

# India's Adoption Policy

September 9, 2022

## Manifest Pedagogy:

India's adoption policy is very strict and the country is facing huge backlogs in clearing the adoption requests. The country should take care of its children orphaned due to circumstances. Institutionalisation may be detrimental over the long term. This calls for a simplified yet secure adoption process. The government should pay equal attention to the finer aspects of child care, and allow itself to be guided by a child-centric philosophy. There are no shortcuts in ensuring orphaned children come to no harm.

In News: The Supreme Court recently emphasised that the child adoption process in India needs to be streamlined.

Placing it in the Syllabus: Polity and Social Justice.

## Static Dimensions

- Background
- Facts Related to the matter
- Stakeholders in the adoption process
- The Laws to Adopt a Child in India
- Eligibility
- Adoption procedure

## Current Dimensions

- Issues with the current Procedure
- Challenges

## Content

### Background

- A recent report, "**Review of Guardianship and Adoption Laws**", by the Parliamentary Standing Committee on

Personnel, Public Grievances and Law and Justice has pointed to the huge mismatch between the number of people wanting to adopt children and the number of children legally available for adoption.

- The report argued that in a country with millions of orphans, only **2,430 children were available for adoption.**
- According to the report, there were **27,939 prospective parents registered** with the Central Adoption Resource Authority (CARA) as of December 2021, from nearly 18,000 in 2017.
- There were 6,996 orphaned, abandoned and surrendered children residing in childcare institutions considered adoptable, but only 2,430 were declared legally free for adoption by Child Welfare Committees.
- It claimed that the waiting time for adoption had increased to three years from one year, in the past five years. **The total number of children adopted in 2021-22 was only 3,175.**
- The process of adoption in the country was tightened procedurally and legally in response to rampant malpractices and inter-country adoption rackets.
  - CARA was installed as the nodal body for in-country and inter-country adoptions, to monitor and regulate the process, ensuring through stringent rules that the adoption is in the best interests of the child, and no illegality is involved.

### **Facts Related to the matter.**

- The **2020 World Orphan Report estimates the number of orphans in India at 31 million.**
- Ministry of Women and Child Development, as per Census 2011 there are **55,258 child beggars** in the age group of 0 to 19 years in the country.
- According to **UNICEF, almost 10,000 children become**

**orphans every day.** There are about 140 million orphans in the world.

- 26,734 prospective adoptive parents were registered with CARA as on December 16, 2021, and were waiting for referral for in-country adoption. Another 1,205 prospective adoptive parents awaited inter-country adoption as of that day, the report observed.

### **Stakeholders in the adoption process**

- **Central Adoption Resource Authority (CARA)** – CARA ensures smooth functioning of the adoption process from time to time, issues Adoption Guidelines laying down procedures and processes to be followed by different stakeholders of the adoption programme.
  - CARA is an autonomous and statutory body of the **Ministry of Women and Child Development** in the Government of India.
  - The system acts as a centralised digital database of adoptable children and prospective parents.
  - 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.
  - CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the 1993 **Hague Convention on Intercountry Adoption**, ratified by the Government of India in 2003.
  - CARA primarily deals with the adoption of “orphaned, abandoned and surrendered” children through recognised adoption agencies.
  - In 2018, CARA has allowed individuals in a live-in relationship to adopt children from and within India.
- **State Adoption Resource Agency (SARA)** – State Adoption Resource Agency acts as a nodal body within the State to promote and monitor adoption and non-institutional care

in coordination with Central Adoption Resource Authority.

- **Specialised Adoption Agency (SAA)** – Specialised Adoption Agency (SAA) is recognized by the State Government under sub-section 4 of section 41 of the Act for the purpose of placing children in adoption.
- **Authorised Foreign Adoption Agency (AFAA)**– Authorised Foreign Adoption Agency is recognised as a foreign social or child welfare agency that is authorised by Central Adoption Resource Authority on the recommendation of the concerned Central Authority or Government Department of that country for coordinating all matters relating to the adoption of an Indian child by a citizen of that country.
- **District Child Protection Unit (DCPU)** – District Child Protection Unit (DCPU) means a unit set up by the State Government at the district level under Section 61A of the Act. It identifies orphan, abandoned and surrendered children in the district and gets them declared legally free for adoption by the Child Welfare Committee.

### **The Laws to Adopt a Child in India**

- The adoption in India takes place under **Hindu Adoptions and Maintenance Act, 1956 (HAMA)** and the **Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)**.
- HAMA, 1956 falls in the domain of Ministry of Law and Justice and JJ Act, 2015 pertains to the Ministry of Women and Child Development.
- As per the government rules, Hindus, Buddhists, Jains, and Sikhs are legalised to adopt kids.
- 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.

