

# Need to Understand Adoption-Its ways and Hurdles

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**Abstract:** *Adoption as a construction of a family has drawn worldwide research since four decades. India as one of the ancient countries in the Asian continent has gone through major changes in the field of adoption. From an informally adopting male child for performing last rites after the death of the adopted parents, India has shown progressive changes. During the social reform in the 1950's, India focused on finding home for abandoned, destitute, illegitimate and surrendered children. These children were institutionalized and eventually placed for domestic and inter-country adoption. The domestic adoption in India gained its momentum only in late 1980's. Since then, important changes have happened in the field of adoption.*

## 1. Adoption

Adoption conjures a mix of emotions. For some, it may seem as a quick remedy to bring a child into the house, and for others, an act of nobility. Some think of adoption as an opportunity to complete the family without getting into the travails of pregnancy yet again. Whatever be the driver, most parents carry an air of caution, loss, suspicion, grief and surprise around adoption. Unlike law, religion, science, taxation, relations, marriage, careers and whole lot of domains prescribed at school and college education, adoption has completely escaped the attention of our educators. It is not part of any curriculum; there are no festivals dedicated to it; it is not enshrined in any political party's manifesto and there are hardly any family or public conversations around it. The International community as well as the Indian Legal System has recognized 'adoption' as one of the best and appropriate forms of alternative family care.

Adoption is not just the last recourse of couples affected by infertility. Families are increasingly choosing to adopt a child, irrespective of their need or ability to reproduce one. Many single parents also opt for adoption. The law does not differentiate between rural, urban, rich, poor, single, married or divorced status of the parent. It does not discriminate on the basis of religion or social status either. We don't have to prove if we are infertile, and we don't have to give a reason as to why we want to adopt.

## 2. Adoption of Children in India

"Adoption is the establishment of a parent-child relationship through a legal and social process other than the birth process. It is a process by which a child of one set of parents becomes the child of another set of parents or parent. Indian adoption policies are sculpted, by several years of on-going efforts by social reform lobbyists and child welfare organizations. This is evident from the laws and policies set forth by the Government of India. A more recent policy in the Chapter IV of the Juvenile Justice Act of 2000 implemented the concept of secular adoption whereby, without any reference to the community or religious persuasions of the parents or the child concerned, a right appears to be granted to all citizens to adopt, and all children to be adopted. While this was a positive change, this concept still did not give the legal and legitimate status to the child equal to that of a biological, legitimate child. Later, the Juvenile Justice (Care and Protection of Children Act of 2015) cleared the issue, where the adoption was defined as

the process through which the adopted child is permanently separated from the biological parents and becomes the legitimate child of the adoptive parents with all rights, privileges and responsibilities that are attached to the relationship. This act introduced the expression child in need of care and protection. Through this paper, my purpose is to address the past, present, and the future of adoption in India. For that, one should first understand more about the historical perspective of Indian adoption.

### Emergence of Inter-country adoption

Before 1970 not many Indians wanted to adopt an unrelated, child whose parentage was unknown. The parents who adopted kept it as a family secret due to the social stigma involved in barrenness and adopting an unrelated child. (Mahtani, 1994). This prejudice and social stigma in the Indian family and social system created an opportunity for inter-country adoption to gain momentum in the 1960's. Financial affordability by foreign adoptive parents made inter-country adoption an attractive proposal to the Indian adoption agencies. Absence of a uniform law in India and caste prejudices made inter-country adoption more popular than domestic adoption (Nilima Mehta, personal communication, October 31 2009). For nearly two decades from the 1960's to the mid 1980's there was a progressive increase in inter-country adoptions and they were not reliably documented (Hoksbergen, 1986).

The Hague convention of 1993 operating through a system of national Central Authorities reinforced the UN Convention on the Rights of the Child (Art. 21). This convention was fruitful for creating international laws in protection of children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. India signed this Hague convention on inter-country adoption in 2003 and ratified the same with a view to strengthening International Cooperation and Protection of Indian Children placed in inter-country adoption (Bhargava, 2006).

