



## Revitalizing adoption laws in India: A path to equity and progress

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### Abstract

This comprehensive research delves into India's adoption laws, spotlighting critical challenges and advocating for substantial reforms. Covering the current state of regulations, in-country and international adoption processes, legal eligibility criteria, and the need for uniformity, the study explores the complex landscape. Major challenges include a prolonged adoption process, illegal practices, child returns, and biases against disabilities. Proposed reforms prioritize children, strengthen laws, establish post-adoption services, raise awareness, and simplify processes. The call for a uniform civil code for adoption laws underscores the need for consistency. The study concludes by emphasizing the imperative nature of reforms to ensure the welfare of working children and the efficiency of adoption practices.

**Keywords:** Adoption laws, Indian regulations, challenges, reforms, uniform civil code, working children, legal eligibility, inclusivity, awareness, adoption processes

### Introduction

Adoption laws in India play a crucial role in ensuring the well-being and protection of children who are in need of permanent homes. However, there is a need for significant changes and reforms in these laws to better address the current challenges and ensure a smooth adoption process. "Working as laborers, children are deprived of their childhood, their dignity, growth, and physical and mental well-being. According to the Census of 2011, there are 4.35 million working children between the age of 5-14 in India". These statistics highlight the urgent need for reforms in adoption laws to provide these working children with a chance at a better life through adoption. The current adoption laws in India need to be revised and updated to address the issues faced by working children, who are deprived of their childhood, education, and basic rights. Additionally, there is a need for a more efficient and streamlined adoption process in India. This would ensure that children in need of adoption can find loving and nurturing families more quickly, reducing the time they spend in institutional care. Furthermore, the adoption laws should also focus on promoting and facilitating adoption by single parents, LGBTQ+ individuals and couples, and non-resident Indians.

### The Current State of Indian Adoption Regulations

The legal framework governing the process of adopting a child in India comprises several legislations delineating rules and regulations. These statutes include:

- Hindu Adoption and Maintenance Act, 1956<sup>[1]</sup>
- Juvenile Justice (Care & Protection of Children) Act, 2015<sup>[2]</sup>
- Model JJ Rules, 2016.
- Adoption Regulations, 2017
- Guardianship and Wards Act, 1890 (GAWA)<sup>[3]</sup>

### Secular Adoption in India

India's legal framework for adoption operates on a secular principle, governed primarily by the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), along with its associated regulations. While personal laws like the

Hindu Adoptions and Maintenance Act permit adoption within specific communities, the JJ Act offers a broader, religion-neutral approach catering to all prospective parents and adoptable children.

The JJ Act encompasses various scenarios, addressing the needs of both "children in conflict with the law" and "children in need of care and protection." The latter category includes adoptable children. The Act defines adoption as a permanent process where the adopted child severs ties with their biological family and becomes a legal child of the adoptive parents, enjoying all associated rights and responsibilities.

Adoption procedures are meticulously outlined, covering both domestic and international placements. District Child Welfare Committees (CWCs) play a crucial role in declaring children legally free for adoption after thorough inquiries. Prospective adoptive parents (PAPs) approach Specialized Adoption Agencies (SAAs) who conduct home studies to assess their suitability. If deemed eligible, they are matched with a suitable child based on child study and medical reports.

Following acceptance by the PAPs, the SAA places the child in pre-adoption foster care before seeking an adoption order from the District Magistrate. This order is granted only upon ensuring the child's welfare, considering their wishes (if age-appropriate), and verifying the absence of any financial inducement involved<sup>[4]</sup>.

### Other statutes

India's adoption landscape comprises two primary statutes: the Hindu Adoption and Maintenance Act (HAMA) of 1956<sup>[5]</sup> and the Guardians and Wards Act (GAWA) of 1890<sup>[6]</sup>. Each caters to distinct religious communities and offers varying legal nuances<sup>[7]</sup>.

For Hindus, Jains, Buddhists, and Sikhs, HAMA governs adoption. It facilitates irrevocable adoption, granting the adopted child full legal status akin to a biological child, including inheritance rights. However, restrictions exist to prevent same-sex adoptions if the family already has a child of that sex.

