
FROM GUARDIANSHIP TO SECULAR ADOPTION: THE EVOLUTION OF ADOPTION LAW IN INDIA

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ABSTRACT

Adoption in India has historically been governed by religious personal laws, resulting in an uneven legal framework where only certain communities, particularly Hindus, possessed a statutory right to adopt. For others, adoption was not legally recognised, and guardianship under the Guardians and Wards Act, 1890 functioned as the closest legal alternative. However, guardianship created only a temporary guardian–ward relationship and did not grant the adopted child the legal status of a biological child. Over time, the limitations of this framework and the growing emphasis on child welfare led to demands for a secular adoption regime applicable to all communities in India.

This article traces the historical evolution of India’s secular adoption framework and analyses the gradual transition from a guardianship-based system to a comprehensive statutory adoption regime. It examines early legislative attempts to introduce a uniform adoption law, including the Adoption of Children Bills of 1972 and 1980, which ultimately failed due to socio-religious concerns. The article also highlights the crucial role played by judicial intervention, particularly the Supreme Court’s decision in *Laxmi Kant Pandey v. Union of India*, which established procedural safeguards for inter-country adoption in the absence of a comprehensive statutory framework.

The study further explores the transformation brought about by the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent reforms, culminating in the Juvenile Justice (Care and Protection of Children) Act, 2015. These legislative developments, along with detailed procedural rules and adoption regulations, established a modern, secular adoption system grounded in the principle of the best interests of the child. The recognition of the right to adopt irrespective of religion, affirmed in *Shabnam Hashmi v. Union of India*, further strengthened the secular character of India’s adoption regime.

By analysing legislative developments, judicial pronouncements, and regulatory frameworks, this article demonstrates how India has progressively moved from a fragmented guardianship-based system to a structured and

child-centred secular adoption framework that aligns with international child rights standards.

Keywords: Guardians and Wards Act, Juvenile Justice Act, 2000, Laxmi Kant Pandey case, Shabnam Hashmi case, Child Welfare, Adoption Regulations.

Introduction

Adoption is a legal process through which a child becomes a permanent member of a family other than his or her biological family. It establishes a legal parent–child relationship and provides a family environment for children who are orphaned, abandoned, or otherwise in need of care and protection. In India, the development of a secular adoption framework has been gradual. Historically, adoption was recognised mainly under religious personal laws, particularly Hindu law, while other communities did not have a statutory right to adopt.

Over time, the need for a uniform and secular adoption law became increasingly evident. Legislative initiatives, judicial decisions, and international obligations gradually contributed to the creation of a modern adoption framework that prioritises the welfare and best interests of the child. The development of secular adoption law in India can be traced through several legislative enactments and regulatory measures.

The Guardians and Wards Act, 1890¹

The Guardians and Wards Act, 1890 (GWA) represents the earliest statutory framework in India that indirectly addressed the issue of adoption. While the Act did not formally recognise adoption, it provided a legal arrangement through guardianship that served as the closest substitute for adoption for communities whose personal laws did not permit or recognise adoption.

Adoption creates a permanent parent-child relationship, and it is a substitute for a biological family. Both internationally and domestically, the adopted child inherits the parents' property like a biological child. The GWA was made to provide protection to a child and his or her property. The GWA only grants guardian and ward relationships. It does not give a child the equal status as a biological child. Some of the features of the GWA are not complementary to a permanent relationship, like adoption. They are as follows:

1. After 21 years of age, the child will not become the guardians' own child and thus will not take their name or inherit property by any kind of right. Several persons can simultaneously

¹ The Guardians and Wards Act, 1890 (Act No.8 of 1890) came into force on 21st March, 1890.

be appointed as guardians.²

2. The Court has the power to revoke the guardianship.³
3. The guardian can request that the Court to resign from his position at any time.⁴
4. Under the GWA, the status of guardian is determined by the Court and the existence and continuation of the status depend on the satisfaction of the Court.
5. The guardian and ward relationship, under the Act, is a temporary one.

