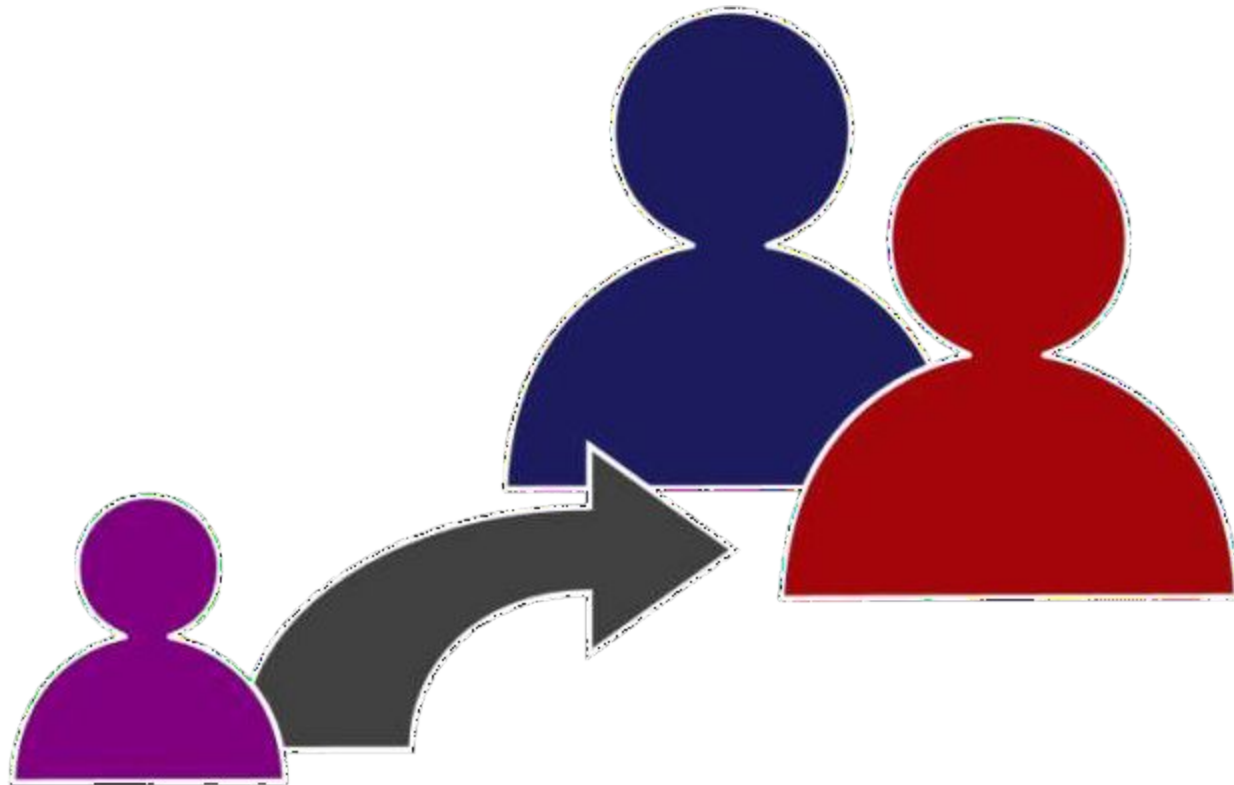


CHILD ADOPTION LAWS IN INDIA

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“There are no unwanted children, just unfound families.”



INTRODUCTION TO CHILD ADOPTION IN TWENTY FIRST CENTURY

- Adoption has always been a sacred act performed by the humans.
- Def (**Merriam-Webster** legal dictionary) **“to take voluntarily (a child of other parents) as one’s own child especially in compliance with formal legal procedures”**.
- Adoption can be legal as well as illegal in India (**Only Legal adoption recognized and Valid**).
 - Under Indian law **adoption is legal coalition between the party willing for adoption and a child,**
 - Subject matter of **‘personal law’** where Hindu, Buddhist, Jaina or Sikh by religion can make a legal adoption.
- According to section **2(aa)** of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, **“adoption means the process through which the adopted child is permanently separated from his biological parent and becomes the legitimate child of his adoptive parents with all right, privileges and responsibility that are attached to the**

WHO IS ALLOWED TO ADOPT A CHILD IN INDIA?

- In India,
 - **An Indian whether he is married or single,**
 - **Non-Resident Indian (NRI), or**
 - **A person belonging to any nationality (foreigner) may adopt a child.**
- The guidelines and documentation process for each group of adoptive parents may differ.