Individuals belonging to other religious communities, such as Christians, Muslims, Parsis, and Jews, rely on GAWA for child custody. This act establishes a guardian-ward relationship, which lacks the comprehensive legal standing and inheritance rights associated with HAMA adoptions. Upon reaching adulthood (21 years), the ward gains independence and lacks automatic inheritance rights, requiring adoptive parents to bequeath assets through a will, potentially vulnerable to contestation.

Until recently, a codified law addressing the adoption of orphans, abandoned, and surrendered children was absent. This lacuna led to inconsistencies and ambiguities regarding their custody, guardianship, and adoption, often disadvantaging these children.

Recent developments aim to address these shortcomings. The Juvenile Justice (Care and Protection of Children) Act, 2015<sup>[8]</sup>, and the Adoption Regulations, 2017, now provide a streamlined framework for adopting these children, ensuring their well-being and legal rights.

### **In-Country Adoption Process in India: A Step-by-Step Guide**

The child must be orphaned, abandoned, or surrendered, and must be legally free for adoption.

1. Prospective adoptive parents are required to register online for child adoption in the Child Adoption Resource Information and Guidance System (CARINGS) in India, submitting the necessary documents.
2. Children's profiles are shared with prospective parents based on their preferences, and the chosen profile must be reserved within 48 hours.
3. Adoptive parents in India need to approach the Specialised Adoption Agency (SAA), which files an application before the court of jurisdiction.
4. The court verifies that the adoption aligns with Section 60 of the Juvenile Justice (Care and Protection of Children) Act (JJ Act).
5. As the adoption process in India is non-adversarial, there is no opposing party to contest during the arguments of the Specialised Adoption Agency in the court of law.
6. SAA receives a certified copy of the adoption order from the court and forwards it to the adoptive parents.
7. SAA then applies to the authorities for issuing birth certificates containing the names of the adoptive parents and the date of birth as per adoption records.
8. The child is officially adopted by the prospective parents. The authorities prepare follow-up reports on a six-monthly basis for two years, and any relocation of adoptive parents during this period needs to be conveyed to the authorities.

### **Legal Procedures for Adoption in India by NRI/OCI/Foreign Nationals**

Adopting a child in India as a Non-Resident Indian (NRI), Overseas Citizen of India (OCI), or foreign citizen is facilitated by legal processes aligned with the welfare of the child. Unlike restrictive laws, these individuals enjoy equal priority with Indian citizens for adopting orphaned, abandoned, or surrendered children. The following legal steps must be adhered to:

1. Non-Resident Indian, Overseas Citizen of India, or foreign adoptive parents residing in a Hague Adoption

Convention signatory country approach the Authorised Foreign Adoption Agency or Central Authority. In the absence of such offices, government departments or Indian diplomatic missions can be contacted.

2. Application for the preparation of a Home Study Report and registration under the Child Adoption Resource Information and Guidance System is submitted, along with required documents.
3. After evaluating the eligibility and suitability of adoptive parents, the application is forwarded to the Specialised Adoption Agency, where legally free children are available for adoption.
4. Profiles of two shortlisted children, matching adoptive parents' preferences, are forwarded to the relevant authority through which the application was submitted. The profiles are then sent to the adoptive parents according to local laws.
5. Prospective parents must reserve one of the profiles within 96 hours to avoid withdrawal. If reserved, adoptive parents sign the Child Study Report and Medical Examination Report within 30 days, with an option to request a visit.
6. Acceptance of a reserved child must occur within 30 days through relevant authorities. Failure to do so results in withdrawal, allowing the profile to be reconsidered if the Home Study Report remains valid.
7. Continuing the adoption process, the Home Study Report is notarized, apostilled by the competent authority, and obtains a No-Objection Certificate (NOC) from relevant authorities, along with a letter of approval from authorities in the receiving country.
8. While awaiting court orders, the child may be placed in re-adoption foster care in India temporarily after receiving the NOC.
9. Upon the issuance of an adoption order from the competent court, the child receives a passport and VISA, finalizing the custody transfer to the adoptive parents.