Thus, in the absence of any statutory provision for adoption of non-Hindu persons, the GWA was the only option for a couple to get a child which is essentially temporary in nature. By the JJ Act, 2000, came into force, in intercountry adoption, foreigners could adopt Indian children under the GWA, by the order of the District Courts.⁵

Legislative efforts to pass a secular adoption law

The Adoption of Children's Bill, 1972 was introduced in the *Rajya Sabha* by a Joint Committee of the Parliament. The Bill was a long-standing demand to have a secular adoption law for India. The Bill sought to abolish the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and other customary adoptions recognised by various communities. But it was subsequently dropped due to the strong sentiments expressed by the members of the Muslim community, as Islamic law prohibits adoption.⁶ The Bill of 1972 was withdrawn by the government in 1978 as it could not be passed. In 1980, the central government again attempted to introduce the Adoption of Children's Bill, 1980, which contained an express provision that it would not be applicable to Muslims.⁷ Some members of the Parsi Zoroastrian community declared that they wanted the Parsi community to be exempted from the application of the Bill.⁸ Anyhow, the Act has not been enacted into law. In 1990, the Christian Adoption and Maintenance Bill, 1990, was mooted by various Christian organisations, but that too could not make its entry in the

² *Id.* at Sec. 15.

³ *Id.* at Sec. 26, Sec. 39.

⁴ *Id.* at Sec. 40.

⁵ Law Commission of India, 153rd Report on Inter-country Adoption 1994, 4-5 (August, 1994), available at: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080818-1.pdf> (last visited November 10, 2025).

⁶ Jagannohan Rao, "A Uniform Law of Adoption: A Critique on the Adoption of Children Bill 1972" 12(2) *Journal of the Indian Law Institute* 287-288 (April-June, 1975).

⁷ The Bill of 1980 was introduced on December 16, 1980.

"Adoption or Children Bill, 1972 – A Bill through not passed but borne out in the guidelines of Supreme Court" *The Lawmatics*, June 4, 2022, <https://thelawmatics.in/adoption-or-children-bill-1972-a-bill-through-not-passed-but-borne-out-in-the-guidelines-of-supreme-court/> (last visited December 12, 2025).

⁸ Asha Bajpai, *Child Rights in India: Law, Policy and Practice* 37 (Oxford University Press, New Delhi, 2nd edn., 2006).

statute book.

Emergence of the Modern Secular Adoption Framework in India

The Indian government ratified the UN CRC (CRC) on December 11, 1992. To give effect to the judgments of *Laxmi Kant Pandey v. Union of India*,⁹ the provisions of the CRC, and other international instruments,¹⁰ the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act, 2000) – the first consolidated child law of India was enacted. It dealt with juveniles in conflict with the law, children in need of care and protection, adoption, foster care, etc. The secular adoption law of India has developed in the following manner:

The Juvenile Justice (Care and Protection of Children) Act, 2000¹¹

In the *Laxmi Kant Pandey* judgments, the Supreme Court could not find any provision of the existing substantive law to construe the right to adopt. The Court has several times mentioned the Adoption of Children Bill, 1972, and the Adoption of Children Bill, 1980. The foreign parents could adopt the child according to the law of their country, whose guardianship they had taken under the Guardians and Wards Act, 1890. The Juvenile Justice, Act 1986¹² did not contain any provision for adoption or foster care. The Supreme Court issued lists of procedures for the hospitals, placement agencies, foster care homes, and governments; and directed the Central Government to establish a centralised adoption monitoring body to supervise, regulate, and monitor the private adoption agencies and other stakeholders. In the absence of any existing legal framework, the Court laid down elaborative guidelines for all the concerned authorities. The foreign parents were legally bound to adopt the child according to the foreign law. But for Indian adoptive parents, there was no statutory provision for adoption. The JJ Act, 2000 introduced the concept of ‘secular adoption’ in India.

India ratified the 1989 on December 11, 1992. To incorporate the provisions of the CRC; the directions given in the *Laxmi Kant Pandey* judgments India transformed the Juvenile Justice Act, 1986, into an integrated child law.¹³ The JJ Act, 2000, introduced a separate chapter, *i.e.*, Chapter IV, under the heading ‘Rehabilitation and Social Reintegration’ for a child in need of care and protection. Such rehabilitation and social reintegration were to be carried out

⁹ 1984 SCR (2) 797; 1985 SCR Supl. (3) 71; 1987 (1) SCR 383; MANU/SC/0020/1992.

¹⁰ Dhar Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

¹¹ The Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56 of 2000).

¹² The Juvenile Justice, Act 1986 (No. 53 of 1986).