WHO IS ELIGIBLE TO ADOPT A CHILD IN INDIA?

- Under **THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956** following category of people can make adoptions:
- **“Any male Hindu (including Buddhist, Jain or Sikh by religion) who is of sound mind, not a minor and is eligible to adopt a son or a daughter”.**
 - But if such male has living spouse at a time of adoption then he can adopt a child only with a consent of his wife (unless she has been declared incompetent to give her consent by the court).
- **“Any female Hindu (including Buddhist, Jaina or Sikh by religion) who is not married, or if married, whose husband is not alive or her marriage has been dissolved or her husband has been declared incompetent by the court has the capacity to take a son or daughter in adoption”.**

WHO IS ELIGIBLE TO ADOPT A CHILD IN INDIA?

- Conditions for adoption by Hindu couples or single parent
 1. **“In case of adoption of a son by any Hindu male or female, there should not be any living son in the succeeding three generation of the party (whether by legitimate blood relationship or by adoption) at the time of adoption.**
 2. **In case of adoption of a daughter by any Hindu male or female, they should not have any daughter or son’s daughter at the time of adoption.**
 3. Where there is an adoption of a daughter by a male then the adoptive father should be at least twenty-one years older than the child.
 4. Where there is an adoption of a son by a female than the adoptive mother should be at least twenty-one years older than the child”.

WHO IS ELIGIBLE TO ADOPT A CHILD IN INDIA?...

- Personal laws of **Muslim, Christian, Parsis and Jews** do not recognise complete adoption so if a person belonging to such religion has a desire to adopt a child can take the guardianship of a child under **section 8** of the **Guardians and Wards Act, 1890**.
- **This statute only makes a child a ward, not an adoptive child.**
 - **According to this statute, the moment child turns to the age of 21, he is no longer considered as a ward and treated as individual identity.**
- In “**Mohammed Allahadad Khan v. Muhammad Ismail**” it was held that there is nothing in the Mohammedan Law similar to adoption as recognized in the Hindu System.
 - Acknowledgement of paternity under Muslim Law is the nearest approach to adoption.

WHO IS ELIGIBLE TO ADOPT A CHILD IN INDIA?...

- ❑ However, an adoption can take place from an orphanage by obtaining permission from the court under Guardians and Wards Act.
 - ❑ Christians can take a child in adoption under the **Guardians and Wards Act, 1890** only under foster care.
 - ❑ Once a child under foster care becomes major, he is free to break away all his connections from his adoptive parents.
- ❑ **Intercountry adoption:** No separate act that governs adoption by foreign citizens or NRIs but it is covered under Guidelines Governing Adoption of Children, 2015.
 - ❑ Misuse or illegal use of the children through adoption is prevented.
 - ❑ As per the Supreme Court Guidelines for intercountry adoption a foreign parent can adopt an Indian child before he/she completes the age of 3 years.
 - ❑ In the absence of any concrete Act on intercountry adoption, the provisions of Guardians and Wards Act, 1890 will be followed for adoption.
- ❑ In case of adoption of abandoned, abused and surrendered children all intercountry adoptions shall be done only as per the provisions.

WHO IS ELIGIBLE TO ADOPT A CHILD IN INDIA?...

- **Guardians and Wards Act, 1890** remains silent about the adoption of orphans, abandoned and surrendered children.
 - Chapter VIII of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with adoption in such category of the child.
 - Section 58 of this Act defines that any Indian citizen of India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a **Specialised Adoption Agency**, in the manner as provided in the adoption regulations framed by the Authority.
- Section 57 of this Act deals with Eligibility of prospective adoptive parents.
 - As per this Section, the adoptive parents should be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him and both partners must consent for the adoption.
 - A single or divorced person can also adopt in accordance with the provisions of adoption regulations framed by the Authority but a single male is not allowed to adopt a girl child.

WHO CAN BE ADOPTED?

- As per the Hindu law following child may be adopted namely-
 - **The child can either be a girl or a boy if he/she is a Hindu.**
 - **He/ She has not been adopted before.**
 - **The age of the child is below 15 years.**
 - **The child should not be married.**
- As per the Guardianship law and The Juvenile Justice (Care and protection of children) ACT, 2015 following child may be adopted namely-
 - **Who is not a Hindu?**
 - **Who is minor (not completed the age of 18 years).**
 - **An orphan or abandoned or surrendered child.**

WHAT ARE THE NECESSARY PROCEDURE FOR A VALID ADOPTION?