### **Legal Eligibility Criteria for Adoption in India**

The current eligibility criteria for prospective adoptive parents (PAPs) in India are delineated in Section 57 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)<sup>[9]</sup>, and Regulation 5 of the Adoption Regulations, 2022. However, recent discussions have emerged around these criteria, highlighting potential limitations.

In June 2022, a circular issued by the Central Adoption Resource Authority (CARA) has drawn attention and debate by prohibiting single PAPs engaged in live-in relationships from adopting. This decision, referencing Regulation 5(3) of the 2017 Adoption Regulations, mandates a minimum stable marital relationship of two years for couples seeking adoption, rendering non-marital partnerships ineligible, a matter of contention for some stakeholders.

Additionally, the 2022 Regulations introduce restrictions perceived by some as excessively stringent:

- Section 57(4) and Regulation 5(2)(c) explicitly prohibit single men from adopting girl children, prompting concerns about potential gender bias.
- Regulation 5(7) stipulates that couples with two or more biological children are generally ineligible to adopt, except in special cases. This rule has the potential to exclude otherwise qualified parents solely based on family size.

The ongoing debate regarding these criteria revolves around striking a balance between ensuring the welfare of children and promoting fair and inclusive adoption practices. While concerns have been raised about the appropriateness of certain situations, such as live-in relationships, opponents argue that blanket restrictions may inadvertently exclude deserving parents without serving a legitimate purpose.

### Who Cannot Adopt a Child in India?

Adoption in India is subject to certain legal restrictions to ensure the well-being of the child. The following individuals are ineligible to adopt:

1. Individuals with life-threatening medical conditions.
2. Persons who are physically, mentally, emotionally, or financially unstable.
3. Married couples with less than two years of stable marriage.
4. Married couples where one spouse does not consent to child adoption.
5. Single men are prohibited from adopting female children.
6. Couples with three or more children cannot adopt a normal child.

### Age Limit for Adoption in India

Adoptive parents must adhere to specific age criteria:

1. There must be a minimum age gap of 25 years between the adoptive child and parents.
2. For children up to 4 years, a single parent should not exceed 45 years, while the composite age of a married couple must not exceed 90 years.
3. For children aged 4-8, a single parent should not be more than 50 years old, and the composite age of a married couple must not exceed 100 years.
4. For children aged 8-18, a single parent should not exceed 55 years, and the composite age of a married couple must not exceed 110 years.
5. The 25-year age gap requirement and other criteria do not apply to relative adoptions or adoptions by step-parents.

### Overhauling Adoption Practices in India

#### Major Challenges

1. **Lengthy and Complex Adoption Process:** Adoption in India is plagued by a prolonged and bureaucratic process. Over 30,000 hopeful parents await adoption, while only 2,131 children are legally available. Two-thirds of these children have special needs, and the adoption process takes an average of three years.
2. **Illegal and Unregulated Practices:** Troubling cases of illicit adoption practices, including trafficking and sale of babies. Unregistered adoption agencies exploit vulnerable children and biological parents. A notable example involves accusations against Mother Teresa's Missionaries of Charity in 2018 related to a "baby-selling racket."
3. **Returning Children after Adoption:** A concerning pattern of adoptive parents returning children, with over 1,100 cases reported by CARA in 2020. Adopted children are returned to childcare institutions within the last five years.

4. **Disability and Adoption:** Children with disabilities face challenges in adoption, with only 1% adopted in 2018-19. The adoption of children with special needs shows a declining trend <sup>[10]</sup>.

