
THE CRITICAL ANALYSIS OF THE EVOLUTION OF THE ADOPTION LAWS IN INDIA

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ABSTRACT

The research paper critically analyzes the evolution of adoption laws in India, with an insight to the Hindu, Muslim, and secular adoption laws. It explores the cultural and historical aspects of Hindu adoption which allowed for adoption of sons only but with the introduction of the Hindu Adoptions and Maintenance Act, 1956, significant changes were brought. It reformed some of the shortfalls and gender biases inherent in the practice and allowed for the adoption of daughters as well. The Muslim law is analyzed of its limitations regarding adoption and its importance to the concept of paternity. The Hindu personal law is the only personal law to regulate adoptions and the Juvenile Justice Act has been a step to establish a uniform secular law to govern adoptions. While the Guardians and Ward Act of 1890 was the first secular law, but it provided mere guardianship and not adoption. Juvenile Justice (Care and Protection) Act allows for adoption irrespective of marital status, religion, or the gender of the adopted child. The 2015 amendment to the act is discussed in further detail that reiterated the importance of the Central Adoption Resource Authority (CARA). The important cases under the Juvenile Justice Act are discussed which evolved the earlier adoption practices of the personal laws. The Juvenile Justice Act amendments of 2021 and 2022 are considered, with a focus on its procedure to adopt to guarantee the best interests of the child. It also examines India's international commitments and obligations as a signatory to the United Nations Convention on the Rights of the Child and related conventions on adoption. It discusses the administrative roadblocks for LGBTQIA+ community and same-sex couples in adoptions. It is observed that Adoption in India is legally restrictive and cumbersome that the measures in place for protection of these children result in a meagre number of adoptions. Overall, the research paper sheds light on the challenges and complexities of adoption laws and its amendments in India.

INTRODUCTION

The Indian Constitution guarantees for its citizen's equal rights, right to life under article 21 gives everyone to live with dignity. Article 24 provides the right against exploitation of the children below 14 years. These rights are upheld through adoption laws in India. The objective lies between the humanitarian motive of helping and raising the destitute and abandoned child, and to the human desire for a child as a caretaker in old age or an heir after death.¹ Although it is believed that children represent a nation's future and should be cared for, millions of children in India lack basic requirements like food and sanitation. With 13 million infants added every year India has achieved the distinction of having the world's largest population of children². There are a sizable number of orphaned and abandoned children who are forced into child labor or subjected to harassment, even though many of them have families. The Childline India Foundation in 2017 reported that only 470,000 such children were in institutionalized care.³ Parenthood is the fundamental concern in adoption but parenthood through procreation is perceived as the more "natural" and "superior" form of parenthood as blood ties are considered superior to ties of love. One either had to be "born" into the family or be "married" into the family to become part of a family. Therefore adoption is not an accepted practice among many religions.⁴

Adoption is a process by which the child is permanently separated from their biological parents and then becomes the lawful child of their adoptive parents and gains all rights and responsibilities that come with being a biological child⁵, as defined by Section 2 (2) of the Juvenile Justice Act.

1. HINDU LAWS OF ADOPTION

In India, there is a defined legal process that provides legitimate rights to both the adopted child as well as adoptive parents. It has been practiced over the years and there exists references of adoption made in the epics of Hinduism⁶ that can be traced back to the vedas and shastras as

¹ Aishwarya Sandeep, *Critical Analysis of Adoption laws in India*, Parenting and Law, (April 18, 2023), <https://aishwaryasandeep.com/2021/07/26/critical-analysis-of-adoption-laws-in-india/>

² Sini Paul, *Child Adoption in India: From A Human Rights Perspective*, Journal of Multidisciplinary Cases, Vol : 02, No. 01 (2022)

³ Shreya Kalra, *Why India's adoption rate is abysmal despite its 30 million abandoned kids*, BUSINESS STANDARD (April 18, 2023), https://www.business-standard.com/article/current-affairs/why-india-s-adoption-rate-is-abysmal-despite-its-30-million-abandoned-kids-118103000218_1.html.

