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## Adoption and Parental Rights: Legal Challenges & Rewards of Adopting a Child

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*Adoption is a process established by law that builds a parent-child relationship between individuals not related genetically. In India, it is governed by various laws, including the Hindu Adoption and Maintenance Act, 1956, for Hindus, the Juvenile Justice (Care and Protection of Children) Act, 2015, for others, and the Guardians and Wards Act, 1890, as applicable. The Central Adoption Resource Authority plays a vital role in regulating and supervising the adoption procedure in India. It ensures transparency and compliance with the law. Adoptive parents are furnished with specific eligibility criteria by their residency and nationality, including Non-Resident Indians, Overseas Citizens of India, and foreigners. The adoption procedure is time-consuming and frequently complicated, involving registration, home study, legal paperwork, and court proceedings. Legal issues, financial strains, social stigma, emotional adjustments for both parents and children, and unregulated adoption procedures are all part of this complexity. Furthermore, vague adoption rights for LGBTQIA+ individuals and the risk of revocation of adoption raise further concerns. Nevertheless, recent legal reforms such as the Juvenile Justice Amendment Act, 2021, the Adoption Regulations, 2022, and the establishment of CARINGS aim to reduce the complexity of the process by providing the facility of online registration and making the procedure transparent to the public, and protecting children's interests. Stringent legal safeguards, simple procedures, and post-adoption support can encourage adoption approachability. Ultimately, adoption recreates the family environment, identifies love and care over genetic relations.*

**Keywords:** *legal adoption, child welfare, adoption regulations, adoptive parents, parenthood, legal status.*

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## INTRODUCTION

Adoption is a beautiful way to provide a loving home to a child in need. Therefore, every parent who does not have a child has an idea of adoption. It is said that children are a form of God, and adopting any child is considered the most sacred act. Adoption means a legal proceeding that creates a parent-child relationship between persons unrelated by blood. Adoption can be both legal and illegal. However, only legal adoption will be valid as an Indian adoption. Apart from the rights and responsibilities, there are many problems and challenges that parents have to face; however, along with the problems, there are many rewards that parents get. This is what makes the adoption different from the other laws.

In India, adoption is a well-established process governed by laws and regulations, such as the Hindu Adoption and Maintenance Act 1956 for Hindus, and in other religions, adoption is done under their laws or the Juvenile Justice Act 2015.

## LEGAL FRAMEWORKS RELATING TO ADOPTION

**Hindu Adoption and Maintenance Act (HAMA) 1956:** It is a comprehensive law governing adoption in India, specifically for Hindus, Buddhists, Jains, and Sikhs. It has undergone several amendments to become child-friendly.<sup>1</sup>

**The Juvenile Justice (Care and Protection of Children) Act 2015:**<sup>2</sup> The JJ Act, 2015, regulates adoption for all Indians, including Muslims and Christians. The adoption regulations, 2017, framed under the JJ Act, 2015, provide detailed guidelines for adoption.

**Central Adoption Resource Authority (CARA):** CARA is a nodal agency for adoption in India. It regulates and monitors the adoption process in India as it maintains a database of children and prospective adoptive parents and provides guidelines, training, and support to the adoption agencies and PAPs regarding adoption. CARA oversees the accreditation of Specialised Adoption Agencies (SAAs) and regulates inter-country adoptions.

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<sup>1</sup> Hindu Adoption and Maintenance Act 1956

<sup>2</sup> The Juvenile Justice (Care and Protection of Children) Act 2015

**Guardians and Wards Act 1890:**<sup>3</sup> GAWA, 1890, is indeed one of the legal frameworks that govern adoption in India, particularly for Muslims, Christians, and Parsis. It allows persons of all other religions to adopt a child who do not have their adoption laws and to the religions that prohibit the adoption of a child.<sup>4</sup>

## ELIGIBILITY CRITERIA FOR ADOPTIVE PARENTS IN INDIA

Any Indian person, whether married or unmarried, or a resident of any other foreign country with a stable income and financial capability to provide for a child, is eligible to adopt a child, although the documentation and procedures required for both parents may differ.

**These are some categories and their eligibility to adopt a child:**

**Non-Resident Indians (NRIs):** Prospective adoptive parents (PAPs) should be at least 25 years old, and the age difference between the child and either of the adopting parents should not be less than 25 years. NRIs must prove their NRI status through documents like a passport, visa, or certificate of residency.