### Suggested Reforms

1. **Prioritizing Children:** CARA and the ministry should prioritize overlooked and at-risk children for adoption. Emphasis on providing a family, family rights, and overall welfare for the adopted child.
2. **Strengthening Adoption Laws:** India lacks a universal adoption law, necessitating reconsideration and modernization. Reforms should focus on enhancing transparency, simplifying paperwork, and minimizing delays.
3. **Post-Adoption Services:** Establishing comprehensive post-adoption support services is crucial. Services should include counseling, educational assistance, healthcare access, and guidance for both adoptive parents and adopted children.
4. **Awareness and Adoption:** Raising awareness about adoption as a viable means of forming families is vital. Public education on the advantages, processes, and legal facets of adoption is crucial to foster positive perspectives.
5. **Simplifying Adoption Processes:** A thorough review of regulations governing the adoption process is required. Collaboration with experts to gather feedback and address practical challenges faced by prospective parents is essential for simplifying the adoption process.

### Towards Uniformity: Advocating a Single Adoption Law in India

In India, while laws concerning crime, punishment, commerce, contracts, and various affairs are uniform for all citizens, there is a conspicuous absence of consistent laws pertaining to family matters. The lack of uniformity in family laws, as evidenced by case laws and authorities, has prompted persistent calls for standardized regulations to ensure equal treatment of all citizens. This discrepancy is notably pronounced in adoption laws, with distinct provisions for Hindus and non-Hindus, leading to emotional challenges for non-Hindu parents seeking legal adoption. The current legal framework, characterized by the Hindu Adoptions and Maintenance Act, 1956, fails to provide a consistent adoption code for all religions. This inconsistency creates barriers for Muslim and Christian Indians, preventing them from legally adopting children and officially claiming parenthood. The resultant demand is for the implementation of a uniform civil code in adoption laws, aligning with the principles of State policy and India's commitment to the Convention on the Rights of a Child (CRC). Such uniformity is seen as essential to enhance and protect the rights of adoptive children.

Implementing a uniform civil code in adoption laws is not envisioned as infringing upon the fundamental right to religion. The proposal aligns with the directive principles of State policy, which mandate the state to bring about uniformity in laws, emphasizing the CRC. Recognizing adoption as a significant aspect of Hinduism, the Hindu

Adoptions and Maintenance Act, 1956, highlights the inconsistency that bars Muslim and Christian Indians from legal adoption due to the absence of a uniform adoption code. A uniform civil code, if established, would extend the privilege of adoption to women of all religions, akin to Hindu women, thereby advancing the overall status of Indian women in social life.

To avoid conflict, individuals should have the option to opt-out of religious-based classification within the proposed uniform civil code. In case the central government is hesitant to proceed, individual states, following the example of Goa, are urged to take the initiative. The call for a uniform civil code aligns with the vision of a secular India, emphasizing the need for consistency in adoption laws.

Moreover, there is a pressing need to address gender bias within adoption laws. Existing disparate rules based on gender must be rectified to grant equal rights to both men and women in the adoption process, ensuring a fair and non-discriminatory legal framework for adoptive parents.

### Way Forward: Reforming Adoption Laws in India

1. Introduce specific legal provisions addressing the needs and rights of working children, prioritizing their protection and ensuring access to education.
2. Streamline and enhance the adoption process, making it more efficient to reduce the duration children spend in institutional care.
3. Permit and promote adoption by single parents, LGBTQ+ individuals and couples, as well as non-resident Indians. This aims to diversify prospective adoptive parents, offering every child the opportunity for a loving and supportive family.
4. Implement a comprehensive and standardized system for monitoring and evaluating adoption processes. This system should ensure transparency, accountability, and, most importantly, prioritize the best interest of the child. This point aligns with the need for post-adoption services mentioned earlier.
5. Initiate awareness and educational programs to dispel myths and misconceptions surrounding adoption. The goal is to foster a more positive culture around adoption in society, encouraging prospective parents and dispelling any unwarranted concerns.

### Conclusion

The existing adoption laws in India demand substantial reform to address the specific needs and rights of working children. Simultaneously, there is a crucial need for a more efficient and inclusive adoption process. Reforms should embrace inclusivity by allowing adoption by a diverse range of parents and implementing a robust monitoring and evaluation system to safeguard the welfare of adopted children. Additionally, awareness initiatives are imperative to reshape societal perceptions and promote a positive environment for adoption.

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