⁴ Paul, *supra note 2*

⁵ The Juvenile Justice (Care and Protection) Act, 2015, §2 (2).

⁶ Riya & Neelaksh, *Comprehensive Study on Child Adoption in India with Special Reference to Hindu Laws*, 4 INT'L J.L. MGMT. & HUMAN. 1493 (2021).

well. In the ancient times, Hinduism believed when a lack of male offspring befell, couples would adopt a male child to assign him as a legal beneficiary. A deceased parent's spirit can accomplish salvation only when an individual has a child to light the memorial service fire, and salvation can be accomplished through a male child who provides tribal love.⁷ It made adoption more of a sacramental "dharma" than a secular act.⁸ There existed two requirements for a valid adoption in ancient times. (1) the act of giving and receiving, with the intention of passing the son from one family to the other, and (2) the performing *datta homam*, i.e. the offering ghee (clarified butter) into the fire.⁹ Thus traditional Hindu adoption laws and practices permitted for adoption of son only. But the purpose and procedures for adoption in the olden times differ greatly from the modern notion of adoption.

1.1 The Hindu Adoptions and Maintenance Act

The Hindu Adoptions and Maintenance Act, 1956 is the first law regarding adoption which is applicable on Hindu, Sikhs, Buddhists and Jain and has removed restrictions under the old law. It overrides old customs, sources, and practices traditionally utilized within Hinduism. After adoption, the adopted child must sever all ties to his birth family and be treated as the biological child of the adoptive parents. He or she also has the same rights to his or her parents' property as a biological child.¹⁰

Any adoption that is made in violation of this legislation would be ruled invalid. The law deviates from the customary practice of only adopting sons by using the word "boy" instead of "son" and permitting the adoption of daughters as well. The legislation also stipulates that the kid or adoptee must be regarded as a "Hindu" by definition; but, unlike in previous systems, the child does not need to belong to the same caste or be a blood relative. Only the child of the opposite sex can be adopted if the family already has a biological child. Irrespective of the Hindu law, "there is enough evidence to claim that an adoption of a shudra who is married at the time of the adoption is lawful if the child is a member of the present type of "Sagotra" (of the same family) and is in the Dakhan recognised by local custom".¹¹

The Act has expanded women's rights in adoption, allowing them to both give in adoption and adopt. The women had no legal authority to adopt, give in adoption, or even offer their assent

⁷ "Adoption Laws in India" Arundhati Banerjee Mewar Law Institute, Ghaziabad, U.P.

⁸ Riya & Neelaksh, *supra note 6*

⁹ SADESAI, MULLA'S PRINCIPLES OF HINDU LAW (17th ed, Butterworth 1998) 710.

¹⁰ The Hindu Adoptions and Maintenance Act, 1956

¹¹ Nalhaji v. Hari 8 Bom HCR 67(1871)

to adoption under Shastric Hindu Law. But the Section 8 of the HAMA talks of capacity of Hindu unmarried female, widow or divorced to adopt in her own right. This was supported in the case of *Smt. Vijayalakshamma v. B.T. Shankar (1968)*, where the Court was of the opinion that permission of a co-widow is not necessarily required, as Section 7 of HAMA and its explanation needs to be read into with Section 8 which gives the Hindu female her own right to adopt¹². But the right of married women to adopt was restricted until the passing of Personal Laws (Amendment) Act, 2010.¹³ Earlier, the HAMA did not provide for a married woman, or one going through a divorce battle to adopt with or without her husband's consent. But the 2010 amendment gave equal right to the father or the mother to adopt or give in adoption. There existed a bias in the old provisions of the act wherein a Hindu male could give in adoption with the consent of the mother if alive, but the woman was not entitled to the same right. The amendment has removed this bias and Section 9 (2) confers upon both parents equal right to give in adoption, provided it is done with the other's consent if alive.¹⁴

The law does not consider the rights of transgenders, same sex couples and others on the spectrum. HAMA has not made much progress to reform society's adoption practices and it fails to change the regressive Indian mindset that female children can be given and received in adoption.¹⁵ Adoption of children in welfare institutions or care facilities is not allowed under the purview of the law. There is an unreasonable requirement for a giver (one parent or both) to be present for adoption. This leaves a large number of abandoned orphan children who are not covered under this act.