¹³ This law was also passed to improve the conditions of the juvenile justice system into the standards prescribed in the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and the UNs Rules for the Protection of Juvenile Deprived of their Liberty, 1990.

alternatively by adoption, or foster care, or sponsorship, or by sending the child to an after-care organization. The provisions of the Act established the Child Welfare Committees (CWCs)¹⁴ which had sole authority to declare a child in need of care and protection who were free for adoption,¹⁵ to regulate and monitor the children's home,¹⁶ shelter homes,¹⁷ after-care organisation¹⁸ (for youth between the ages of 18 and 20), adoption, foster care.¹⁹ It is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Juvenile Justice (Care and Protection) Rules, 2007. The JJ Act, 2000, defined adoption²⁰ as 'the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges, and responsibilities that are attached to the relationship.'²¹ So, it can be said that the term 'adoption' was defined from the child's perspective, rather than as a right of the adoptive parents. The adopted child has been given equal status as the natural-born child. The rule regarding adoption was defined only in one provision, *i.e.*, Section 41.²² This Section laid down that 'orphan, abandoned, neglected, and abused' children are eligible for adoption through 'institutional and non-institutional methods'.²³ The state government was empowered to prescribe the detailed rules,²⁴ and the Juvenile Justice Board was responsible for investigating that the child was legally free for adoption and that the PAPs were eligible to adopt the child.²⁵ The Board was allowed to consider a single parent eligible to adopt.²⁶ Since the law primarily focused to prevent the illegal adoption, it recognised the children's home and state government-run institution as only the recognised adoption agencies.²⁷

¹⁴ *Supra* Note 11 at Sec. 29.

¹⁵ *Id.* at Sec. 31.

¹⁶ *Id.* at Sec. 34.

¹⁷ *Id.* at Sec. 37.

¹⁸ *Id.* at Sec. 44.

¹⁹ *Id.* at Sec. 42.

²⁰ Adoption has not been defined under the Guardians and Wards Act, 1890, and the Hindu Adoptions and Maintenance Act, 1956.

²¹ *Supra* Note 11 at Sec. 2(aa).

²² *Id.* at SS 42-44 dealt with alternative methods of rehabilitation namely, foster care, sponsorship and being looked after by an after-care organisation.

²³ *Id.* at Sec. 41(2).

²⁴ *Id.* at Sec. 41(3).

²⁵ *Id.* at Sec. 41(3), Sec. (5)(a).

²⁶ *Id.* at Sec. 41(6).

²⁷ *Id.* at Sec. 41(4).

The Juvenile Justice (Care and Protection of Children) Rules, 2001 (Model)²⁸

Juvenile Justice (Care and Protection of Children) Rules, 2001 (Model) were brief procedural guidelines. It prescribed that the surrendering, placing, and adoption of an abandoned child should take place according to the directions issued by the Supreme Court and the procedure laid down by CARA. It described the procedure of declaring a child legally free for adoption by the CWC: a child who is eligible for adoption and resides in an unrecognised home, shall be transferred to a recognised home for adoption; the state governments were directed to recognise SAAs in each district, etc.²⁹ More or less, the Model Rules are the codification of the *Laxmi Kant Paney* judgments.

The Juvenile Justice (Amendment) Act, 2006³⁰

The Amendment Act of 2006 brought some substantial changes to the Principal Act of 2006 to address system adoption in a more holistic and sensible manner. In spite of declaring the children neglected and abused, it declared them 'surrendered'.³¹ By this time, the CARA had become a fully functioning body. Therefore, the 2006 Amendment Act, along with the state government, authorised CARA to lay down the detailed adoption rules.³² It tried to establish a centralised system of adoption by mandatorily notifying the Central Government about the detailed rules. It took the power to take the adoption away from the Juvenile Justice Board and gave it to the Court.³³ The 2006 amendment included private-run institutions as well as recognised adoption agencies in its scope.³⁴

The Juvenile Justice (Care and Protection of Children) Rules, 2007³⁵

The Juvenile Justice (Care and Protection of Children) Rules, 2007 were the first detailed rules on adoption made in exercise of the rule making power vested by Section 68 of the JJ Act, 2000. It contained seven chapters and one hundred rules. Under Rule 33(2), guidelines issued by the CARA, and as notified by the Central Government under Sec. 41(3) of the JJ Act, 2000, were made applicable to all matters relating to adoption.