**Foreigners Living Abroad:** Foreign prospective adoptive parents must approach the authorised foreign adoption agency or the central authority concerned for the preparation of their home study report and registration.

**Overseas Citizens of India (OCI):** OCIs must follow the same procedures as NRIs and are treated at par with resident Indians in terms of priority for adoption.

**Foreigners Living in India:** Foreign prospective adoptive parents living in India must obtain a No Objection Certificate from their embassy or high Commission for adoption.

**Relative Adoption:** Relative adoptions must follow the guidelines set by the Central Adoption Resource Authority (CARA).

**Adoption by Step-Parents:** The stepparent must be legally married to the biological parent of the child. The stepparent must follow the legal procedures outlined by CARA.

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<sup>3</sup> Guardians and Wards Act 1890

<sup>4</sup> *Shabnam Hashmi v Union of India & Ors* (2014) 4 SCC 1

## PROCESS OF ADOPTION IN INDIA

The Central Adoption Resource Authority oversees the adoption process in India, which is governed by various laws.<sup>5</sup> The adoption procedure in India is quite lengthy and time-consuming, as the prospective adoptive parents have to undergo several stages, such as

**Registration:** First of all, adoptive parents need to register their names with the competent authority on the Central Adoption Resource Authority (CARA) website.<sup>6</sup> Registration is an essential step to begin the adoption process, and in this process, adoptive parents have to submit their details.

**Home Education and Counselling:** Throughout the process, members of the institution or organisation will visit the adoptive parents' home to conduct a home study report to assess the adoptive parents' suitability. According to CARA regulations, home education must be completed within 3 months from the date of parent registration.

**Referral to the Child:** When the child is ready for adoption, the agency must inform the parents about the child. The organisation provides parents with medical information about the child, etc. They should share all necessary information, such as allowing them to spend time with the child, to establish a good relationship between them.

**Sign-to-Document:** Once the parents are satisfied after completing all the procedures, they need to sign some documents regarding the same.

**Send the Petition:** All important documents are sent to the lawyer, who then prepares the petition to go to court. When everything is ready, the lawyer will notify the parents and ask them to sign the petition in front of a worker.

**Pre-Adoption Foster Care:** After signing the court order, parents can first take the child to the foster care centre to get a better understanding of the child's behaviour from the workers.

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<sup>5</sup> 'Procedure of Adoption in India' (*Lawpanch*, 26 May 2021) <<https://lawpanch.com/procedure-of-adoption-in-india/>> accessed 03 April 2025

<sup>6</sup> Ankita Saria, 'Child Adoption in India-Laws & Procedure' (*Finology Legal*, 07 March 2022) <<https://blog.finology.in/Legal-news/child-adoption-india>> accessed 05 April 2025

**Court Hearing:** Parents must attend a hearing conducted by the judge and the court. The judge asked the parents and said that the money should be deposited in the child's name.

**Court Decision:** When the investment receipts are presented, the judge will forward the decision to the parent. To reduce this traffic and delays in the process of adoption, several developments have been made, such as online applications and matching of the child and prospective adoptive parents etc.

## **EFFECTS OF ADOPTING A CHILD**

These effects collectively reflect the comprehensive legal changes that occur when a child is adopted under the Hindu Adoption and Maintenance Act, emphasising the intent to confer rights and duties on a biological child.

**Alteration of Legal Status:** Adoption results in a complete alteration of the legal status of the adopted child. The child is deemed to be the child of the adoptive parents, as if the child were born to them, and the adoptive parents are the same as the child's biological parents.

**Cessation of Ties with Birth Family:** Upon adoption, the adopted child ceases to be the child of their biological family. They are no longer considered a part of the birth family for legal purposes, and the original parents do not have any rights and liabilities toward the child after adoption is done.

**Succession and Inheritance:** The adopted child acquires the right to inherit the property of the adoptive family and is also considered for succession to the family estate. The child enjoys the same rights as if they were a biological child<sup>7</sup>, and they want to be able to inherit from their original parents, until and unless the law allows or special arrangements are made regarding this.

