

FROM STIGMA TO ACCEPTANCE: STATUS OF SINGLE – PARENT ADOPTION IN INDIA

AUTHOR – AYUSHMAN MISHRA, STUDENT AT BENNETT UNIVERSITY

BEST CITATION – AYUSHMAN MISHRA, FROM STIGMA TO ACCEPTANCE: STATUS OF SINGLE – PARENT ADOPTION IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (11) OF 2025, PG. 542-546, APIS – 3920 – 0001 & ISSN – 2583-2344

Abstract

Adoption is a heartfelt act of love and humanity, it gives a child who has been abandoned or deprived of basic family setting due to any reason, a nurturing home. It also allows a couple who's deprived of having biological children to experience the joy of raising a child as their own. Though adoption is usually associated with married couple, an individual can also go for adoption and assume parental responsibility for a child. The article will explore the difficulties that single parents face when going for adoption encompassing legal restrictions and societal biases. The article will also try and explain the societal attitudes towards such adoptions. Additionally the recent amendments and cases that shaped the statutes in this matter will be discussed in order to give a better idea and understanding on status of single parent adoption in India.

Key words: Single parent, Adoption, Responsibility, Legal restrictions, Societal attitude

Introduction

Adoption is a process by which a person or a couple can legally assume parental responsibility for a child who's not biologically their own⁸⁷⁷. Initially adoption was related to married heterogenous couples, for the reason being them considered to be parental unit. However with change in times, single parent adoption got legal recognition too. When an individual undertakes such adoption without a partner, reason being unmarried, divorced or widowed, this is called single parent adoption. With the growth of single parent households due to multiple reasons, single parent adoption has gained a lot of prevalence making it a highly discussed topic in family law discussions. In order to make sure that the laws specifically made for adoption are inclusive and serving the best interest of the child, it's important to figure out the legal barriers and other complications related to it. With the contemporary world adapting to changes frequently, it becomes the

duty of the law to make sure that the adoption laws are adapting to the changes too.

Historical context of Adoption laws in India

Initially the adoption laws were developed with the assumption that a two parent household comprising of a heterosexual couple was best suited for raising a child⁸⁷⁸. Forming beliefs based on cultures and traditions these laws completely neglected the possibility of an individual going for adoption and prioritised two-parent setting for child rearing. Over the past few years, these old-traditional minded laws have gone through significant changes reflecting growth of a contemporary- modern mindset. With the increase of divorce cases⁸⁷⁹, individuals seeking adoption got allowed to adopt in various jurisdictions. The said change has been brought in order to focus more on the benefit of

⁸⁷⁸ Joan F. Shireman And Renny R. Johnson, Single-parent adoptions: A longitudinal study,

<https://www.sciencedirect.com/science/article/abs/pii/S0190740985800050>

⁸⁷⁹ Will the surge in divorces and single living reshape Indian society?, India Today (March 12, 2025)

<https://www.indiatoday.in/lifestyle/society/story/will-the-surge-in-divorces-and-single-living-reshape-indian-society-2692247-2025-03-12#>

⁸⁷⁷ Adoption, Cambridge dictionary, <https://dictionary.cambridge.org/dictionary/english/adoption> (last visited April 3, 2025)

the child than parental marital status. In the context of single parent adoption, the pace of reforms varies from country to country, while some countries exist that completely restrict it. In many countries, old adoption laws restricted adoption to married heterosexual couples. These were justified by opinions on single parent's disability to provide a proper environment for nurturing a child whether emotional or financially. It was also considered that every child deserves to have a normal environment for living and just because they are open for adoption, they can be deprived a normal - traditional household setting consisting of mother and father both. Countries like United States⁸⁸⁰ restricted single parent adoption mandating the parents to be married, while countries like Italy⁸⁸¹ and Germany⁸⁸² placed explicit legal bans on single parent adoption.

Legal barriers Faced in Single-parent adoption

Although there is progress in many countries, legal restrictions on single parent adoption still exist in many parts of the world. In India, The Juvenile Justice (care and protection of children) Act 2015⁸⁸³ allows single parent to adopt but puts gender based barriers on the same, for example- a single male cannot adopt a female child. In China, a very strict criteria is followed for single parent adoption as traditionally it was meant only for married couple⁸⁸⁴. In Italy, a 40 year old law which barred single parents to go for adoption was overturned recently⁸⁸⁵. Even in

jurisdictions where single parent adoption is allowed legally, its on the discretion of the judiciary to decide whether adoption should be allowed in a particular case or not. Courts exercise subjective power in decision of whether the person is suitable for adoption or not, the decision is taken by keeping the child in consideration. In many cases judges showcase strong reluctance towards single parent adoption. For example- in the case of *Rajwinder Kaur & Anr v. Central Adoption Resource Authority*⁸⁸⁶, the procedural barriers and judicial biases made the adoption more difficult for a single parent. The Hindu Adoption and Maintenance Act (HAMA) doesn't allow male individuals to adopt a female child. It provides explicit restrictions on the adoptions that can be made by male individuals⁸⁸⁷.

Apart from the statutory barriers, societal behaviour and approach towards single parent adoption is not good either. In most of the societies this is a practice which is usually discouraged and looked down, the cultures and traditions find a married couple parent setup best suited to nurture a child. It is contested that a single parent would not be able to provide a financial or emotional support as compared to a married couple. The single parents often face discouragement and discrimination from agencies dealing in child care, family and society. Often single parents face a more rigorous and difficult process than married couple. The adoptive agencies and government require multiple criteria to be met including extensive background checks, criminal records of the individual as well as their family, home studies and financial assessments. These multiple requirements make the process very tedious and troublesome for single parents opting for adoption.