²⁸ The Juvenile Justice (Care and Protection of Children) Rules 2001 (Model) (Published Vide F. No. 1-3/2001-SD. Dated 22nd June, 2001), available at: <http://www.bareactslive.com/ACA/ACT2559.HTM#0> (last visited December 13, 2025).

²⁹ *Id.*

³⁰ The Juvenile Justice (Amendment) Act, 2006 (Act No. 33 of 2006).

³¹ *Id.* at Sec. 41(1)(2).

³² *Id.* at Sec. 41(3).

³³ The Juvenile Justice (Amendment) Act, 2006 (Act No. 33 of 2006).

³⁴ *Id.* at Sec. 41(4).

³⁵ The Juvenile Justice (Care and Protection of Children) Rules 2007, (Notified on 26th October, 2007), available at <http://wcd-icps.nic.in/pdf/jjrules2007.pdf> (last visited December 15, 2025).

The Guidelines Governing the Adoption of Children, 2011³⁶

The Government of India issued the first guidelines for adoption in 2004, but they were only for in-country adoption. At this stage, there was no law to govern inter-country adoption. In 2011, the Guidelines Governing the Adoption of Children, 2011 (GGAC, 2011) were issued, suppressing the Guidelines for In-country Adoption, 2004. It was the first composite guidelines that regulated both intra and inter-country adoption. The GGAC, 2011 were the guiding principle for the later laws. The detailed substantive law and procedural rules laid down under the Adoption Regulations, 2017 was based on the Guidelines of 2011.

*Shabnam Hashmi v. Union of India*³⁷

In this case, the Supreme Court declared that every person in India has the right to adopt a child, irrespective of his or her religion, caste, or creed. Though a person of any religious background could adopt under the JJ Act, 2000, the Act expressly did not confer the right to adopt. The Supreme Court, following in the footsteps of Bombay³⁸ and Kerala³⁹ High Court, declared the right of a child to be adopted and that of prospective parents to adopt. But the Court did not declare it as a fundamental right.

The Juvenile Justice (Care and Protection of Children) Act, 2015⁴⁰

To incorporate the judgement of the *Shabnam Hashmi*, the JJ Act, 2000 was repealed and replaced by the JJ Act, 2015.⁴¹ This Act introduced the concepts underlined in the Hague Adoption Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993. (HCIA).⁴² The JJ Act, 2015, is the most consolidated child-law in India's history. It is the most elaborate adoption law in India. The Act not only defines the substantive law of the adopted child and adoptive parents but also prescribes the procedure of

³⁶ The Guidelines Governing the Adoption of Children, 2011 (Notified on 24th June, 2011), Rul. 24(1), Rul. 48(1), available at: https://www.wbja.nic.in/wbja_adm/files/Cara_Guidelines.pdf (January 2, 2026).

³⁷ *Shabnam Hashmi v. Union of India*, available at: MANU/SC/0119/2014: Also available at <http://cara.nic.in/PDF/Court%20Orders/2.%20Shabnam%20Hashmi%20Vs%20UOI%20&%20Ors%20CWP%20No.%20470%20of%202005.pdf> (last visited November 5, 2025).

³⁸ *Re: Manuel Theodore D'souza*, (2000) 3 Bom CR 244.

³⁹ *Philips Alfred Malvin v. Y.J. Gonsalvis & Ors.*, AIR 1999 Kerala 187.

⁴⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).

⁴¹ Also, Delhi gang-rape incident happened in December 2012 had tremendous impact on public perception of the Act. This Act allows 16-year-olds to be tried as adultSec.

“Juveniles who commit rape should be tried as adults: Maneka Gandhi” *IBNLIVE*, Jul. 14, 2014, available at: <https://web.archive.org/web/20140717191444/http://ibnlive.in.com/news/juveniles-who-commit-rape-should-be-tried-as-adults-maneka-gandhi/485770-37-64.html> (last visited November 12, 2025).

⁴² India ratified the HCIA on June 3, 2003.

India ratifies Intercountry Adoption Convention, available at <https://www.hcch.net/en/news-archive/details/?varevent=4> (last visited December 7, 2025).

adoption, which becomes the guiding norm for the Adoption Regulations. The Act is built on the principle of 'Best Interest of the Child', and it takes utmost care to implement the same.

