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ADOPTION LAWS IN INDIA: LEGAL FRAMEWORK AND CHALLENGES

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Abstract

India's diverse social fabric and complex legal history significantly shape its adoption landscape. This abstract provides a comprehensive overview of the legal framework governing adoption in India, primarily focusing on the Hindu Adoptions and Maintenance Act (HAMA) of 1956 and the Juvenile Justice (Care and Protection of Children) Act (JJ Act) of 2015. While HAMA governs adoptions within the Hindu community and a few other allied religions, the JJ Act provides a secular framework for the adoption of orphaned, abandoned, and surrendered children, emphasizing the "best interest of the child." The paper delves into the procedural aspects, eligibility criteria for prospective parents, and the role of various authorities like the Central Adoption Resource Authority (CARA). Furthermore, it identifies and analyzes key challenges within the existing system, including delays in the adoption process, issues related to inter-country adoptions, the persistent preference for male children, and the impact of societal stigmas. The abstract concludes by highlighting the need for continued legal reforms and public awareness to streamline the adoption process and ensure every child's right to a loving family.

Keywords: Adoption, India, Legal Framework, Hindu Adoptions and Maintenance Act (HAMA), Juvenile Justice Act (JJ Act), CARA, Challenges, Child Welfare, Inter-country Adoption.

1. Introduction

The act of adoption, a profound human endeavor, transcends mere legal formalities; it embodies the fundamental human right to a family and a nurturing environment for every child. A family, regardless of its composition, serves as the primary incubator for a child's holistic development, fostering emotional security, social skills, cognitive growth, and a strong sense of identity. In its absence, children often face significant vulnerabilities, making a robust adoption framework crucial for their well-being. India, with its vast population and complex socio-cultural landscape, has a unique and evolving history concerning adoption. Historically, adoption practices in India were deeply intertwined with religious and customary laws, often prioritizing the continuation of lineage and the performance of specific religious rites, particularly for male children.¹

Ancient Indian texts and traditions, primarily within Hinduism, reveal a long-standing practice of adopting male heirs for spiritual salvation and property inheritance. These adoptions were often informal, governed by customary practices, and lacked a unified legal framework. The concept of adopting an unrelated child for their welfare, rather than for the adopter's spiritual or material benefit, is a more recent development that gained traction in the 20th century. During the British colonial period, while some aspects of personal laws related to adoption were codified, a comprehensive, secular law remained elusive.

Post-independence, India embarked on a journey to modernize its legal system, recognizing the need for a more child-centric approach to adoption. This led to the enactment of crucial legislations that sought to regulate and streamline the adoption process. The Hindu Adoptions and Maintenance Act (HAMA) of 1956 was a landmark step, formalizing adoption practices for Hindus, Sikhs, Jains, and Buddhists, and extending the right to adopt to women. However, its scope remained limited by religious affiliations, leaving a significant portion of the population without a secular adoption option. This gap was partly addressed by the Guardians and Wards Act of 1890, which allowed individuals from other religious communities to take a child under guardianship, but without the full legal recognition of a parent-child relationship akin to adoption.²

The shift towards a truly secular and child-centric approach gained significant momentum with

¹ Sharma, A. (2021). Child Adoption in India-Issues and Challenges. *Indian JL & Legal Rsch.*, 2, 1.

² Aatif, S. M. (2019). The law of adoption in India: A critical analysis. *Pravnik*, 74, 5.

the enactment of the Juvenile Justice (Care and Protection of Children) Act (JJ Act). The most recent iteration, the JJ Act of 2015, revolutionized the adoption landscape by establishing a uniform, secular procedure for the adoption of orphaned, abandoned, and surrendered children, irrespective of the religious background of the prospective adoptive parents or the child. This Act unequivocally prioritizes the "best interest of the child," laying down detailed procedures, eligibility criteria, and the critical role of the Central Adoption Resource Authority (CARA) as the nodal body overseeing all adoptions in India, including inter-country adoptions.³

