as Nutritive food, Health care and education and lead a life of a basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption in foreign parents. Such adoption would be quite consistent with our National Policy on children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned to lead a Healthy life, without privation and suffering arising from Poverty, ignorance, Malnutrition and Lack of sanitation and Free from neglect and exploitation, where they would be able to release full potential of growth.

Concluding Remark

Children's constitutes a special group who need special care and protection. Unfortunately for one reason or another, they suffer in various ways. In India millions of children are bound to live the life of orphanage and destitute. Today when any child is adopted we are proud of giving a decent homely life to the child. But in the absence of the common adoption code for all community members, we cannot hope the expected results. So now it is a time to reassess our laws and regulations that deal with cases of Intra country and Inter country adoptions. Government cannot try and plug loopholes in one act by amending another. Adoption law in India needs an amendment to bring in greater uniformity for all religions but it needs to be done more systematically and not just by amending Juvenile Justice act.

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