2. MUSLIM LAW ON ADOPTION

Section 3¹⁶ of the Shariat Act provides that adoption is regulated under the act upon a voluntary declaration, and where such is not the case the judiciary has accepted customary adoptions.¹⁷ The judiciary has upheld the belief that there is nothing in Mohammedan law that equates to or accepts adoption as under the Hindu Law.¹⁸ Some customary adoptions have been a recognized and acceptable practice among certain Muslim sects such as the Khojas or those of

¹² *Smt. Vijayalakshamma v. B.T. Shankar* 4 SCC 538(2000)

¹³ Personal Laws Amendment Act, 2010.

¹⁴ The Hindu Adoption and Maintenance Act, 1956, §9 (2).

¹⁵ Harneel K. Lally, *Divided Dharma and Adoption Laws in India*, 4 SOAS L.J. 133 (2017).

¹⁶ The Muslim Personal Law (Shariat) Application Act, 1937, §3.

¹⁷ *Id.*

¹⁸ *Mohammed Allahabad Khan v. Mohammad Ismail Khan*(1888) 10 All 289.; Priyam Kumar Sinha, *Adoption: With a Major Concern on Women Rights under Hindu Law*, 2 INT'L J.L. MGMT. & HUMAN. 328, 330 (2019).

Awadh etc.,¹⁹ but mainly adoptions are not allowed in Islam and the adopted children are not treated at par with biological children. Acknowledgement of paternity is another way muslim law has incorporated adoption. Mulla defines paternity as the relation between the father and the child.²⁰ Paternity becomes discernible by the factum of marriage. Acknowledgement of paternity works in the limited sense because it is only valid for marriages that are not *batil*.²¹ This validates the legitimacy of the child and the acknowledgement is only limited to instances where illegitimacy of the child is not proved.²² The only acceptable means that allows for care of the orphaned or abandoned child is that of “Kafalah” which is a form of guardianship only.²³

3. SECULAR LAWS FOR ADOPTION

The Guardians and Ward Act of 1890 was the first secular law, but it provided mere guardianship and not adoption. The promulgation of the Adoption of Children Bill 1972 was the first attempt at introducing a secular adoption bill but it was opposed by the Muslim community as they believed it to be violative of their personal beliefs as per the Quran.²⁴ The bill was reintroduced in 1980, exempting the Muslims, but this time it was opposed by the Bombay Zoroastrian Jashan Committee.²⁵ The Juvenile Justice Act, 1986 was the first central law on juvenile justice that provided a uniform law for the whole country in this respect. Juvenile Justice Act 1986 came after the United Nation countries adopted the Standard Minimum Rules for the Administration of Juvenile Justice but soon after United Nations adopted a convention on right of child convention that defined Child as human being below the age of eighteen years. This forced the Indian legislation to revoke Juvenile Justice Act 1986 by the Juvenile Justice (Care and Protection Act) 2000.²⁶ Chapter VI of The Juvenile Justice Act, 2000 included provisions for adoption irrespective of the religion of the adoptive parents. This secular law has faced various amendments over the years and is known as the Juvenile

¹⁹Jean-Philippe Dequen, *Filiation and Adoption among Muslims in India: The Quagmires of a Religious Minority Law*, 34 J. L. & RELIGION 336, 340 (2019).