Despite these significant legal advancements, the Indian adoption system faced numerous challenges before 2020. Data from CARA indicates a fluctuating trend in adoptions during this period. For instance, in 2015-16, there were 3,677 total adoptions (3,011 in-country and 666 inter-country), which rose to 4,027 in 2018-19 (3,374 in-country and 653 inter-country). However, there was a slight decline in 2019-20, with 3,745 total adoptions (3,351 in-country and 394 inter-country). This period also saw a significant disparity between the number of prospective adoptive parents and the children legally available for adoption. As of December 2019, approximately 23,000 prospective parents were registered with CARA, while only around 3,000 children were declared legally free for adoption. This supply-demand gap often led to lengthy waiting periods, with reports indicating average wait times of two to three years for healthy infants and younger children.⁴

Other persistent issues prior to 2020 included the societal preference for male children, which often left older children and children with special needs waiting longer for families. For example, in 2019-20, while 2,061 girls were adopted, 1,470 boys found families, suggesting that more girls were available for adoption. Additionally, illegal adoptions and instances of child trafficking remained a concern. The lack of widespread awareness about formal adoption procedures and bureaucratic hurdles also contributed to the challenges faced by prospective adoptive parents. Furthermore, the absence of robust post-adoption support services often led to difficulties in adjustment for both children and adoptive families, with some instances of children being returned to childcare institutions.⁵

³ Ngai, E. W., Law, C. C., & Wat, F. K. (2008). Examining the critical success factors in the adoption of enterprise resource planning. *Computers in industry*, 59(6), 548-564.

⁴ Central Adoption Resource Authority (CARA). (2020). *Adoption statistics 2015-2020*. Ministry of Women & Child Development, Government of India.

⁵ Greenhalgh, T., Wherton, J., Papoutsi, C., Lynch, J., Hughes, G., Hinder, S., ... & Shaw, S. (2017). Beyond adoption: a new framework for theorizing and evaluating nonadoption, abandonment, and challenges to the scale-up, spread, and sustainability of health and care technologies. *Journal of medical Internet research*, 19(11), e8775.

2. Legal Framework Governing Adoption in India

The legal landscape of adoption in India is characterized by a dualistic system, catering to both religion-specific personal laws and a comprehensive secular framework. This intricate structure has evolved over time to address the diverse social and cultural contexts of the nation while increasingly prioritizing the paramount welfare of the child.

2.1. Statutes & Regulations

The primary legislative instruments and regulatory bodies that govern adoption in India are:

- **Hindu Adoptions and Maintenance Act (HAMA), 1956:** This landmark legislation specifically governs adoptions among individuals who are Hindu by religion, including Virashaiva, Lingayat, or follower of the Brahmo, Prarthana, or Arya Samaj, and extends to Sikhs, Jains, and Buddhists. Prior to HAMA, Hindu adoptions were largely governed by customary practices. HAMA codified these practices, bringing uniformity and legal recognition to adoptions within these communities. It outlines who can adopt, who can be adopted, and the conditions under which an adoption is valid. Notably, it primarily focuses on the creation of a legal parent-child relationship for the purpose of lineage continuation and inheritance, though it also ensures the child's right to maintenance.⁶
- **Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015:**⁷ This Act represents a significant paradigm shift in Indian adoption law, providing a secular and child-centric framework for the adoption of orphaned, abandoned, and surrendered children, regardless of the religious background of the child or the prospective adoptive parents. It superseded the earlier JJ Act of 2000 and is universally applicable across all communities in India. The JJ Act, 2015, firmly establishes the "best interest of the child" as the guiding principle for all adoption proceedings, emphasizing a rights-based approach to child protection and care. It lays down elaborate procedures for declaring children "legally free for adoption" and mandates the involvement of various child welfare committees and district child protection units.
- **Guardians and Wards Act, 1890:** While not an adoption law in itself, the Guardians and Wards Act, 1890, has historically been used by non-Hindus, particularly Christians,

⁶ PSYCHOSOCIAL, A., & INDIA, O. A. I. (2020). ¹ The Adoption Bill (1974) and the Adoption Bill (1980). 2 The 1974 Bill applied to all communities, including the Muslims-who objected to this inclusion on the grounds that Islamic religion did not recognise adoption. In the 1980 Bill the Muslims were expressly excluded, but this round going the Parsis objected to being included on the grounds that Parsi religion did not recognise conversion, and adoption was a virtual conversion. *Redefining Family Law in India*, 22.