**Cessation of Rights in Birth Family:** The adopted child loses all rights in the birth family, and members of the birth family lose all rights to the adopted child. The adopted child will no longer be a legal representative of the biological parents in cases such as payments of debt, etc.

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<sup>7</sup> *Geeta Hariharan v Reserve Bank of India* (1999) 2 SCC 228

**Sapindaship and Prohibited Degrees:** The adopted child is treated as if they were born into the adoptive family to acknowledge the prohibited degrees for marriage and for determining the concept of sapinda relations.

**Change of Name:** The adopted child is entitled to take the surname or the title of the adoptive family, and the previous title of the biological family shall be replaced. Their original name might be changed in legal documentation and databases.

**Religious Status:** The adopted child's religion might change according to their adoptive family. They need to acquire the religious status of the adoptive family, and, for all religious purposes, they are acknowledged to belong to the adoptive family, but in some exceptional cases where the parenting of the adopted child is done because of the different religions of the adoptive parents, then the religious status of the child will be recognized as the same.

**Maintenance Rights:** The adopted child is entitled to the right to claim maintenance from the adoptive family and is considered the same as a biological child in matters of maintenance for that matter. Maintenance includes the responsibility for the child's welfare, education, and emotional development. In cases of divorce, the adopted child has right to maintenance remains unaffected.

## RECENT DEVELOPMENTS RELATING TO ADOPTION

**Juvenile Justice (Care and Protection of Children) Amendment Act 2021:** This amendment is made to make the JJ Act child-friendly. This change in the act authorises District Magistrates and Additional District Magistrates to issue adoption orders under Section 61 of the JJ Act. This change aims to streamline the adoption process as the JJ Act takes precedence over personal laws when determining the best interests of the child in adoption<sup>8</sup> and reduce delays. It has widened the ambit of children, and it is more closely concerned with the rehabilitation and reintegration of children into society from child institutions in a positive way, rather than making it as a punishment for children.

**The Adoption Regulations 2022:** The Ministry of Women and Child Development introduced these regulations to ensure the best interests of the child by making the procedure

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<sup>8</sup> *N. Faritha Begam v The Joint Registrar No. 2* (2022) WP No 34069/2014

easy and simple. District Magistrates (DMs) and Child Welfare Committees are now directed to upload adoption orders and case status in real-time so that there will be accuracy in data to monitor the overall adoptions in the period.

**Retrospective Effect:** The Delhi High Court upheld the retrospective application of Regulation 2022, finding that the policy change was not arbitrary and that the right to adopt is not a fundamental right.<sup>9</sup>CARA in 2023 made a change in the adoption regulation 2022 by applying a retrospective effect on parents having two biological children who want to adopt a normal child. Now they can adopt only a special child or a hard-to-place child.

**Carings:** The Child Adoption Resource Information and Guidance System (CARINGS) continues to play a vital role in ensuring legal compliance and protecting the rights of both children and adoptive parents. It is an online platform launched by CARA to facilitate adoptions in the country. CARINGS increases transparency by providing all the databases online available to the public, and it reduces the delays as prospective parents do not have to undergo long-term adoption procedures for application.

**Unmarried and Queer Couples:** The former CJI D.Y. Chandrachud, in the case of *Supriyo v Union of India* (same-sex marriage verdict) struck down a Central Adoption Resource Authority (CARA) regulation 5(3) that allows only married couples to adopt children and clarified that the term couple includes both married and unmarried couples, couples in live-in relationships. Queer couples also have the right to adopt a child, even though same-sex marriage is not recognized in the country, as the term couple also includes queer couples too, as per the Supreme Court of India<sup>10</sup> But a 3:2 majority on the five-judge bench upheld the existing regulations of CARA and held that the onus lies with the legislature to deliberate and enact reforms in this matter.

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<sup>9</sup> *Debarati Nandee v Union of India & Anr* (2023) CONT.CAS(C) 563/2023

<sup>10</sup> 'Unmarried couples, including queer couples can jointly adopt child' *The Economic Times* (18 October 2023) <<https://economictimes.indiatimes.com/news/india/unmarried-couples-including-queer-couples-can-jointly-adopt-child-cji-in-minority-verdict/articleshow/104505574.cms?from=mdr>> accessed 05 April 2025

## CHALLENGES OF ADOPTING A CHILD IN INDIA

In India, there is a clear legal framework to adopt a child, but it comes with a lot of problems and challenges. These challenges can be in various forms, like emotional problems, bureaucratic, and cultural. Below are the main challenges of adopting a child in India:

**Legal Complexities:** Various laws are in existence for the regulation of the adoption of children. The adoption process requires court involvement to complete the adoption in a formal way, which is time-consuming, as the courts are already overburdened.