- Under The Hindu Adoption and Maintenance Act, 1956 the party willing for adoption can make application to Child Welfare Agency.
 - **Registration can be done either an Adoption Coordinating Agency (ACA) found in each state's capital city, or an agency certified by the Central Adoption Resource Authority (CARA) in New Delhi.**
- After this, the agency conducts a preliminary interview with the adopting couple in order to understand their intention and motivation behind adoption.
- Once the party decides which child are they going to adopt they file the petition at the court of apt jurisdiction, where court hearing takes place regarding adoption (the court is required to dispose the adoption case within 2 months).
- Once the Court issues the decree, the adoption is finalized.
- Under **The Guardianship and Wards Act, 1890** the party seeking guardianship has to file application to the Court where they provide complete information on them, reasons behind to become guardian of a child and other information asked in the application.
 - After admitting the application, the court will set the date of hearing where it will hear and view evidence, requirements and considering the interests of a minor

WHAT ARE THE NECESSARY PROCEDURES FOR A VALID ADOPTION?

- There is a directive that adoption proceedings have to be completed within two hearings, and the petition has to be disposed of within two months of the filing of the petition.
- The certified copy of the order has to be obtained by the agency within 10 days. The agency must also obtain the birth certificate of the child, with the names of the adoptive parents.

OTHER ASPECT OF ADOPTION

□ HOW MUCH TIME DOES THE ENTIRE PROCESS TAKE?

- Adopting a child in India is a long process.
 - Earlier, parents who wished to adopt would go to the nearest agency and register. The agency would match preferences of the couple with the children available. The match may or may not happen, and would take months, even years.
 - **Now, all adoption agencies have to upload details and the Central Adoption Resource Authority (CARA) software will match preferences across the country. This has lessened the duration of an adoption.**

□ WHAT WILL BE THE AGE OF THE BABY I CAN ADOPT? WHAT IS THE MOST COMMON RANGE?

- Under Hindu Adoption and Maintenance Act, 1956 a child who has completed the the age of fifteen years shall not be given in adoption unless there is a custom or usage applicable to the parties who is willing to make an adoption which permits them to adopt a child above the age of fifteen years.
- Under The Guardians and Wards Act any child who had not completed 18

OTHER ASPECT OF ADOPTION

❑ CAN I SPECIFY THE GENDER AND THE AGE OF KID I WANT TO ADOPT?

❑ An adoptive parent is allowed to ask for a child, as per their preferences.

❑ For example a parent may ask for a child of a certain age, gender (if it is the first child in the family), skin colour, religion, special features, health condition, etc. However, greater the specifications, more difficult it is to find a child who conforms to them.

❑ WILL I BE GIVEN MANY OPTIONS TO CHOOSE FROM?

❑ Since India has an overpopulation problem, with so many unwanted children, there are various options for the adoptive parents. Depending on the adoptive parent's desired details, children are scrutinised to find a suitable match. When a child with the desired characteristics is found, she is shown to the prospective parents. In case the parents are unhappy with the selection, about two more children with the same characteristics may be presented to the parents.

OTHER ASPECT OF ADOPTION

❑ CAN A PERSON ADOPT A CHILD IF HE ALREADY HAS A CHILD?

❑ Yes. The gender of the child becomes a factor here. The Hindu Adoption and Maintenance Act, 1956 (HAMA, under which Hindus, Jains, Sikhs, Buddhists and Arya Samaj adopt) allows only to adopt a child of the opposite gender to the adoptive parent which they already have. There is no such problem under the other 2 adoption laws, namely the Guardians and Wards Act, 1890 and the Juvenile Justice Act, 2015 which has enabled many Indians to adopt a child of the same gender.

❑ IS THERE A MINIMUM INCOME NEEDED FOR ADOPTING A CHILD?

❑ As per CARA, couples must have a minimum average monthly income of Rs. 3000. Lower income may be considered considering other assets and support systems e.g. one's own house etc.

CONCLUSION

- An adoption is a pious act so it should be performed by the people at a large scale because India is a country where there is too much population and there is a huge number of unwanted children.
- In the past few years, agencies and adoptive parents have noted a growing preference for the girl child over boys in India's adoption system. Adoption is one of the ways to control and prevent female foeticide and infanticide problem raging in India. And what could be better to give a good and standard life to a child who really need it.

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Thanks For Watching!

END OF PRESENTATION