⁷ Young, S., Greer, B., & Church, R. (2017). Juvenile delinquency, welfare, justice and therapeutic interventions: a global perspective. *BJPsych bulletin*, 41(1), 21-29.

Parsis, and Muslims, to take a child under "guardianship." Under this Act, the individual is granted guardianship of the child, allowing them to care for and manage the child's property. However, it does not confer the full legal status of a parent-child relationship, nor does it typically grant the child the right to inheritance from the guardian or break ties with their biological family. This act provided a limited avenue for child care for communities not covered by HAMA, but it falls short of the permanency and legal implications of adoption.⁸

- **Central Adoption Resource Authority (CARA) Guidelines:** CARA, an autonomous body under the Ministry of Women and Child Development, Government of India, is the nodal agency for adoption in India. It frames regulations and guidelines for both in-country and inter-country adoptions. These guidelines, which are updated periodically, provide detailed procedural rules, eligibility criteria, and protocols to be followed by adoption agencies, prospective adoptive parents, and other stakeholders involved in the adoption process. They are crucial for ensuring transparency, accountability, and the efficient functioning of the adoption system, aiming to prevent illegal adoptions and safeguard the best interests of the child.⁹

2.2. Key Provisions

The various legal instruments collectively define the critical aspects of the adoption process:

- **Eligibility criteria for adoptive parents:** Both HAMA and the JJ Act, along with CARA guidelines, stipulate specific criteria for prospective adoptive parents. These typically include age requirements (with different age limits based on the age of the child being adopted), marital status (single individuals, married couples, and increasingly, single women are eligible), financial stability, good health, and a stable home environment conducive to raising a child. Psychological and emotional maturity are also key considerations, often assessed through home studies.¹⁰
- **Rights of biological parents vs. adoptive parents:** The legal framework clearly delineates the rights and responsibilities. In the case of adoption under the JJ Act, once

⁸ Frost, G. (2013). Under the guardians' supervision: illegitimacy, family, and the English Poor Law, 1870–1930. *Journal of Family History*, 38(2), 122-139.

⁹ Kakkar, P. (2019). Adoption in India—The Past, Present and Future Trends. *Journal of Research and Analytical Reviews*, 6(2), 718-721.

¹⁰ Kaur, V., & Verma, S. (2021). INSTITUTIONAL LEGAL FRAMEWORK AND TRENDS OF ADOPTION IN INDIA: A STUDY WITH SPECIAL REFERENCE TO THE PROVISIONS AND SAFEGUARDS FOR CHILDREN UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015. *Elementary Education Online*, 20(4), 2877-2877.

a child is declared "legally free for adoption" by the Child Welfare Committee (CWC) after due inquiry to ascertain that the child is orphaned, abandoned, or surrendered, the biological parents' rights are legally severed. Upon adoption, the adoptive parents assume all legal rights, responsibilities, and obligations towards the child as if they were the biological parents, including rights to inheritance and maintenance. Under HAMA, the child is deemed to be the child of the adoptive parents for all purposes from the date of the adoption, and the ties with the biological family are severed, with some exceptions related to prohibited degrees of relationship for marriage.¹¹

- **Inter-country adoption regulations:** CARA plays a pivotal role in regulating inter-country adoptions. These adoptions are permitted only when no suitable Indian parents are available for a child. CARA guidelines stipulate stringent procedures for foreign prospective adoptive parents, requiring them to be recommended by a foreign adoption agency authorized by CARA, and emphasizing adherence to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (to which India is a signatory). These regulations are designed to prevent child trafficking and ensure that children are adopted into safe and stable environments abroad.¹²

2.3. Other Laws

While the Hindu Adoptions and Maintenance Act (HAMA) of 1956 provides a specific legal framework for adoption within the Hindu, Sikh, Jain, and Buddhist communities, the concept of adoption, as understood in HAMA, is not traditionally recognized in the personal laws of other major religious communities in India, namely Muslims, Christians, and Parsis. This historical absence of a formal "adoption" concept within their respective personal laws led to different practices and legal interpretations before the advent of the secular Juvenile Justice (Care and Protection of Children) Act (JJ Act).