²⁰ Prof. Iqbal Ali Khan: *Mulla Principles of Mahomedan Law*. 20th Edition, Lexis Nexis, India 2012.; Syed M. Aatif, *The Law of Adoption in India: A Critical Analysis*, 74 PRAVNIK 5, 13 (2019).

²¹ Syed M. Aatif, *The Law of Adoption in India: A Critical Analysis*, 74 PRAVNIK 5, 13 (2019).

²² *Mohammed Allahabad Khan v. Mohammad Ismail Khan* (1888) ILR 10 All. 334-45.

²³ Dequen, *supra note 19*

²⁴ Priyal Garg, *Legal provisions of adoption in India: A critical study with special reference to child protection*, 4 INTERNATIONAL JOURNAL OF LAW. 10, 12 (2018).

²⁵ *Id.*

²⁶ Dibakar Banerjee, *Juvenile Justice*, Legal service India E-Journal, (April 18, 2023), <https://www.legalserviceindia.com/legal/article-3089-juvenile-justice.html#:~:text=Juvenile%20Justice%20System%20In%20India&text=N%20countries%20in%20November%201985,a%20age%20of%2016%20years.>

Justice (Care and Protection) Act, 2015 and The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

3.1 GUARDIANS AND WARDS ACT, 1890

This Act is secular legislation that applies to every religion and covers the procedural aspects for personal law related to guardian and ward. The Guardians and Wards Act 1890 safeguarded the minor's interest and secure his property.²⁷ The act defines the relationship between a minor who has attained 18 years of age and a guardian who takes care of minor's property. Guardianship is vital in the development of a child and thus, the parents are vested with the decision who would be their guardian when they die. This act does not confer biological child status on the child who is under the guardianship and lasts only during the minority of the child. Thus, it cannot be taken to compensate for the other religions for the lack of a personal law for adoption.

The law commission of India Report No. 83 has considered the need for revision of the Act and stated that the Court must see which of the claimants is best suited by his or her educational competence and influence in upbringing the child and not the superiority of the mother or father is to be taken into account.²⁸ The aforesaid enactments remain silent about the orphan, abandoned and surrendered children. As a result, several misconceptions or irregularities appeared in respect of the custody, guardianship or adoption of these types of children, which were prejudicial to the interest of the children.²⁹

3.2. JUVENILE JUSTICE ACT, 2015

Adoption is regulated by the Juvenile Justice (Care and Protection) Act irrespective of one's marital status, religion, existing biological children and the gender of the adopted child. The Act allows for people to adopt once the child is "declared legally free for adoption". It caters to children alleged and found to be in conflict with law and children in need of care and protection, by adopting a child-friendly approach in the adjudication and disposal of matters for their rehabilitation.³⁰ The 2000 Act was amended in 2015 to distinguish between children in conflict with the law and children in need of care and protection. It gave extensive guidelines

²⁷ Anshita Surana, Guardians And Wards Act, 1890: An act protecting rights of minor, GETLEGAL INDIA, (April 18, 2023), <https://getlegalindia.com/guardians-and-wards-act/>

²⁸ Law Commission of India Report No. 83

²⁹ Niraj Meena, Adoption laws in India: Challenging Existing Law, manupatra

³⁰ The Juvenile Justice (Care and Protection) Act, 2015

on how abandoned, orphaned children who require rehabilitation and social integration must be placed in appropriate welfare agencies and how these children must then be placed either with foster families³¹ or be given for adoption. The principle of the best interests of the child is brought out in section 3 of the Juvenile Justice Act 2015 that justifies for any choice taken with respect to the child needs, character, social prosperity and physical, enthusiastic and scholarly improvement and, to guarantee satisfaction of his fundamental rights. It made **Central Adoption Resource Authority (CARA)** the statutory body for smooth functioning of **adoption procedures for orphans, surrendered,** and abandoned children. It also requires the establishment of Child Welfare Committees and Juvenile Justice Boards in each district. **It mandates that** All Child Care Institutions are to be registered under the Act within 6 months from the date of commencement of the Act, whether run by the State Government or by voluntary or non-governmental organizations.³²