### **Eligibility**

- The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.
- Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:-
  - the consent of both the spouses for the adoption shall be required, in case of a married couple.
  - a single female can adopt a child of any gender; a single male shall not be eligible to adopt a girl child.
- No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.
- In case of a couple, the composite age of the prospective adoptive parents shall be counted.
- The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.
- The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.
- Couples with three or more children shall not be considered for adoption except in case of special needs children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by step-parent.
- **Who can be adopted?**

- An orphan, abandoned, or surrendered child who has been declared legally free for adoption by the Child Welfare Committee (CWC) can be adopted under the provisions of the JJ Act 2015.
- A child of a relative (paternal uncle or aunt, a maternal uncle or aunt or paternal and maternal grandparents).
- Children of the spouse from earlier marriage surrendered by the biological parent(s)

### **Adoption procedure**

- Parents register online on CARINGS ([www.cara.nic.in](http://www.cara.nic.in)).
- Select preferred Adoption Agency for HSR (Home Study Report) and State
- Specialised Adoption Agency (SAA) conducts Home Study Report (HSR) of the PAPs and uploads it on CARINGS within 30 days from the date of submission of required documents on CARINGS.
- Suitability of Prospective Adoptive Parent (PAP)s is determined (if not found suitable, PAPs informed with reasons for rejection).
- PAPs reserve one child, as per their preference up to 6 children.
- PAPs visit the adoption agency within 15 days from the date of reservation and finalise.
- If the child is not finalised within the stipulated time, the PAPs come down in the seniority list.
- On acceptance of the child by the PAPs, SAA completes the referral and adoption process (on CARINGS).
- PAPs take the child in pre-adoption foster care and SAA files petition in the court.
- Adoption Court order issued.
- Post-adoption follow-up report is conducted for a period of two years.

### **Issues with the current Procedure**

- The Supreme Court on Friday emphasised that the child adoption process in India needs to be streamlined as there are three-to-four years waiting period under the Central Adoption Resource Authority (CARA) to adopt a single child while there are “lakhs and lakhs of orphan children waiting to be adopted.
  - The top court had earlier also termed the process as “very tedious” and said that there is an urgent need for the procedures to be “streamlined”.
- The Central Adoption Resource Authority (CARA) has an annual capacity of 2,000 adoptions which has now increased to 4,000. There are three crore children who are orphans in this country.
- Central Adoption Resource Authority (CARA), the number of children adopted within the country declined from 5,693 in 2010 to 3142 in 2020-21. **The number of children taken in inter-country adoption decreased from 628 in 2010 to 417 in 2020-21.**
  - This decline, by and large, points to trafficking or a thriving illegal child adoption market.

### **Challenges**

- 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.
- A mapping exercise of childcare institutions by the Women and Child Development Ministry in its report in 2018 found that of the total **3.7 lakh children in need of care and protection in these homes.**
  - The largest category of children were those who had a single parent at **32% or 1.2 lakh children, while those without any parent were just 11% or**

**41,730** out of the total.

- Children in CCIs are there for various reasons such as for shelter or protection or care or for whatever reason their family is not able to look after them.
- These are used by vulnerable families more as hostels or spaces where there is access to education, food, shelter and clothing.
- Many others may have extended families or grandparents who too may not agree to give up the child for adoption.
- Sometimes children in homes don't want to go into adoption.
  - Some of the older children also don't want to go to an adoptive family because of their own experience with their biological families.
- There are disruptions, i.e. when children are adopted but are returned to homes.
  - **60% of all children returned were girls, 24% were children with special needs.**
- 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.

### Way Forward

- The Parliamentary Standing Committee suggested that the way to remedy this would be to ensure that orphan and abandoned children found begging on the street are made available for adoption at the earliest.
  - Periodic district surveys to identify children who are orphaned/abandoned.
  - 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 committee is of the view that there is a need to increase surveillance, especially on unregistered child care institutions and adoption agencies/hospitals with a past record of trafficking.
- Bringing down the time required for placing a child in adoption to less than six months.
- The Child Adoption Resource Information and Guidance System may appoint a few trained “adoption preparers” on the lines of the Income Tax preparer scheme of 2006.
  - They can help prospective parents to complete the cumbersome paperwork required for adoption.
- 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.
  - We must have a zero tolerance towards abuse, violence, exploitation and neglect of children and then have an adequate safety net for these children so that they get the help they need.
- When it comes to LGBTQI people seeking to adopt, there is a need to note that merely allowing such adoptions would not be sufficient.
  - The law should be amended to recognize them as prospective guardians even when applied as non-single parents, as in case of applicants in marital relationships.
  - Notably, civil union among the LGBTQI community is yet to get legal recognition in India, even though the Supreme Court legalized homosexuality in 2018.

### **Mould your thoughts**

Q.The child adoption process is very tedious and needs to be

streamlined.Critically analyse.Also highlight the steps that needs to be taken to make child adoption policy fast and secure. ( 250 words)

**Approach to the answer.**

- Introduction about gravity of situation
- Laws and institutions associated.
- Issues in the present process.
- Challenges and implications.
- Possible solutions.
- Way Forward and Conclusion.