Muslim Adoption Law

In traditional Islamic jurisprudence (Sharia), the concept of full legal adoption, which severs ties with the biological family and grants inheritance rights to the adopted child from the adoptive parents, is generally not recognized.¹³ This is primarily due to the emphasis in Islamic law on maintaining biological lineage and the prohibition of changing a child's parentage. The

¹¹ Baxter, T. D. (2015). Respecting Parents' Fundamental Rights in the Adoption Process: Parents Choosing Parents for Their Children. *Rutgers UL Rev.*, 67, 905.

¹² Vashishtha, N. (2020). Two Sides to Inter-Country Adoption. *Jus Corpus LJ*, 1, 401.

¹³ N., Ananya K. (2021). Morality of Adoption Laws. *Indian JL & Legal Rsch.*, 2, 1.

Quran (Surah Al-Ahzab, 33:5) emphasizes calling children by the names of their fathers, reinforcing the importance of biological paternity.¹⁴

Instead of adoption, Muslim personal law recognizes the concept of "**Kafala**" or guardianship. Under Kafala, a child is taken into care and raised within a family, but they do not assume the surname of the guardian nor do they automatically inherit from them. The child's biological identity and lineage are preserved. Guardians under Kafala are responsible for the child's upbringing, education, and welfare, essentially acting as trustees. If a Muslim family wishes to provide for a child under their care, they can do so through gifts during their lifetime or by making a will (Wasiyat) for up to one-third of their property, as inheritance laws under Islam are fixed.¹⁵

However, the legal landscape for Muslims in India changed significantly with the Supreme Court's landmark judgment in **Shabnam Hashmi v. Union of India (2014)**. This ruling declared that the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (which was later replaced by the JJ Act, 2015) providing for the adoption of orphaned, abandoned, and surrendered children, would prevail over personal laws. This effectively allowed Muslims, and indeed individuals from any religious background, to adopt a child under the secular framework of the JJ Act, granting the child full legal rights, including inheritance, akin to a biological child. Therefore, while traditional Muslim personal law does not permit full adoption, the JJ Act now provides a secular avenue for Muslims to legally adopt.

Christian Adoption Law

Similar to Muslim personal law, traditional Christian personal laws in India also do not have specific provisions for full legal adoption that creates a new parent-child relationship with inheritance rights. Historically, Christians in India, when seeking to care for a child who was not their biological offspring, often resorted to the **Guardians and Wards Act, 1890**. Under this Act, a person could be appointed as a legal guardian of a minor's person and/or property. This arrangement, however, only confers guardianship, not adoption. It does not sever the child's ties with their biological family, nor does it grant automatic inheritance rights from the guardian. The guardianship ceases once the child attains the age of majority.¹⁶

¹⁴ Dequen, J. P. (2019). Filiation and adoption among Muslims in India: The quagmires of a religious minority law. *Journal of law and religion*, 34(3), 336-355.

¹⁵ Aatif, S. M. (2019). The law of adoption in India: A critical analysis. *Pravnik*, 74, 5.

¹⁶ Antony, T. (2020). Inheritance Rights of Adopted Children in Christian Law. *Supremo Amicus*, 18, 937.

However, with the enactment of the **Juvenile Justice (Care and Protection of Children) Act, 2015**, Christians in India, like other communities, can now legally adopt children who are orphaned, abandoned, or surrendered. The JJ Act provides a uniform, secular adoption process that applies to all citizens, irrespective of their religious affiliation. Therefore, a Christian individual or couple can adopt a child under the JJ Act, and upon the passing of the adoption order by the court, the child gains all the rights and responsibilities of a biological child within the adoptive family, including inheritance rights.¹⁷

Parsi Adoption Law

The Parsi community in India, while having their own set of personal laws governing aspects like marriage, divorce, and succession, traditionally do not have a codified law of adoption. Similar to Christians and Muslims, Parsi individuals or couples historically relied on the **Guardians and Wards Act, 1890**, if they wished to take a child under their care. This would establish a guardian-ward relationship, without conferring the full legal status of adoption or the automatic inheritance rights that come with it.¹⁸

There was a customary practice among some Parsis of taking a "Paalak" (foster child) primarily for the purpose of ensuring the performance of religious rites after the demise of the adoptive parents. However, this "Paalak" arrangement did not carry the full legal implications of adoption, particularly concerning property inheritance.