To streamline the process of inter-country adoption, the Central Adoption Resource Agency (CARA) was formed in India in 1986. The primary role of CARA is to monitor and regulate the entire adoption process (Ananthalakshmi, et al., 2001). The guidelines developed by CARA for inter-country adoption has led to more transparency. A scrutinizing body was identified for every region to assist the court in determining that 'sufficient opportunity' was given to every child to find a home within India.

### Ways of Adoption

India has two perfectly legal options of adopting a child. The old method was to adopt a child under the Hindu Adoptions and Maintenance Act (HAMA), 1956, where only Hindus could adopt a child. The second option is to register with the Central Adoption Resource Authority (CARA) on their website [www.cara.nic.in](http://www.cara.nic.in), where the entire process is online.

### Hindu Adoption and Maintenance Act 1956 (HAMA)

It is the only statute in force governing adoption of children in India. Unfortunately, its ambit is confined to Hindus (Section 2, The HAM Act, 1956). Hindu Adoption and Maintenance Act amended the pristine law of adoption among Hindus (also includes Sikhs, Jains and Buddhists) and unified the customary forms of adoptions into a single form. The Act recognizes even a private act between the natural and adoptive parents concerning adoption and except in giving the child for adoption by a person other than the natural guardian, even the scrutiny or permission of the court is not required. Even a religious ceremony like *DattakaHoma* is not necessary. The child to be adopted must actually be given and taken in adoption by the parents or guardians with the intent to transfer the child to the family of its adoption. The capacity of married man, widower and widower, single or divorced or deserted women to adopt is also recognized by the Act (Section 8). To prevent sexual abuse, the Act provides that there shall be an age difference of 21 years between the adoptive parents and the adopted child, whenever they are of opposite sex (Section 11). The position of the adopted son is better under the Act than the pristine law. Now he takes equal share with a subsequently born aurasa. But his share was less under the ancient law. Under HAMA you can adopt a child of each sex but no two children of the same sex which means if you have a son, you can adopt only a female child and vice-versa.

### Adoption under the Guardians and Wards Act, 1890 (GAWA)

The Guardians and Wards Act, 1890 is a general law of the land applicable to all religious communities, which decides of the custody of the child for guardianship. Section 7 (1) of the Act provides:

“(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made.

- a) appointing a guardian of his person or property, or both, or
- b) declaring a person to be such a guardian, the court may make an order accordingly.”

Sec 17 of the Act further provides that the welfare of the child must guide the Court in the appointment or declaration of a guardian. In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section be guided by what consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor. In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property (Section 17 (2)), if the minor is old enough to form an intelligent preference, the court may consider that

preference (Section 17 (3)). An order for guardianship under Section 7 may be made only on the application of the person desirous of being, or claiming to be the guardian of the minor or any relative or friend of the minor or the collector of the district or other local area within which the minor ordinarily resides or the collector having authority with respect to the class to which the minor belongs (Section 8). The district court is given the jurisdiction to entertain the application of such persons. (Section 9)

### Adoption under Juvenile Justice (Care and Protection of Children) ACT 2015

Section 2(2) of J.J. Act “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child. According to section 56 of the Act orphan, abandoned or surrendered children may be adopted, irrespective of the relation, religion, country barrier by the orders of competent court. PAPs desiring to adopt shall upload the entire information as required in Form VI (JJ Act 2015 and Adoption Regulations, 2017) with option of State and get registration and shall opt for the nearest SAA (Specialized Adoption Agency)

### Why Legal Adoption

Legal adoption is irrevocable and provides an extended security ring for the adopted child. It ensures the status of the child in the adoptive family. A legally adopted child can enforce all his/her rights in the Court of Law. On the contrary, informal adoptions do not carry any legal enforcement and are gross violation of the law of the land.