**Emotional Adjustment:** Adopting a child requires significant emotional adjustments for both the parents and the adopted child. Parents who are adopting a child have to prepare to provide a loving atmosphere while taking care of the emotional needs of the child. In some cases, they may have any trauma that still has to be healed.

**Financial Burden:** Adoption can be a tough situation for many families from an economic perspective. The parents may face financial issues because the adoption process is lengthy and requires several types of fees, as well as travel expenses in certain cases. Additionally, they must spend a significant amount of time completing the adoption process or caring for the child, which often necessitates time off from work.

**Social Problems:** Adoption in India can sometimes lead to some social difficulties, as there are social stigmas in society regarding adoption. While adopting a child, some families face judgment by their relatives or society members, particularly in rural areas. They might question the decision of the adoptive parents, which can make the adoption process stressful for both the parents and the child.

**Illegal and Unregulated Practices:** The lack of authenticity of data and unregulated adoption practices are complexities in the adoption process. One of the examples of these unregulated practices is, as in 2018, Mother Teresa's Missionaries of Charity (MoC) Ranchi branch faced allegations of a baby-selling racket.

**Returning Children after Adoption:** For various reasons, the adoptive parents return the child to the foster care homes or child care institutions, even though the law provides



adoption as an irrevocable act. In 2020, CARA reported that over 1100 children returned to child care institutions in the last five years.<sup>11</sup>

**LGBTQIA+ Community's Rights:** The existing adoption laws in India are vague and do not explicitly address the rights of LGBTQ+ individuals and couples.<sup>12</sup> This lack of clarity can lead to inconsistent application of the law and additional challenges for LGBTQ+ prospective parents.<sup>13</sup>

**Post-Adoption Support:** After the completion of the adoption process, the family may suffer from post-adoption issues like emotional adjustment, attachment issues, behaviour, etc. Some adoption agencies support even after the adoption, but post-adoption support is not provided by all agencies<sup>14</sup>. Adoptive parents may need more post-adoption support to begin a new life for the adopted child.

## REWARDS OF ADOPTING A CHILD

**Giving Love and Care:** Adoption provides a child with a loving family and a secure home, offering emotional healing to those who may have experienced neglect, abuse. Adoptive parents, in turn, receive love and affection from the child, forming a bond that brings joy and emotional connection to both. This mutual care creates the foundation for a supportive and nurturing environment where the child can begin a new chapter of life.

**Emotional Fulfilment:** Adoption rewards as having a complete family of parents and their child, and enjoying the responsibilities and joy of parenthood for the prospective adoptive parents. The void in their lives was filled by the adoption. Sometimes, for adoptive parents, the emotional fulfilment of providing a loving home to a child in need is immeasurable.

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<sup>11</sup> 'Over 1,100 adopted children returned to child care institutions in last five years' *The Hindu* (05 January 2020) <<https://www.thehindu.com/news/national/over-1100-adopted-children-returned-to-child-care-institutions-in-last-five-years/article30483915.ece>> accessed 07 April 2025

<sup>12</sup> Anna Fleck, 'Where Adoption is Illegal for LGBT+ Couples' (*Statista Infographics*, 22 June 2022) <<https://www.statista.com/chart/13179/where-adoption-is-illegal-for-lgbt-couples/>> accessed 07 April 2025

<sup>13</sup> 'Highlight the challenges associated with laws that govern adoption in India? What measures can be taken to resolve these challenges?' (*Forum IAS*) <<https://forumias.com/blog/answered-highlight-the-challenges-associated-with-laws-that-govern-adoption-in-india-what-measures-can-be-taken-to-resolve-these-challenges/>> accessed 10 April 2025

<sup>14</sup> R A Price et al., 'Genetic contributions to human fatness: an adoption study' (1987) 144(8) *The American Journal of Psychiatry* <<https://doi.org/10.1176/ajp.144.8.1003>> accessed 10 April 2025

**Positive Social Impact:** Adoption sets an example and encourages others to adopt, as it promotes awareness of the benefits of adoption. It can have an impressive effect on society and help remove stigmas in society, and help create a culture of love and joy towards each other. Also, it gives a chance to grow in a loving environment.