With the advent of the **Juvenile Justice (Care and Protection of Children) Act, 2015**, Parsis, like all other Indian citizens, can now legally adopt children under its secular provisions. This means that a Parsi individual or couple can approach CARA and the designated adoption agencies to adopt an orphaned, abandoned, or surrendered child, thereby creating a full legal parent-child relationship with all associated rights and responsibilities, including inheritance.¹⁹

3. Challenges in India's Adoption System

Despite significant legislative advancements aimed at streamlining the adoption process and prioritizing child welfare, India's adoption system continues to face a complex array of

¹⁷ Riya; Neelaksh. (2021). Comprehensive Study on Child Adoption in India with Special Reference to Hindu Laws. *Issue 3 Int'l JL Mgmt. & Human.*, 4, 1493.

¹⁸ Bose, B. (2021). Succession Laws amongst Parsi in India. *Issue 3 Int'l JL Mgmt. & Human.*, 4, 1696.

¹⁹ Irani, P. K. (2021). The personal law of the Paris of India. In *Family Law in Asia and Africa* (pp. 273-300). Routledge.

challenges. These hurdles often manifest as prolonged delays, perpetuate societal biases, and, in some unfortunate instances, create vulnerabilities for children.²⁰

3.1. Bureaucratic Delays & Procedural Complexities

One of the most significant impediments to adoption in India is the pervasive issue of bureaucratic delays and the inherent complexities of the adoption procedure. Prospective adoptive parents (PAPs) frequently encounter:

- **Excessive paperwork and prolonged waiting periods:** The process of registering with CARA, undergoing home studies, matching with a child, and securing court orders involves a considerable amount of documentation and multiple stages of verification. This often translates into agonizingly long waiting periods. While CARA aims for a more efficient process, the average waiting time for a healthy child can range from **1 to 3 years**, and sometimes even longer, which can be emotionally taxing for PAPs and detrimental to the child's development in institutional care.
- **Lack of coordination between CARA, state agencies, and courts:** Despite CARA being the central authority, there can be a noticeable lack of seamless coordination among CARA, the State Adoption Resource Agencies (SARAs), District Child Protection Units (DCPUs), Child Welfare Committees (CWCs), and the courts. This disjointed approach can lead to procedural bottlenecks, duplicate efforts, and unnecessary delays in case processing and finalization of adoptions. The transfer of adoption orders from courts to District Magistrates under recent amendments also highlights ongoing coordination challenges during implementation.²¹

3.2. Sociocultural Barriers

Deeply ingrained societal beliefs and cultural norms continue to pose significant challenges to the widespread acceptance and practice of adoption in India:

- **Preference for biological children; stigma against adoption:** A strong societal preference for biological progeny, often rooted in notions of lineage, "bloodline," and religious continuity, persists. This leads to a persistent stigma associated with adoption, with adopted children sometimes facing discrimination and adopted parents feeling the need to conceal the adoption. The desire for a child who carries forward the family

²⁰ Sharma, S., Joshi, M., & Kansal, M. (2017). IFRS adoption challenges in developing economies: an Indian perspective. *Managerial Auditing Journal*, 32(4/5), 406-426.

²¹ Tiwari, R., Chand, K., Bhatt, A., Anjum, B., & Thirunavukkarasu, K. (2021). Agriculture 5.0 in India: opportunities and challenges of technology adoption. *A Step Towards Society 5.0*, 179-198.

name and traditions often overshadows the humanitarian aspect of providing a home to a child in need.²²

- **Religious limitations (e.g., Muslims relying on guardianship under personal laws):** As discussed, personal laws for Muslims, Christians, and Parsis traditionally do not recognize full legal adoption akin to the Hindu Adoption and Maintenance Act. While the Juvenile Justice Act (JJ Act) now provides a secular option, historical reliance on mechanisms like guardianship under the Guardians and Wards Act, 1890, for these communities means that the societal understanding and acceptance of adoption as a full legal affiliation within these groups are still evolving. This can create confusion and hesitation for prospective parents from these backgrounds, even when a secular legal path is available.²³

3.3. Legal Ambiguities

Despite efforts to create a comprehensive legal framework, certain ambiguities and overlaps between different statutes can lead to complexities:

- **Conflict between HAMA (parental property rights) and JJ Act (child-centric approach):** While both HAMA and the JJ Act facilitate adoption, their fundamental philosophies and procedural details differ. HAMA, rooted in Hindu personal law, often focuses on the continuity of lineage and property rights for the adoptive parents, allowing adoptions to occur even without court intervention in some cases. In contrast, the JJ Act is entirely child-centric, prioritizing the "best interest of the child" and mandating court orders for all adoptions of orphaned, abandoned, or surrendered children. This dual system can sometimes lead to confusion and even potential legal challenges, particularly concerning inheritance rights and the finality of adoption orders, especially when one system is favored over the other for a particular type of adoption.
- **Ambiguities in interfaith/transnational adoptions:** While the JJ Act provides a secular framework, complexities can arise in interfaith adoptions if the adoptive parents' personal laws conflict with the complete severance of biological ties or inheritance rights. Similarly, inter-country adoptions, though regulated by CARA and the Hague

²² Jain, P. (2011). IFRS implementation in India: Opportunities and challenges. *World Journal of Social Sciences*, 1(1), 125-136.

²³ Chhabra, V., Chopra, S., & Rajan, P. (2018). Challenges in technology adoption in Indian public distribution system: a quality management approach. *International Journal of Productivity and Quality Management*, 23(3), 328-348.

Convention, can face ambiguities related to the recognition of foreign adoption orders in India and vice versa, leading to prolonged legal battles and uncertainties for both the child and the adoptive family.

3.4. Child Trafficking & Fraud Risks

A deeply concerning challenge within the adoption system is the vulnerability of children to trafficking and fraudulent practices:

- **Illegal adoptions disguised as "surrenders" under JJ Act:** The demand-supply gap for adoptable children creates fertile ground for illegal activities. There have been instances where children are illegally acquired, often from vulnerable families, and then presented as "surrendered" or "abandoned" to adoption agencies or institutions to bypass legal procedures and facilitate illegal adoptions for a price. This not only constitutes child trafficking but also violates the child's fundamental rights and puts them at severe risk.
- **Lack of monitoring in private orphanages:** While CARA and the JJ Act regulate specialized adoption agencies, the monitoring and oversight of many smaller, unregulated private orphanages and childcare institutions remain a significant concern. Such institutions can become hubs for illegal adoptions or, at the very least, lack the necessary standards of care, making children vulnerable to exploitation and hindering their chances of being legally adopted into loving families. The absence of strict penalties and vigilant enforcement exacerbates this issue.

4. Case Studies & Judicial Precedents

Judicial pronouncements by the Supreme Court of India have played a pivotal role in shaping the country's adoption laws, often stepping in to fill legislative gaps or interpret existing statutes in a manner that prioritizes the welfare of the child. These landmark judgments have significantly influenced the evolution of India's adoption framework.

4.1. Landmark Judgments

- **Shabnam Hashmi v. Union of India (2014): JJ Act overrides religious laws; adoption is a universal right.**²⁴ This was a landmark Public Interest Litigation (PIL) filed by Shabnam Hashmi, a social activist, who had fostered a child and sought to

²⁴ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India).

legally adopt her, but faced difficulties due to her Muslim faith, as traditional Muslim personal law does not recognize full adoption (as opposed to guardianship). The Supreme Court, in its ruling, held that the **Juvenile Justice (Care and Protection of Children) Act, 2000 (now replaced by the 2015 Act), is a secular law that allows any Indian citizen, irrespective of their religious affiliation, to adopt an orphaned, abandoned, or surrendered child.** The Court clarified that the JJ Act provides an enabling framework for adoption and does not conflict with personal laws, as individuals are free to choose between adopting under the JJ Act or following their personal laws (like guardianship). While the judgment did not declare the right to adopt as a fundamental right under Article 21 of the Constitution, it unequivocally affirmed that the JJ Act allows for a secular adoption process for all, effectively providing a legal avenue for Muslims, Christians, and Parsis to adopt children with full legal rights, including inheritance, under its provisions. This judgment was a significant step towards a uniform and child-centric approach to adoption in India.