The following fundamental principles shall govern adoptions of children from India, namely:-

- The child’s best interests shall be of paramount consideration, while processing any adoption placement
- Preference shall be given to place the child in adoption with Indian citizens and with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible
- All adoptions shall be registered on Child Adoption Resource Information and Guidance System (CARINGS) and the confidentiality of the same shall be maintained by the Authority.

### Hurdles in Adoption

Adoption is a hurdle race. The more expectations you have the more hurdles you are creating for yourself. These can range from fair complexion to gender, but most centre around age and physical health. Most Indian couples prefer adopting babies under the age of one and are unwilling to accept a child with any medical complication or physical disability. Foreign couples are more open to adopting a child with a medical condition than Indian couples.

Although state approved agencies are providing adoption, the fact is that private adoptions are still taking place in some hospitals through agents and with unorganized sectors. “Children are being adopted illegally every which way, through nursing homes, hospitals and institutions that don’t figure in the adoption set-up at all”.

Putting the application process online was supposed to make things easier to adopt. It hasn't quite worked out that way—adoption rates in India are falling due to procedural delays. In 2013-14 just under 4000 children were placed for adoption, fewer than the 4964 in 2012-13 and 5964 children in the previous year.

As per the data available on the CARA website the In-Country adoption number has come down (substantially by over 40%) from 5693 in 2010 to 3276 in 2017-18. The Inter-Country adoptions have been going up and down in these 7 years. The worrying aspect is that the number of In-Country adoptions haven't increased despite simplification of guidelines. As per the data shared by the government in Rajya Sabha, more than 19000 Prospective Adoptive Parents (PAPs) were waiting for In-Country adoption as of March 2018 while more than 800 PAPs were waiting for Inter-Country adoption. At the current rate, it might take many years before the list is cleared.

Contrary to the Western countries, Indian culture does not encourage "open adoption". Because India follows "closed adoption", confidentiality about the birth parent/s is not disclosed. As of today, it is observed both in rural and some families in urban areas, adoptive parents are also not comfortable telling their children about the adoption status (Sheelajayanthi, personal communication, Dec 11, 2009). It is absolute necessary to share your decision to adopt a child. It is your child's right to be aware of his/her identity and it helps them discover their true potential. If you choose not to tell them, chances are they'll discover on their own or through someone else.

### Deal with Hurdles

It is highly recommended for the PAPs that not judge a child by his/her appearance. It will only increase the wait and delay the happy times in seeking multiple profiles. Adoption is not about 'matching' a child. It is about accepting one.

Counselling helps to prepare for adoption, overcome the feeling of loss, connect you with the child and with other families trying to adopt. Adoption is a personal choice; adoptive parents need help with queries regarding parenting, families, dealing with community and school. Post adoption counselling in the form of aftercare is currently available but is offered to the parents only on request. It is recommended that post adoption counselling is mandated to assist and guide parents with the change in their roles and coping with parenthood.

Adoption institutions should promote adoption work by building social awareness among the parents. They should create a positive congenial social atmosphere for the purpose of adoption.

There is a huge need to sensitize the general public at ground level for adoption throughout the country to deal with stigma associated. CARA should promote cause and essentiality of adoption. Adoption counselling centres may be established at district level where pre & post adoption counselling services can be given to the PAPs along with their grievance redressal and educate them for the entire process of adoption and time frames.

Procedural delays in the adoption process at the level of SAAs, DCPU and CARA should be reviewed fortnightly and required interventions be placed to expedite the delayed process. This will help to lessen the number of grievances which are due to the frustrations and impatience of the PAPs lined up for Adoption.

Based on the current trend, it may be implied that there will come a need in future to introduce adoption therapy training.

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- [5] Article 3(1), Convention on Rights of the Child, 1989 provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of Law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."
- [6] Article 5, UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children provides: "In all matters relating to the placement of a child outside the care of the child's own parents, particularly his or her need for affection and rights to security and continuing care, should be the paramount consideration."
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