The problems with adoption as per the **personal laws** of various religions have been overcome by opting for adoptions under the JJ Act. The case of *Vinay Pathak and His Wife v. Unknown (2009)*³³, where a Hindu couple wishes to adopt when they already have a child of their own, of the same gender is one such case. This is barred by Section 11 (i) and (ii) of Hindu Adoption and Maintenance Act, but HAMA does not bar the Hindu having biological child from adopting the child of same gender when the child is orphaned, abandoned or surrendered child or a child in need of care and protection as defined in Juvenile Justice Act. In this case, JJ Act 2000 will be applied, which allowed parents to adopt a child of same sex irrespective of the number of living biological sons or daughters.³⁴ This condition applies to all persons irrespective of religion. The conflict arose between the two acts and the question “whether a Hindu couple could adopt under the JJ Act, even if the adoption was in contravention with a provision of their personal law” was answered. It was held that Juvenile Justice (Care and Protection) Act, 2000 would prevail, considering the well-settled rule that when two acts are dealing with the same subject then the regulation enacted subsequently would prevail.

Muslim personal laws create an obstacle in access to adoption as they do not recognize an adopted child to be at par with a biological child. In the case of *Shabnam Hashmi v. Union of India*³⁵, where the petitioner, a single Muslim woman, sought to adopt a child under the 2000

³¹ The Juvenile Justice (Care and Protection) Act, 2015

³² The Juvenile Justice (Care and Protection) Act, 2015

³³ *Vinay Pathak and His Wife v. Unknown (2009)*

³⁴ Sec 41 (6) (b) JJ 2000.

³⁵ *Shabnam Hashmi v Union of India*, A.I.R 2014 SC 1281.

Act, its legality was contested on the grounds that adoptions are not permitted by her religion. She approached the court in order to get adoption recognized as a fundamental right under the Constitution of India. The All-India Muslim League Board intervened and allowed for the Kafala system, where the child remains a descendant of its biological parents but is placed under the “kafil” who provides care and financial support. They pleaded that the relevant authorities consider this system under Islamic Law, also accepted under the United Nations Convention of the Rights of the Child under Article 20(3), before declaring a Muslim child legally free for adoption.³⁶ But the court upheld the JJ act and ruled that prospective parents irrespective of their religious background are free to adopt children after the prescribed procedure. It was declared that the right to adopt a child by a person as per the provisions of the Juvenile Justice Act would prevail over all personal laws and religious codes in the country. Although the court refrained from granting adoption the status of a fundamental right and maintained that personal laws would continue to govern any person who chooses to submit himself until such time that the vision of a uniform civil code is achieved.

3.2.1 Procedures to adopt

The HAMA and the JJ act have separate eligibility criteria for adoptive parents. Under HAMA³⁷, an adoption deed, a court order or a “dattaka hom” ceremony is required to obtain irrevocable adoption rights. However, there are no regulations for monitoring adoptions and tracing sourcing of children and determining whether parents are fit to adopt. While those applying under the JJ Act³⁸, must register on CARA’s portal after which a specialised adoption agency carries out a home study report. Once it is determined that the candidate is eligible for adoption, a child who has been declared legally available for adoption is forwarded to the applicant.

As per the CARA guidelines, the adoptive parents need to be mentally, physically, emotionally and financially stable to adopt and herein, I have discussed the procedures to adopt under it.

1. The Prospective adoptive parents (PAPs) habitually residing in India shall adopt by registering under a Government recognized adoption agency known as Specialized Adoption Agency (SAA).