- **Laxmi Kant Pandey v. Union of India (1984): SC laid guidelines for inter-country adoptions.**²⁵ This was another seminal Public Interest Litigation that brought to light malpractices and exploitation in inter-country adoptions from India, particularly concerns about child trafficking and the welfare of Indian children adopted by foreign parents. Responding to these concerns, the Supreme Court took a proactive stance and, in the absence of specific legislation at the time, laid down a comprehensive set of **guidelines and norms for regulating inter-country adoptions.** These guidelines mandated that all inter-country adoptions must be routed through government-recognized social welfare agencies, emphasized the importance of proper home study reports of prospective foreign parents, and stressed the need for follow-up reports on the child's well-being after adoption. The judgment aimed to safeguard children from abuse, neglect, and exploitation and ensure that they are adopted into suitable environments. The principles laid down in this case formed the bedrock for subsequent legislation and the establishment of CARA, which later codified many of these guidelines into formal regulations.

4.2. Recent Issues

The Indian adoption system has continued to face new and evolving challenges, sometimes

²⁵ *Laxmi Kant Pandey v. Union of India*, (1984) 2 SCC 244 (India).

exacerbated by unforeseen circumstances or the implementation of new technologies:

- **COVID-19's impact on pending adoption cases:** The COVID-19 pandemic and the ensuing lockdowns significantly disrupted the adoption process in India. Travel restrictions, closure of courts, and limited functioning of adoption agencies led to a substantial slowdown and even a halt in pending adoption cases. Many home study reports, child study reports, and court hearings were delayed or postponed. This resulted in prolonged waiting periods for prospective adoptive parents and kept eligible children in institutional care for extended durations, impacting their development and the emotional well-being of all involved. The pandemic also led to an increase in the number of orphaned children, particularly during the second wave, further straining the existing child welfare and adoption infrastructure. Data from CARA showed a decrease in adoptions in 2020-21, reflecting the pandemic's adverse impact.²⁶
- **Controversies around CARA's online portal (misrepresentation of child health):** While CARA's online portal was introduced to bring transparency and efficiency to the adoption process, it has, at times, been embroiled in controversies, particularly concerning the accurate representation of a child's health status.²⁷ Instances have been reported where prospective adoptive parents alleged that the medical information or photographs of children available on the portal did not accurately reflect the child's actual health condition or appearance, leading to disillusionment and sometimes even the return of children. These issues highlight the critical need for meticulous medical assessments, ethical practices by childcare institutions, and robust verification mechanisms within the online portal to prevent misrepresentation and ensure informed decision-making by prospective parents. Such controversies erode trust in the system and can cause significant distress to both the adoptive family and, most importantly, the child.²⁸

5. Suggestions

To address the multifaceted challenges confronting India's adoption system and to further uphold the "best interest of the child," a comprehensive and multi-pronged approach is

²⁶ Pai, C., Bhaskar, A., & Rawoot, V. (2020). Investigating the dynamics of COVID-19 pandemic in India under lockdown. *Chaos, Solitons & Fractals*, 138, 109988.

²⁷ Carp, E. W. (1998). *Family matters: Secrecy and disclosure in the history of adoption*. Harvard University Press.

²⁸ Grimes, S. M. (2021). *Digital playgrounds: The hidden politics of children's online play spaces, virtual worlds, and connected games*. University of Toronto Press.

necessary. These suggestions aim to streamline processes, enhance transparency, foster greater societal acceptance, and ensure the safety and well-being of every adoptable child.

5.1. Streamlining Procedures and Reducing Delays

- **Digitization and Automation:** While CARA's online portal is a step in the right direction, further digitization of all adoption-related documents and processes is crucial. This includes online submission of all forms, real-time tracking of application status, and secure digital signatures to reduce physical paperwork and accelerate approvals.
- **Enhanced Inter-Agency Coordination:** Establishing a more robust, integrated digital platform that seamlessly connects CARA, SARAs, DCPUs, CWCs, and the judiciary is paramount. Regular inter-departmental meetings and joint training programs can foster better understanding and coordination, minimizing procedural bottlenecks.
- **Time-Bound Processing:** Strict adherence to timeframes for each stage of the adoption process, from home study to court order, must be enforced. Penalties for undue delays by agencies or authorities could be considered to ensure accountability.
- **Increase in Legally Free Children:** Expediting the legal process of declaring children "legally free for adoption" is critical. This involves more efficient functioning of CWCs in identifying orphaned, abandoned, and surrendered children and completing the necessary inquiries within stipulated timelines.

