

Child Adoption



Child Adoption is a legal act through which the rights and responsibilities of a child are permanently transferred from birth parents to adoptive parents.

Child adoption can be of different types: It could be a family adoption where one set of biological parents / legal guardians - willingly place a child in adoption to another set of parents, or it could be an adoption of an abandoned or a surrendered child being placed in adoption by a qualified third party.

Such adoptions could be further classified as **‘In-Country Adoption’** if the adoptive parents are Indian Citizens living within India or **‘Inter-Country Adoption’** if the adoptive parents are Non-resident Indians or Overseas Citizens of Indian origin or Foreign Nationals.

The Supreme Court Judgement upon the case Lakshmikanth Pandey .V. Union Government of India delivered on 19th September 1986 remains to date a landmark, in establishing a well laid out process for In-Country and Inter-Country Adoptions.

After this judgment, extensive Rules, regulations, and guidelines were brought out, especially for the adoption of

parentless children who were either abandoned or surrendered and were placed in adoption by a third party.

Currently, **The Hindu Adoption and Maintenance Act of 1956**, and the **Juvenile Justice (Care & Protection of Children) Act of 2015** - are the two Acts available for adopting a child in India.

Those who are not eligible under the above two Acts could take the Guardianship of the child alone under *Guardian and Wards Act of 1890* Hindu Adoption and Maintenance Act of 1956

Even though Child Adoption has been in practice since time immemorial among Hindus, above is the first codified Law that came into practice throughout India.

Under this Act, only a Hindu can adopt a child who is born as a Hindu or brought up as a Hindu.

If parents themselves directly place a child in adoption to another set of parents the adoption deed can be registered in a competent registration office. When both parents are dead or certified that they are of unsound mind, then a legal guardian could give a child for adoption with the permission of a competent court.

Once an adoption order is issued, it becomes irrevocable, and the child gets all rights as if it is a natural-born child of that family. that includes inheritance rights to self-earned as well as traditional Hindu Joint Family Properties.

The Juvenile Justice (Care & Protection of Children) Act 2015

This is an enabling Act for all persons, irrespective of their religion, to adopt any abandoned or surrendered child who is declared as **‘legally free for adoption’** by the **Child Welfare Committee which is the competent authority under the Act.**

As per Section 2(2) – “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges, and responsibilities that are attached to a biological child.

Chapter VIII of the Act deals with the procedures to be followed while placing children in Adoption. While Section 58 deals with procedures for adoption by Indian prospective adoptive parents living in India, Section 59 deals extensively with adoption by Indian citizens /persons of Indian origin or foreign nationals.

Central Adoption Resource Authority (CARA) – is a body created by the Government of India to monitor the entire process of adoption of Abandoned or surrendered children in India under the above Act.

The same Act also has provisions for a family adoption where a child from one member of the family could be placed in adoption with another with certain limitations.

But still, there are some types of adoption placements that are not possible in India even today due to a lack of legal provisions under any Act. For example, if one set of Non-Hindu parents wants to place their child in adoption to a family member or a friend who does not come under the definition provided under the J.J.Act, then they can only give the guardianship rights over the child under the Guardian and Wards Act of 1890 and such legal rights would last until the child completes 21 years of age.

The **Central Adoption Resource Authority (CARA)** is an autonomous body under the Ministry of Women & Child Development, Government of India. It functions as the nodal body for the adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions.

The child will not have any legal claim over the properties of such guardians.

CARA primarily deals with the adoption of orphaned, abandoned, and surrendered children through its associated /recognized adoption agencies. The entire process is done online, wherein nationwide details of all available children for adoption and details of all certified parents wishing to adopt a child are uploaded to the specified CARA website. Matching of children with adoptive parents is done centrally through this website.