³⁶*Id.*

³⁷ Hindu Adoption and Maintenance Act, 1956

³⁸ Juvenile Justice Act, 2015

2. The Specialized Adoption Agency shall register the PAP(s) for adoption and issue them a registration slip upon receipt of the application for registration, along with necessary documents, and the required registration fee.
3. Pre-adoption counseling is provided to PAPs by the concerned SAA in order to assist them in making the best decision.
4. The documents shall be furnished by the PAPs to the concerned Specialized Adoption Agency to facilitate conduct of home study.
5. The assignment of a child with PAP(s) shall be done by the 'Adoption Committee' only after the child has been declared legally free for adoption by the CWCs and the PAP(s) have been found eligible by the SAA to adopt.
6. The PAPs shall be required to sign a foster care affidavit and undertaking before the child is placed in their temporary custody.
7. The SAA shall file a petition in the Competent Court of jurisdiction for obtaining the necessary adoption orders under the Act within ten days of acceptance of referral by PAPs and shall pursue the same regularly with the court so that the process of legal adoption is completed at the earliest.³⁹

The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final on the issuance of an adoption order by the civil court. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was signed into Act by the President and came into force on September 1, 2022. **The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021** and the **notification of the 'Model Amendment Rules 2022'** to implement the act provides that the district magistrate and Additional District Magistrates has the authority to issue such adoption orders within a period of two months from the date of filing of the application under Section 61 of the JJ Act.⁴⁰ It works to make proceedings of the court faster and enhance accountability because of many adoption cases pending before the court. The DMs are granted the authority to inspect child care institutions (CCIs) as well as evaluate the functioning of district child protection units, child welfare committees (CWCs), juvenile justice boards, specialized juvenile police units, child care institutions etc.⁴¹ The eligibility

³⁹ Central Adoption Resource Authority guidelines, Ministry of Women & Child development, Government of India

⁴⁰ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

⁴¹ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

parameters for appointment of CWC members have been revised to ensure that the people with integrity and competence are appointed.

The amendments to the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 say, “all the cases pertaining to adoption matters pending before the Court shall stand transferred to the District Magistrate from the date of commencement of these rules.” It also provides that any person aggrieved by an adoption order passed by the district magistrate may file an appeal before the Divisional Commissioner, within 30 days of such order⁴². But the Bombay High Court has issued a notice to the Attorney General and ordered an ad-interim stay on the amendment to the Juvenile Justice (Care and Protection of Children) Amendment Act 2021 to the extent it transferred jurisdiction over adoption cases from courts to district magistrates. The effect of this amendment, according to the petitioners and the interveners, was that the district magistrate would now have exclusive jurisdiction over all adoptions, including foreign adoptions.⁴³

The Government has simplified its policy pertaining to adoption under the JJ Amendment Act, 2021, the JJ Model Amendment Rules, 2022 and the Adoption Regulations, 2022. which includes

- If prospective adoptive parents (PAPs) are adopting a child under the age of two, the upper age limit has been lowered to 40 years for single PAPs and 85 years for couples.
- 7-day adoption effort launched by CARA for Resident Indian (RI), Non- Resident Indian (NRI), and Overseas Citizen of India (OCI) PAPs,
- Chief Medical Officer (CMO) will assess the health status of the child based on Rights of Persons with Disabilities Act, 2016,
- PAPs with more than two children are not qualified to get referral for a normal child,
- mandatory counseling for all the relevant stakeholders at pre-adoption, adoption and post-adoption stages

⁴² The Juvenile Justice (Care and Protection of Children) Model Rules, 2016

⁴³ Amisha Shrivastava, Bombay High Court Orders Stay On Transfer of Adoption Cases To District Magistrates, Asks Single Judge To Continue Hearing Matters, LiveLaw (April 18,2023)

- emphasis on foster adoption of adoptable children already in foster care after a period of two years,
- time lines at various stages like uploading of LFA (Legally Free for Adoption) within ten days, examination of special needs children within a period of fifteen days by the Chief Medical Officer and verification of adoption application documents by District Child Protection Unit (DCPU) within five days,
- stringent measures have been provisioned for PAPs becoming reason for disruption or dissolution⁴⁴

