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A Study on Socio-Legal Aspects of Adoption in India

Article History:

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How to cite this article:

Singh A *et al.*, A Study on Socio-Legal Aspects of Adoption in India. *J Int Commer Law Technol.* 2025;6(1):1470–1472.

Received: 13-10-2025

Revised: 22-11-2025

Accepted: 02-12-2025

Published: 08-12-2025

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Abstract: Adoption serves as a bridge between child welfare and the rights of childless individuals or families. In India, the concept of adoption is governed by a complex interplay of personal laws, statutory provisions, and evolving societal norms. This research emphasizes the need for a uniform civil code or a consolidated adoption law to eliminate inconsistencies and ensure equal rights for all prospective parents and children, regardless of religion. It concludes that while significant progress has been made in legal and institutional reforms, societal attitudes, bureaucratic delays, and legal pluralism still pose substantial challenges to the adoption system in India.

Keywords— Adoption, Hindu Adoption and Maintenance Act, Juvenile Justice Act, CARA, Socio-legal, Child Rights, Uniform Civil Code.

INTRODUCTION

Adoption is a significant social and legal institution that not only fulfills the fundamental need of a child for love, care, and security but also grants individuals and couples the opportunity to experience parenthood. It serves as a humanitarian response to the plight of children who are orphaned, abandoned, or voluntarily surrendered by their biological parents. In the Indian context, adoption is far more than a legal transaction; it is a deeply personal process, often influenced by a complex matrix of religious doctrines, societal norms, and legal stipulations.

India's pluralistic society means that adoption practices and rights vary significantly across different religious communities. While Hindus are permitted to adopt under the codified Hindu Adoption and Maintenance Act, 1956, followers of other religions, such as Islam, Christianity, and Judaism, do not have

a direct statutory right to adopt and must instead rely on the Guardians and Wards Act, 1890, which confers guardianship rather than full adoptive parenthood. This fragmented legal framework has resulted in unequal access to adoption and inconsistent rights for adopted children. With the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015, a secular and more inclusive pathway to adoption has emerged, applicable to all citizens. However, practical challenges and social resistance continue to affect its implementation. This paper aims to critically analyze the socio-legal dimensions of adoption in India, highlighting the gaps in existing laws, the impact of societal attitudes, and the urgent need for a uniform, rights-based adoption framework.

Concept, History, and Modern-Day Challenges of Adoption in India:

Adoption is a legal and social process through which a child is permanently transferred from biological parents to adoptive parents, granting the child all rights and privileges as a natural-born child. In India, adoption is more than just a legal transaction—it is deeply influenced by religious beliefs, societal norms, and cultural values. Historically, the concept of adoption can be traced back to ancient Hindu scriptures such as the Manusmriti, where childless couples were allowed to adopt a male heir to perform ancestral rites. However, formal legal frameworks for adoption began with the Hindu Adoption and Maintenance Act (HAMA), 1956, which applies only to Hindus, Buddhists, Jains, and Sikhs. For non-Hindus, adoption is regulated under the Guardians and Wards Act, 1890, which does not confer full parental rights but only guardianship. A major shift occurred with the Juvenile Justice (Care and Protection of Children) Act, 2015, which allows any Indian citizen, regardless of religion, to adopt children legally and confers full parental rights. The Central Adoption Resource Authority (CARA) now serves as the nodal agency for regulating adoptions in India, ensuring child welfare and preventing malpractices.

Despite legal advancements, modern-day challenges persist. These include bureaucratic delays, lack of awareness, and religious constraints that create confusion and disparity among prospective adoptive parents. The stigma around adoption, especially in rural areas, remains a major societal hurdle. Further, the low rate of adoption compared to the number of orphaned and abandoned children highlights systemic inefficiencies. Additionally, inter-country adoptions, adoption by single parents, and LGBTQ+ individuals face legal and social resistance. There is also a pressing need for a Uniform Adoption Law to replace fragmented personal laws and ensure equality and clarity in adoption procedures.

Role of Agencies, Authorities, and the Judicial System in Adoption in India:

Adoption in India is governed and facilitated by a network of legal institutions, statutory authorities, and the judiciary, all working towards ensuring the best interests of the child. The Central Adoption Resource Authority (CARA) plays a pivotal role as the nodal agency under the Ministry of Women and Child Development, responsible for regulating and monitoring both in-country and inter-country adoptions under the Juvenile Justice (Care and Protection of Children) Act, 2015. CARA lays down guidelines, maintains a central database of adoptable children and prospective parents, and ensures that adoption procedures are transparent, ethical, and in accordance with the law. It also licenses and oversees Specialized Adoption Agencies (SAAs) at the state and district levels, which are responsible for the care, rehabilitation, and placement of children declared

legally free for adoption. The State Adoption Resource Agencies (SARAs) function as the state-level arms of CARA, facilitating coordination among stakeholders, monitoring SAAs, and ensuring proper record maintenance and reporting. The judiciary plays a crucial role in legalizing adoption. In domestic adoptions under the JJ Act, the District Magistrate (earlier the Juvenile Justice Board or Civil Court) now has the authority to issue adoption orders. In the case of inter-country adoptions, the Guardians and Wards Act, 1890 is often invoked where the adoptive parents are appointed legal guardians before final adoption abroad. Indian courts have also played a significant role in interpreting adoption laws in the interest of child welfare, such as allowing single and divorced individuals to adopt, and in some cases, supporting adoption rights for LGBTQ+ individuals and live-in partners. Collectively, these agencies and judicial bodies ensure that adoption is conducted lawfully, safeguarding the rights of both children and adoptive parents.

