

Adoption under Secular Law

Guardianship under the Guardians and Wards Act, 1890

Personal laws of Muslims, Christians, Parsis and Jews do not recognize complete adoption. As non-Hindus did not recognize complete adoption. As non-Hindus did not have an enabling law to adopt a child legally, the people belonging to these religions who want to adopt a child can only take the child in 'guardianship' under the provisions of The Guardians and Wards Act, 1890.

Important features

- ✓ 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.

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- Presently, there are 2 Acts, under which adoption of children can be undertaken in India:-
 - (a) Hindu Adoption Maintenance Act, 1956 (HAMA)
 - (b) Juvenile Justice (Care & Protection of Children) Act, 2015 (JJ Act)
 - (i) Model JJ Rules, 2016 (JJ Rules)
 - (ii) Adoption Regulations, 2017
 - HAM Act pertains only to Hindus, Buddhist, Jaina or Sikh wherein a Hindu parent/guardian can give a child in adoption to another Hindu, Buddhist, Jaina or Sikh parent (Sec 2 of HAMA).
 - Muslim, Christian, Parsi or Jew cannot adopt or give a child in Adoption.

- The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act, 2015 must be harmoniously construed. The Hindu Adoptions and Maintenance Act, 1956 deals with conditions requisite for adoption by Hindus. The Juvenile Justice Act of 2015 is a special enactment dealing with children in conflict with law and children in need of care and protection.
- If there is a conflict between the provisions of the Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act of 2015, it is the latter Act which would prevail. This is on the well settled principle that when there are two special Acts dealing with the same subject matter, the legislation which has been enacted subsequently should prevail.

Adoption under The Juvenile Justice (care and protection of children) Amendment act, 2006

- **Section 2 (aa)** defines ‘adoption’ as the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.
- **Fundamental principles governing adoption.** –
The following fundamental principles shall govern adoptions of children from India, namely: -
 - a) The child's best interests shall be of paramount consideration, while processing any adoption placement;
 - b) Preference shall be given to place the child in adoption with Indian citizens, with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible

Chapter IV of this act is titled ‘**Rehabilitation and Social Reintegration**’

This is a very good approach of the parliament to secularize adoption and a positive step towards the welfare of abandoned, orphan and surrendered children.

Section 40 talks about the rehabilitation of the child and social integration by

1. Adoption

2. Forster care
3. Sponsorship
4. Sending the child to an after-care organization.

Section 41 gives guidelines regarding adoption

The Juvenile Justice (Care and Protection) Act 2015 read with Adoption Regulation, 2017 has recognized five kinds of adoption namely,

- i.** an abandoned, surrendered, destitute child/ren adopted by unrelated person/s living within the country
 - ii.** an abandoned, surrendered, destitute child/ren adopted by unrelated person/s living outside the country
 - iii.** a related child by relatives living within the country
 - iv.** a related child by relatives living outside the country
 - v.** adoption of a child by step parents within the country
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CARA Guidelines on Adoption

- Adoption in India is regulated by the Central Adoption Resource Authority (CARA), an autonomous body under the Ministry of Women and Child Development, Government of India. Parents need to register with CARA (www.cara.nic.in) for adopting a child.
- **Following are the key provisions of the latest 2017 CARA Guidelines:**
- A married couple, a single male/female (unmarried, widowed or legally divorced) can adopt a child up to 18 years of age
- A single male can only adopt a male child.
- A single female can adopt a child of any gender.
- Minimum age difference between the child and the parent should be 25 yrs
- Parents with maximum composite age of
 - 90 yrs (single parent- 45 yrs) can adopt a child up to a 4 yrs of age
 - 100 yrs (single parent -50 yrs) can adopt a child between 4-8 yrs of age
 - 110 yrs (single parent-55 yrs) can adopt a child between 8-18 yrs of age
- The parent need to register online with CARA adoption System- CARINGS and upload required documents as per their status
- The parent can indicate following preferences while registering
 - Age of Child- 0-2, 2-4, 4-6, 6-8, 8-10, 10-12, 12-14, 14-18 yrs
 - Gender of Child – Boy/Girl/any Gender
 - State to adopt from- Give top 3 preferences or Anywhere in India
 - Kind of Child – Normal / Sibling/ Special Needs
- The Specialized Adoption Agency (SAA) nearest to the parent's address will conduct their Home Study. The parent will become eligible for receiving a profile of the child only after the Home Study report (HSR) is uploaded in CARINGS.
- The parent will be offered profiles of 3 children in one or more referrals, as per availability of the children according to their preferences.
- The parent can see the entire profile and medical history of the child in the referral.

- The Parent can then choose to |Reserve or Not Reserve a child within 48 hours of the referral (online only)
- Upon reserving, the child has to be accepted within 20 days. Parents who do not accept the child in the above period will be relegated to the bottom of the wait list.
- Parents who do not accept any of the 3 profiles will be relegated to the bottom of the wait list. However, their registration shall continue to be valid, with revalidation of the Home Study Report in every three years. A fee of Rs. 46,000 is payable to the SAA. The fee includes expenses for home study, legal services etc and no other sum is payable by the parent.

Inter Country Adoption

Earlier there were no provisions in law so the framework and guidelines regarding inter country adoption are given by the courts through case laws.

In Re, Rasika Lal Chaganlal Mehta (AIR 1982 Guj 193)

A German couple wished to adopt a girl from an orphanage at Rajkot, and take her to Germany with the, In the absence of any statutory provision under which a foreigner could adopt an Indian child, the applicants tried to explore the provision under the **9(4) of the Hindu Adoptions and Maintenance Act, 1956**

In order to overcome the hurdle, which requires that the adopter under the Act has to be a Hindu, they even adopted Hinduism. They had to shuffle between the passport office and courts and ultimately had to file another application under the Guardians and Wards Act, 1890.

After detailed considerations of all aspects of such adoption, the Division Bench of the High Court came out with various guidelines. In any case involving inter-country adoptions

- A notice should be compulsorily issued to the concerned welfare agency;
- There should be a provision in the adoption order providing for periodical report pertaining to the maintenance and well-being of the child in the hands of the adoptive parents.
- The court must ensure that the adoption is legally valid under the laws of both the countries and that the child should be able to immigrate to that the child should be able to immigrate to that country and also obtain the nationality of the parents.

Lakshmi Kant v. Union of India (AIR 1984 SC 469)

In this case the Supreme Court laid down the normative and procedural safeguards in regard to foreign/inter-country adoptions. This case arose out of a letter written by a lawyer to the Supreme Court, which was treated as a petition. The letter was

based on a report published by The Mail (from London), which revealed that hundreds of unwanted babies were being transported from the slum of Calcutta to the USA.

Since we don't have a uniform adoption law. Supreme Court of India gave directives and guidelines in processing adoptions to foreign parents under the Guardian and Wards Act. 1890.

Supreme Court formulated the normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents. Court held that any adoption in violation of or non-compliance with the directive set forth in this judgment may lead the adoption to be declared invalid and expose the person concerned to strict action including prosecution.