4. INTERNATIONAL MANDATE

India being a signatory to the United Nations Convention on the Rights of the Child 1989 (CRC), must implement state laws and policies for child welfare and protect its right to be with its family. Article 3 (1) requires the state and its bodies and any other private or public institutions to keep the best interests of the child at the forefront when taking any decision regarding them.⁴⁵ Clause b of Article 214 of the CRC states that inter-country adoption must be resorted only in certain specific circumstances. The adoption agencies in the respective countries party to the Convention must take note whether the same is followed or not.⁴⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015⁴⁷ fulfils India's commitment as a signatory to the United Nations Convention on the rights of the child, Co-operation in respect of Inter-country Adoption (1993), the Hague Convention on Protection of Children and other related international instruments.

The non regulatory nature of inter-country adoptions in India is highlighted in the case of *Laxmi Kant Pandey vs. Union of India* where attention was brought to the lack of legislative oversight of international adoptions in India that might be extremely harmful to Indian children. The court established a comprehensive framework of normative and procedural safeguards for regulating inter-country adoption in order to protect children's welfare. The Court referred to Articles 15(3), 24, and 39 of the Indian Constitution regarding child welfare and the principles embodied in the U.N. Declaration on the Rights of the Child (1959) which highlights children's

⁴⁴ Simplification of the procedure for Child Adoption, Ministry of Women and Child Development, Child Adoption Resource Information & Guidance System (CARINGS) portal (2023)

⁴⁵ United Nations Convention on the Rights of the Child 1989, art. 3(1).

⁴⁶ Aatif, *supra note 21*

⁴⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015

need for special care and protection, “including appropriate legal protection, before as well as after birth.” It specified that foreigners who want to adopt Indian children should be sponsored by appropriately licensed agencies of their own country and the international adoption organizations must meet requirements set by the Government of India licenses. For this, Central Adoption Resource Agency (CARA) was set up by the government with branches in different areas for easy adoption across the country.⁴⁸

The case of *Karina Jane Creed v Union of India & Ors* reiterates the process of Inter-country adoption that requires a certification of the adoptive parents' suitability to adopt the child, guidance for the potential adoptive parents, and authorization for the child to enter and reside in the State of residence. According to the adoption regulations by the CARA, a foreigner residing abroad who wishes to adopt an orphan or abandoned or surrendered child from India may submit an application to a central government or authorised foreign adoption agency in his country of habitual residence. When prospective adoptive parents are qualified, the authority of the foreign nation in question must compile a home study report and sponsor their application to CARA for the adoption of an indigenous child. With a certificate of no objection from his country's diplomatic office in India, a foreigner, a person of Indian descent, or a foreign citizen of India who has his habitual residence in India may apply to CARA to adopt a child from India.⁴⁹

The Supreme Court (2017) recommended that “all children in CCIs be registered compulsorily and this data be verified and validated”⁵⁰ and in 2018, it recommended “the state governments to evaluate CCIs across India to ensure that minimum standards of care are being complied with”.⁵¹ In 2017, the Madhya Pradesh High Court noted that Central Adoption Resource Authority (CARA) is not giving timely referrals to children declared legally free for adoption⁵². It was advised that the CARA Steering Committee to be given the authority to regulate and investigate CARA's actions.

The new JJ model rules of 2022 provide that a child who does not get adopted in-country or inter-country is placed under the “hard to place category” and is qualified to be placed in the foster care, by the child welfare committee on the recommendation of the district child protection

⁴⁸ Laxmi Kant Pandey vs Union of India (1987) AIR 232, 1987 SCR (1) 383

⁴⁹ *Karina Jane Creed v. Union of India & Ors.* (2019)

⁵⁰ *Exploitation of Children in Orphanages, in re v. Union of India*, (2017) W.P. (CrI.) No.102 of 2007

⁵¹ *Sampurna Behura v. Union of India and others*, (2018), W.P. (C) No.473 of 2005