Social and Cultural Aspects of Adoption:

Adoption, while legally governed, is deeply rooted in social and cultural beliefs. In many societies, particularly in India, adoption is not merely a legal process but an emotional, religious, and cultural decision influenced by long-standing traditions, family values, and societal expectations. In Indian society, biological lineage and inheritance carry great significance, often leading to a preference for blood relations over adoption. This creates a social stigma around adoption, where adoptive parents may face societal scrutiny, and adopted children may be seen as "outsiders" in traditional family structures. This stigma is even more pronounced in rural areas and among conservative communities, making adoption less common despite the large number of orphaned or abandoned children. Religious beliefs also shape attitudes toward adoption. For example, Hindu law (under the Hindu Adoption and Maintenance Act, 1956) allows for legal adoption with rights akin to biological children. However, Muslim, Christian, and Parsi personal laws do not traditionally recognize adoption in the same way, leading to reliance on guardianship under secular laws like the Juvenile Justice (Care and Protection of Children) Act, 2015. Gender preference also plays a role in the cultural dynamics of adoption. Male children are often preferred due to inheritance and family name continuation, while girls may be less likely to be adopted, despite government incentives. However, attitudes are gradually shifting. Urbanization, increased awareness, celebrity adoptions, and growing infertility issues among couples have led to a slow but steady change in societal acceptance of adoption. Still, to create a more inclusive environment, ongoing education, legal reform, and social sensitization are essential.

Challenges in the Adoption System: Indian Perspective:

The adoption system in India faces several complex challenges rooted in legal, administrative, cultural, and social issues. Despite legal frameworks like the Juvenile Justice (Care and Protection of Children) Act, 2015 and Hindu Adoption and Maintenance Act, 1956, the process remains cumbersome and underutilized.

- **Complex and Lengthy Legal Procedures:** The adoption process involves extensive documentation, background checks, and court procedures. Many prospective adoptive parents find the process bureaucratic, slow, and unclear, leading to delays and frustration.
- **Multiplicity of Laws:** India has different laws governing adoption based on religion. While Hindus can adopt under HAMA, other communities must seek guardianship under the JJ Act. This multiplicity creates confusion and limits adoption rights for non-Hindus.
- **Low Rate of Legal Adoption:** Despite thousands of orphaned and abandoned children, the number of children legally available for adoption is low due to poor identification, registration, and rehabilitation mechanisms.
- **Social Stigma and Cultural Resistance:** In traditional Indian society, adoption is still stigmatized. Families often hesitate to disclose that their child is adopted, and adoptive parents may face societal pressure, especially in cases involving inter-caste or inter-religious adoptions.
- **Preference for Young, Male Children:** Many adoptive parents prefer infants, especially boys, leading to long wait times and neglect of older children, girls, and children with special needs.
- **Lack of Awareness and Misinformation:** Many people are unaware of the legal adoption process or believe myths related to adoption, further hindering the system's effectiveness.
- **Inefficiencies in CARA (Central Adoption Resource Authority):** Though CARA is the central regulatory body, it often faces criticism for delays, lack of transparency, and limited coordination with state agencies.

To improve the adoption system in India, reforms must focus on simplifying legal procedures,

increasing awareness, improving child care institutions, and removing societal stigma through education and advocacy.

Key Suggestions for Reforms:

- ❖ Simplify legal procedures to make adoption faster and less bureaucratic.
- ❖ Unify adoption laws across all religions under a single secular framework.
- ❖ Strengthen CARA with better transparency, coordination, and accountability.
- ❖ Improve awareness through public campaigns to reduce stigma and promote adoption.
- ❖ Promote adoption of older children and those with special needs through incentives.
- ❖ Train and monitor adoption agencies for better efficiency and child care.
- ❖ Encourage open adoption practices to build trust and emotional security.

Ensure post-adoption support like counseling and legal aid for adoptive families.

Conclusion:

The socio-legal landscape of adoption in India reflects both progress and persistent challenges. Adoption serves as a crucial means to provide care, identity, and a secure future to children in need. However, despite legal provisions under the Juvenile Justice (Care and Protection of Children) Act and the Hindu Adoption and Maintenance Act, the process remains entangled in legal ambiguities, religious limitations, and administrative delays. Deep-rooted social stigmas, preference for biological kin, and gender biases further deter potential adoptive families. The role of regulatory bodies like CARA and the judiciary is vital but requires greater efficiency, transparency, and accountability. Encouragingly, shifts in societal attitudes, increased awareness, and policy-level discussions are paving the way for a more inclusive and child-centric approach. For adoption to truly fulfill its purpose in India, unified laws, simplification of procedures and societal sensitization are imperative. Only then can adoption evolve into a widely accepted and effective tool for child welfare.