5.2. Promoting Societal Acceptance and Awareness

- **Public Awareness Campaigns:** Launching nationwide public awareness campaigns using various media (television, social media, print) to destigmatize adoption is essential. These campaigns should highlight positive adoption stories, emphasize that adopted children are no less "their own," and educate the public about the legal and emotional benefits of adoption.
- **Counseling and Support Services:** Providing mandatory pre- and post-adoption counseling for prospective parents and adopted children can help in addressing emotional challenges, preparing families for the adoption journey, and facilitating successful integration.
- **Incentives for Adoption:** Exploring potential incentives, such as tax benefits or specialized leave for adoptive parents, could encourage more families to consider adoption.

- **Addressing Gender and Age Bias:** Specific campaigns should be launched to promote the adoption of girl children, older children, and children with special needs, sensitizing prospective parents to the unique joys and rewards of adopting such children.

5.3. Strengthening Legal Framework and Clarity

- **Harmonization of Laws:** While the JJ Act serves as a secular law, ongoing review and potential harmonization with aspects of HAMA could further streamline the legal framework, particularly concerning the finality of adoption orders and inheritance rights across all communities.
- **Clarity in Interfaith and Transnational Adoptions:** Developing clearer, more explicit guidelines and protocols for interfaith adoptions within India and for complex transnational adoption cases, ensuring consistency and predictability for all parties involved, would be beneficial.
- **Stringent Enforcement Against Illegal Adoptions:** Increasing surveillance and punitive measures against individuals and organizations involved in illegal adoptions or the misrepresentation of children's identities is crucial. Regular audits of childcare institutions and stricter licensing norms are required.

5.4. Enhancing Child Protection and Welfare

- **Robust Monitoring of Institutions:** Implementing stricter monitoring mechanisms and regular, unannounced inspections of all childcare institutions, including private orphanages, is necessary to prevent child trafficking, ensure proper care, and identify adoptable children.
- **Ethical Practices and Transparency:** Ensuring that adoption agencies adhere to the highest ethical standards, particularly in providing accurate information about a child's health and background to prospective parents. There should be clear channels for reporting and investigating any alleged misrepresentation.
- **Support for Biological Families:** Strengthening support systems for vulnerable biological families to prevent abandonment and surrender of children due to poverty or lack of resources. This could include counseling, financial aid, and access to essential services.

6. Conclusion

India's journey in establishing a robust legal framework for adoption reflects a gradual yet profound shift from customary practices to a child-centric approach. The Hindu Adoptions and Maintenance Act of 1956 provided crucial formalization for Hindu adoptions, while the Juvenile Justice (Care and Protection of Children) Act of 2015 emerged as a transformative secular legislation, unequivocally prioritizing the "best interest of the child" across all communities. Landmark judicial pronouncements, such as those in *Laxmi Kant Pandey* and *Shabnam Hashmi*, have further solidified this commitment, expanding the scope and accessibility of legal adoption and reinforcing its universal nature. Despite these significant strides, the Indian adoption system grapples with persistent challenges. Bureaucratic complexities, prolonged waiting periods, and the pervasive impact of societal stigmas—such as the preference for biological children and gender bias—continue to impede the flow of children into loving families. Legal ambiguities arising from the interplay of diverse personal laws and the secular framework sometimes create confusion, while the ever-present threat of child trafficking and fraudulent practices underscores the vulnerabilities within the system.

Moving forward, the success of India's adoption system hinges on a concerted effort to implement the proposed suggestions. This includes leveraging technology for greater efficiency and transparency, fostering enhanced inter-agency coordination, and actively engaging in public awareness campaigns to dismantle sociocultural barriers. Crucially, continuous legal reform to harmonize existing statutes and stringent enforcement against malpractices are essential to protect the most vulnerable. Ultimately, by addressing these multifaceted challenges, India can strive to create a more compassionate, efficient, and equitable adoption landscape, ensuring that every child's fundamental right to a family and a nurturing home is realized. The commitment to safeguarding the "best interest of the child" must remain at the core of all future endeavors, paving the way for a brighter future for countless children awaiting a family.