



Review of Guardianship and Adoption Laws

For Prelims: Adoption (First Amendment) Regulations, 2021, CARA

For Mains: Child Adoption in India and related issues, Issues Related to Children

Why in News?

Recently, the Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice tabled a report **“Review of Guardianship and Adoption Laws”** in Parliament and recommended **district-level surveys to identify orphaned and abandoned children.**

- In India, there are only 2,430 children available for adoption while the **number of parents desiring to bring home a child is growing rapidly.**

What are the Key Findings of the Report?

- There were 27,939 prospective parents registered with the [Child Adoption Resource Authority \(CARA\)](#) as of December 2021, up from nearly 18,000 in 2017.
 - **CARA**, a statutory body of the Ministry of Women & Child Development, functions as the **nodal body for adoption of Indian children and is mandated to monitor and regulate** in-country and inter-country adoptions.
- There was a total of 6,996 orphaned, abandoned and surrendered children residing in childcare institutions considered adoptable, only **2,430 were declared “legally free” for adoption by Child Welfare Committees.**
 - There are only 2,430 children found to be legally free for adoption in India with an estimated 3.1 crore orphans because of the **failure to bring more children in need of care into the government’s safety net.**
- The waiting time for adoption has increased **to three years from one year** in the past five years.
- The total number of children adopted in 2021-2022 was only 3,175.

What are the Recommendations?

- A monthly meeting chaired by the **District Magistrate should be held in every district** to “ensure that orphan and abandoned children found begging in streets are produced before the **Child Welfare Committee and are made available for adoption at the earliest.**”
- The point should not be to track more children and put them into adoption, but to not leave children out of the safety net. Such an exercise should not aim to provide more children because so many adoptive parents are waiting, **but to identify those genuinely without a family otherwise poor people will have their children snatched away.**
- In order to link children to nurturing families there is a need for a **paradigm shift that looks beyond “custodial” needs such as food and shelter and focuses on their rights.**
- Many children are under parental care, but not optimal care. There are parents abusing their own children or neglecting them and then having an adequate safety net for these children so that they get the help they need. The failure to do so also leads to malpractice, which was **why adoptions**

were centralised in 2015.

What are Adoption and Related Rules in India?

▪ About:

- Adoption is the **formal process through which a child is permanently separated from his biological parents** to become the lawful child of his adoptive parents.
- The adopted child enjoys all rights, privileges and responsibilities attached to a biological child.
- The fundamental principles that **govern adoption state that the interests of the child are most important and preference is to be given to place the child in adoption with Indian citizens** with “due regard to the principle of placement of the child in his socio-cultural environment, as far as possible”.

▪ Legislations:

- The **Hindu Adoption and Maintenance Act, 1956 (HAMA)**:
 - Under the Act, a Hindu parent or guardian can give a child in adoption to another Hindu parent.
 - The Act does not allow the adoption of an orphaned, abandoned or surrendered child who is in the care of any specialized adoption agency (SSA) or child care institution.
 - Inter-country adoptions don't come under the purview of this Act.
- The **Juvenile Justice (Care and Protection of Children) Act, 2015**. This includes Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and Adoption Regulations, 2017.
 - As per the government rules, **Hindus, Buddhists, Jains, and Sikhs are legalized to adopt kids.**
 - An orphan, abandoned, or surrendered child who **has been declared legally free** for adoption by the **Child Welfare Committee (CWC)** can be adopted. This only happens under the provisions of the JJ Act 2015.
- Until the JJ Act, the Guardians and Ward Act (GWA), 1980 was the **only means for non-Hindu individuals to become guardians** of children from their community.
 - However, since the GWA appoints individuals as legal guardians and not natural parents, guardianship is terminated once the ward turns 21 and the ward assumes individual identity.

What are the Challenges for Child Adoption?

▪ Declining Statistics and Institutional Apathy:

- There is a **wide gap between adoptable children and prospective parents**, which may increase the length of the adoption process.
- Data shows that while more than 29,000 prospective parents are willing to adopt, just 2,317 children are available for adoption.

▪ Returning Children after Adoption:

- Between 2017-19, the Central Adoption Resource Authority (CARA) faced an unusual upsurge in adoptive parents returning children after adopting.
- According to the data, **60% of all children returned were girls, 24% were children with special needs**, and many were older than six.
 - The primary reason these ‘disruptions’ occur is that disabled children and older children take much longer to adjust to their adoptive families.

▪ Disability and Adoption:

- Only 40 children with disabilities were adopted between 2018 and 2019, accounting for approximately 1% of the total number of children adopted in the year.
- Annual trends reveal that domestic adoptions of children with special needs are dwindling with each passing year.

▪ Manufactured Orphans and Child Trafficking:

- In 2018, Ranchi's Mother Teresa's Missionaries of Charity came under fire for its **“baby-selling racket”** after a nun from the shelter confessed to selling four children.
 - Similar instances are **becoming increasingly common as the pool of children available for adoption** shrinks and waitlisted parents grow restless.

▪ **LGBTQ+ Parenthood and Reproductive Autonomy:**

- Despite the constant evolution of the definition of a family, the 'ideal' Indian family nucleus still constitutes a husband, a wife and daughter(s) and son(s).
- The invalidity of LGBTQI+ marriages and relationships in the **eyes of the law obstructs LGBTQI+ persons from becoming parents because the minimum eligibility** for a couple to adopt a child is the proof of their marriage.
- To negotiate these unfavorable legalities, illegal adoptions are becoming increasingly common among queer communities.

Way Forward

- The primary purpose **of giving a child in adoption is his welfare and restoring his or her right to family.**
- The adoption **ecosystem needs to transition from a parent-centric perspective** to a child-centric approach.
- There is a **need to adopt an inclusive approach that focuses on the needs of a child to create an environment of acceptance,** growth, and well-being, thus recognising children as equal stakeholders in the adoption process.
- The process of adoption needs to be simplified by taking a close relook at the various regulations guiding the procedure of adoption.
 - The ministry can engage with concerned experts working in this field to get feedback on the practical difficulties which prospective parents are facing.

Source: [TH](#)

PDF Refernece URL: <https://www.drishtias.com/printpdf/review-of-guardianship-and-adoption-laws>