Click the link below to learn more about CARA - <http://cara.nic.in/InnerContent.aspx?Id=16#About CARA>

ELIGIBILITY OF A CHILD FOR ADOPTION - With reference to
Abandoned / Surrendered Children

- Only those children who are certified as **“Legally Free for Adoption”** by a *Child Welfare Committee* (CWC) could be placed in adoption
- A child could be certified as *“legally free for adoption”* When its own biological parents voluntarily surrender their child for adoption by executing a *Document of Surrender* in the presence of CWC;
- or After due process of enquiry it has been proved beyond doubt that a child was genuinely *abandoned* by its own parents / family.

ELIGIBILITY OF PROSPECTIVE ADOPTIVE PARENTS (S. 57

J.J.Act .2015) (Rule 5 of adoption Regulations 2017)

Prospective Adoptive Parents shall be physically fit; financially sound; mentally alert; and highly motivated to adopt a child & give a good upbringing to the child.

- ✓ Must have had at least two years of stable married life
- ✓ Age criteria to be followed
- ✓ Age criteria, existing no. of children- not applicable to Relative / Step Parent Adoptions
- ✓ In case of a couple consent of both parties required
- ✓ A single female can adopt a child of any gender
- ✓ A single male shall not be eligible to adopt a girl child
- ✓ minimum age difference between an adopter and the adoptee shall not be less than twenty-five years.
- ✓ Couple with more than three children not eligible to adopt except a special needs child

Agencies involved for adoption of surrendered or abandoned children by Indian Citizens living within India (In–Country Adoption)

- **CWC - Child Welfare Committee under J.J .Act**
- **SAA - Specialised Adoption Agency**
- **CCI - Child Care Institution**
- **DCPU – District Child Protection Unit**
- **CARINGS – Child Adoption Resource Information & Guidance System of India**
- **District Magistrate**

Agencies involved in Inter Country Adoption of Indian Minors

- **CWC - Child Welfare Committee under J.J Act**
- **SAA - Specialised Adoption Agency**
- **SARA - State Adoption Resource Agency**
- **CARINGS – Child Adoption Resource Information & Guidance System of India**
- **CARA - Central Adoption Resource Authority**
- **AFAA - Authorised Foreign Adoption Agency**
- **CARINGS – Child Adoption Resource Information & Guidance System of India**
- **District Magistrate**
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Important Documents involved in Child Adoption

- ☐ ***Document of Surrender***
- ☐ **Certificate Declaring a Surrendered Child as Legally Free for Adoption**
- ☐ **Home Study Report** – that declares parents as fit persons to adopt
- ☐ **Child Study Report**
- ☐ **Family Background Report**
- ☐ **No Objection Certificate by CARA**

- ❑ **Conformity Certificate by CARA**
- ❑ **Pre- Adoption Foster Care**
- ❑ **Adoption follow-up Report**

The Hindu Adoption and Maintenance Act of 1956

https://www.indiacode.nic.in/bitstream/123456789/1638/1/AA1956____78.pdf

Author:The Hindu Adoption and Maintenance Act of 1956

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

<https://www.indiacode.nic.in/bitstream/123456789/8864/1/201602.juvenile2015pdf.pdf>

AUTHOR: Ministry of Women & Child Development

[HTTPS://INDIANKANOON.ORG/DOC/34919523/](https://indiankanoon.org/doc/34919523/)

AUTHOR: MINISTRY OF WOMEN AND CHILD DEVELOPMENT

MODEL GUIDELINES FOR FOSTER CARE, 2016.

<https://sesindia.org.in/wp-content/uploads/2022/08/foster-care-guidelines.pdf>

AUTHOR: MINISTRY OF WOMEN AND CHILD DEVELOPMENT

GUIDELINES GOVERNING ADOPTION OF CHILDREN, 2015

[HTTPS://WWW.SCCONLINE.COM/BLOG/POST/2015/07/29/GUIDELINES-GOVERNING-ADOPTION-OF-CHILDREN-2015/](https://www.scconline.com/blog/post/2015/07/29/guidelines-governing-adoption-of-children-2015/)

AUTHOR: MINISTRY OF WOMEN AND CHILD DEVELOPMENT

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Guideline on Foster Care by CARA