**Fulfilment of Parenthood:** Adoption allows individuals or couples to establish deep, lasting bonds with a child and enjoy the full experience of parenthood. However, this journey can include emotional complexities, especially as adopted children may face identity or attachment issues stemming from their past.

**Personal Growth and Learning:** Adoption gives chances to both adoptive parents and the adopted child to maintain growth in the new environment. They learn how they can take care of each other. A child adopted may come with a lot of emotional or physical needs. It means this experience may be new for the adoptive family.

**Access to Opportunity:** Adoptive families often have the resources to provide better access to healthcare, quality education, and extracurricular activities, enhancing the child's prospects.<sup>15</sup> However, disparities in adoption systems sometimes result in children from underprivileged or developing regions.

**New Vibe in the Family:** Welcoming a child into the family can bring joy, energy, and a sense of renewal to the household. The presence of the adopted child often strengthens bonds among family members and positively reshapes family dynamics. Adoption rewards in a way that makes the home a livelier and happier place.

## RECOMMENDATIONS/SUGGESTIONS FOR FUTURE REFORMS

**Simplify the Adoption Process:** The lengthy process of adoption of a child is a core problem. To limit the delays and difficulties, streamline documentation, set up specific deadlines, and develop and encourage a single-window clearance system. The adoption process should be digitised to ensure transparency, reduce delays, and make it easier for both adoptive parents and authorities. A centralised online platform for adoption applications, documentation, e-

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<sup>15</sup> Kathy Minella, 'The Benefits of adopting a child' (*Minella Law Group*, 01 April 2025) <<https://minellalawgroup.com/blog/10-benefits-of-adopting-a-child/>> accessed 11 April 2025

signature, and case monitoring could ensure speedy matching of children with prospective parents.

**Stop Illegal Activities:** Increased cases of child trafficking and illegal adoption for unlawful and immoral purposes are raising concerns. Enforcing stricter legislation to stop child trafficking and unauthorised adoptions, monitoring adoption agencies more closely, and keeping a proper database may be a reformative step to strengthen the adoption process in our country, and public awareness programs will prove as a boon in this regard.

**After-Adoption Assistance:** after adopting a child, the adoptive parents and child should be provided with various forms of assistance to ensure smooth adjustment and transformation. Providing support services such as counselling, parenting workshops, and guidance to children will encourage adoption in the country. Government-sponsored child welfare schemes to assist financially with the education, health care, and well-being of children can be provided to encourage adoption.

**The Legal System's Assistance:** To guarantee a seamless and effective adoption procedure, the creation of specialised courts, training of judges should be done, and offer adoptive families' post-adoption legal assistance for issues such as obtaining a birth certificate or passport, etc.

**Encouraging Inter-Country Adoption:** Inter-country adoption is so important for enhancing adoption complexity, but it also poses a risk for child trafficking for parents. The government should ensure that transparency is maintained at every step of the process of adoption process. India also needs to collaborate with other countries to make adoption laws easier.

## CONCLUSION

Adoption challenges traditional notions of family structure and promotes a legal and social framework grounded in inclusivity, equality, and modern societal values. As a legally regulated process, adoption involves detailed procedures, including eligibility assessments, background checks, and home studies, to ensure that the best interests of the child are prioritised. While these steps may appear burdensome or time-consuming, they are crucial for safeguarding the welfare of vulnerable children and maintaining the integrity of the adoptive process. However, current challenges such as bureaucratic delays, lack of uniform

adoption laws across jurisdictions, and limited post-adoption support services call for meaningful legal reform. Streamlining procedures through digitisation, standardising adoption laws, and expanding psychological support for adoptive families can address these systemic issues.

Empirical studies also show that well-regulated adoption positively impacts child development and reduces long-term societal costs associated with institutional care. Adoption is more than a private act; it is a public commitment to the principle that every child deserves a loving, secure, and permanent home. Ultimately, it reinforces the legal and moral truth that the essence of family lies not in biology but in enduring care, protection, and love.