The following are the features introduced by this Act:

1. The Act establishes a centralised adoption system where all the applications of the prospective parents and the approval of adoption are decided by CARA. All the Specialised Adoption Agencies (SAAs), child welfare institutions, and children's homes need to be recognised by CARA and the respective state governments. At the same time, the state governments and CARA are given power to make certain rules and regulations.
2. The Act expressly declares the right to inheritance of the adopted child, which previous versions of Juvenile Justice Act did not explicitly confer.⁴³
3. To increase the number of adoptions, the Act allows single parents, unmarried or divorced to adopt.⁴⁴ However, a single male is not eligible to adopt a girl child.⁴⁵
4. The child has to be mandatorily placed with the PAPs for pre-adoption foster care.⁴⁶
5. The Act introduced a time framed process of adoption.

The Adoption Regulations, 2017⁴⁷

The JJ Act, 2015, and Adoption Regulations, 2017 together establish an international standard, secular adoption system, incorporating the HCIA, 1993. Under the centralised, online-based adoption system, all the children's shelter homes are to be mandatorily linked to the online portal. The details of every child staying in those homes are regularly updated. The CWCs and District Child Protection Units would be regular checkers on the standard of living in these homes. Every adoption application had to come through the online portal. From the application to the adoption order - all the documents and relevant information are uploaded on the online portal.

The Adoption Regulations, 2022⁴⁸

Adoption Regulations, 2022, is the revised version of the 2017 Regulations. In 2021, the power

⁴³ *Supra* Note 40 at Sec. 63.

⁴⁴ *Id.* at Sec. 57(3).

⁴⁵ *Id.* at Sec. 57(4).

⁴⁶ *Id.* at Sec. 58(3).

⁴⁷ Adoption Regulations, 2017 (Notified on 4th January, 2017), available at: https://wcd.nic.in/sites/default/files/NTESCL_636194033071198891_english%20regulation_0.pdf (last visited January 10, 2026).

⁴⁸ Adoption Regulations, 2022 (Notified on 23rd September, 2022), available at: https://cara.nic.in/PDF/adoption%20regulations%202022%20english_27.pdf (last visited January 10, 2026).

to pass an adoption order was transferred from the District Court to District Magistrate. The 2022 Regulations incorporate certain changes. For this purpose, new provisions, such as, adoption order;⁴⁹ functions of the District Magistrate⁵⁰ were added. In recent years, a record number of adopted children have been returned to the adoption agencies, which has raised concerns among the adoption authorities.⁵¹ Therefore, the Adoption Regulations, 2022 declare that if the adoptive parents ‘disrupt’ or ‘dissolve’ the adoption, they shall be barred from adoption again.⁵² It has also added a new category ‘hard to place’ children for the older children and children with special needs, with a relaxed and speedy process of adoption.⁵³

Conclusion

The development of modern secular adoption law in India reflects a gradual transition from a fragmented system based on personal laws and guardianship arrangements to a comprehensive legal framework centred on the welfare of the child. Earlier mechanisms such as the GWA provided only temporary guardianship and did not establish a permanent parent–child relationship.

Over time, judicial interventions, legislative reforms, and international commitments—particularly following India’s ratification of the Convention on the Rights of the Child—contributed to the emergence of a secular adoption system. The Juvenile Justice legislation and subsequent regulations have played a crucial role in establishing a structured and transparent adoption framework.

Today, the modern adoption system in India emphasises the best interests of the child, ensuring that children in need of care and protection are provided with a stable and nurturing family environment.

⁴⁹ *Supra* Note 47 at Reg. 13, 18.

⁵⁰ *Id.* at Reg. 36-37.

⁵¹ Fatima Khan, “Why Indian parents have returned 278 of 6,650 adopted children in 2017-19” *The Print*, Nov. 8, 2019, available at: <https://theprint.in/india/why-indian-parents-have-returned-278-of-6650-adopted-children-in-2017-19/319437/> (last visited January 4, 2026); “Over 1,100 adopted children returned to child care institutions in last 5 years” *India Today*, Jan. 5, 2020, <https://www.indiatoday.in/india/story/over-thousand-adopted-children-returned-child-care-institutions-last-years-1634072-2020-01-05> (January 7, 2026).

⁵² *Supra* Note 48 at Reg. 9(4).

⁵³ *Id.* at Reg. 2(13).