⁵² *Smt. Vineeta Kushwaha* (2018), Civil Revision No.258/2017; Civil Revision No.260/201

unit or the specialized adoption agency. All foster families willing to take children under “group foster care” will make an application to the state government. The state government will issue a registration certificate after considering the recommendations of the DM and the due verifications.⁵³

5. LGBTQIA+ COMMUNITY

The adoptions laws of India are discriminatory towards the LGBTQ community. Under the HAMA, the use of the words, “husband” and “wife” u/s 7 & 8 restrict gender of adoptive parents to the binary. Despite marital status of the adoptive parents having been done away with under HAMA and JJ, the 2017 Adoption guidelines and CARA forms still exclude homosexual couples and use the terms “prospective adoptive mother” and “father”.⁵⁴ Thus, same sex couples, non-heterosexual couples and transgender individuals are denied the right to take in adoption. Online Registration form for prospective parents under Schedule VI does not mention of the third gender as well as in adoption regulations which confirms that no specific provision has been worded in a way to incorporate adoptions by “third genders”. It reflects lack of social morality, violative of the fundamental rights of such individuals under art 14⁵⁵, 15 and art 21⁵⁶ and is also in violation of India’s obligations as a signatory to the ICCPR. The ICCPR’s Article 23 upholds the right of men and women of marriageable age to marry and found a family.⁵⁷ The best interest of the child cannot be served by excluding the LGBTQ community from adoption rights as it will deprive children of potential prospective adoptive parents. Studies have also proved that homosexual parents are just as capable to raise a child as effectively as their heterosexual counterpart, thus no logical reasoning is given to deny this right to same sex couples. Unreasonable restrictions in laws deny people basic rights, hence the law of adoption in India needs amendments and enactments to have a more conclusive and effective law in place.⁵⁸

Adoption is a lifetime decision that affects the child abundantly and the law provides rights and obligations to the adopted child as well the adoptive family. It is governed by a maze of legislative, administrative and judicial rules and regulatory frameworks, involving both state

⁵³ JJ Model Amendment Rules 2022

⁵⁴ Gaurav Balpande, *A Case for Adoption Rights for LGBTQ Community in India*, 4 INT’L J.L. MGMT. & HUMAN. 1162, 1166 (2021).

⁵⁵ India Const. art.14.

⁵⁶ India Const. art. 21.

⁵⁷ ICCPR, Art. 23.

⁵⁸ Aatif, *supra note 21*

and non-state actors. The number of orphan, abandoned and surrendered children adopted in the year 2021-2022 is 2991 for in-country and 414 for inter-country adoptions as compared to 3142 as in-country and 417 for inter-country adoptions for the year 2020-2021.⁵⁹ The reason for such reduction is the lack of willingness and knowledge about the rigorous procedures to adopt. In August 2022, Justice Chandrachud, heard a PIL seeking simplification of the adoption process and has thus demanded appropriate agencies to take action for the same and stated that if the petitioner has good suggestions, it must be taken up by the higher authorities.⁶⁰ While every aspect of family life is undergoing transformation, it is the parent-child relationship that has been the subject of intense rule-making in recent times.⁶¹ The main focus shall be on the best interest of the child principle to lead the way in rehabilitating and providing for as many children in need.

⁵⁹ Simplification of the procedure for Child Adoption, Ministry of Women and Child Development, Child Adoption Resource Information & Guidance System (CARINGS) portal (2023)

⁶⁰ Aneasha Mathur, *Supreme Court asks Centre to apprise it of steps taken to simplify adoption process*, INDIA TODAY, (April 18, 2023), <https://www.indiatoday.in/law/supreme-court/story/supreme-court-asks-centre-steps-taken-simplify-adoption-process-1993011-2022-08-26>.

⁶¹ Saptarshi Mandal, *An 'official' family: Laws of parenthood in India*, Firstpost (April 18, 2023), <https://www.firstpost.com/long-reads/an-official-family-laws-of-parenthood-in-india-3425626.html>