⁸⁸⁰ U.S. Embassy & Consulates in India, Who can adopt? <https://in.usembassy.gov/u-s-citizen-services/adoption/who-can-adopt/#:~:text=You%20must%20be%20a%20U.S.%20status%20in%20the%20United%20States.&itext=It%20is%20required%20under%20German%20law%20at%20least%2021%20years%20old.> (last visited April 3, 2025)

⁸⁸¹ VGS Family Lawyers- Italy, Italian Adoption: New Rules for Single People and Age Limitations <https://vgsfamilylawyers.com/italian-adoption-new-rules-for-single-people-and-age-limitations/> (last visited April 3, 2025)

⁸⁸² Schlun & Elseven - Germany, <https://se-legal.de/schlun-elseven-lawyers/family-law-germany/german-adoption-law-legal-advice-from-family-lawyers/?lang=en#:~:text=Adoptive%20Parents%20%7C%20Required%20Age,-In%20Germany%2C%20various&text=It%20is%20required%20under%20German%20law%20at%20least%2021%20years%20old.> (last visited April 3, 2025)

⁸⁸³ The Juvenile Justice (care and protection of children) Act no. 2, Gazette of India, Jan 1, 2015

⁸⁸⁴ Guangxi Updates Adoption Rules for 2024, Guangxi Zhuang Autonomous Region - China, http://en.gxzf.gov.cn/2024-01/10/c_619374.htm (last visited April 3, 2025)

⁸⁸⁵ Italy's Constitutional Court Allows singles to adopt Foreign Minors, The Hindu (March 26, 2024), <https://www.thehindu.com/news/international/italys-constitutional-court->

[allows-singles-to-adopt-foreign-minors-ending-40-year-ban/article69359593.ece#:~:text=Italy's%20Constitutional%20Court%20rule%20on%20adopt%20from%20within%20the%20country](https://www.thehindu.com/news/international/italys-constitutional-court-allows-singles-to-adopt-foreign-minors-ending-40-year-ban/article69359593.ece#:~:text=Italy's%20Constitutional%20Court%20rule%20on%20adopt%20from%20within%20the%20country)

⁸⁸⁶ *Rajwinder Kaur & Anr v. Central Adoption Resource Authority, W.P. (C) 279/2019 (Delhi HC August 31, 2021)*

⁸⁸⁷ The Hindu Adoptions and Maintenance Act, No. 78 of 1956, Gazette of India, Dec.21, 1956

Recent changes

In the modern times, there have been significant developments making the adoption laws more inclusive. In Italy, the 2025 ruling of constitutional court ruling which has allowed adoption of foreign children has marked a remarkable step towards equality and inclusivity⁸⁸⁸. Countries like Germany, France, Spain and India allow single parent adoption, recognising that the presence of two parents is not a mandate for child's well-being⁸⁸⁹. In Indian context, there have been several legal developments and amendments in favour of single parent adoption, showcasing Indian judicial vision towards a more progressive society. The Juvenile Justice (care and protection of children) act 2015⁸⁹⁰ and the rules and guidelines laid out by the Central adoption resource authority (CARA)⁸⁹¹ explicitly allows a single parent to adopt a child, though subjected to certain eligibility and selection criteria. Citing the case of *Malvika Rajkotia v. Union of India (2024)*⁸⁹², the Delhi high court restated the rights provided to single parents by Indian legal system to adopt a child without discrimination and difficulty focusing more on the child's welfare than marital status.

Indian judiciary has gradually and consistently reaffirmed the rights of single parents to adopt. In *Shabnam Hashmi v. Union of India (2014)*⁸⁹³ the supreme court stated adoption as a fundamental right provided under juvenile justice act, allowing people to adopt regardless of their religion or marital status. Similarly, the supreme court in *ABC v. The state (NCT of Delhi) (2015)*⁸⁹⁴, gave a judgement in favour of an unmarried woman to be a sole parent of a child,

restating a more progressive and contemporary approach in interpreting adoption laws. Another ruling of *Sushmita Sen v. Municipal corporation of Gr. Mumbai*⁸⁹⁵ gave a landmark judgment allowing single female individuals to adopt a female, later in the case of *Sushmita Sen v. Municipal corporation of Gr. Mumbai*⁸⁹⁶, the adoption of second female child by a single mother was allowed. These rulings contribute towards a modern progressive legal system that focus more on the wellbeing of the child over societal beliefs.

India being a part of to the United Nations Convention on Rights of Child (UNCRC)⁸⁹⁷ and Hague convention⁸⁹⁸ on intercountry adoption, validate international principles making sure every child's right to safe and secure living. Other organisations such as UNICEF⁸⁹⁹ and the National Commission for Protection of Child Rights (NCPCR)⁹⁰⁰ ensures for non-discriminatory adoption laws and policies, focusing more on child's best interest. These international obligations influences national laws and policies, focusing an inclusive approach towards single parents going for adoption in India.

Landmark judgments related to single parent adoptions

There have been several judgements given by the courts all over India that have tried to change and create an impact on the status of single parent adoption. Here are some of those judgments:

1. **Lakshmi Kant Pandey v. Union of India**⁹⁰¹
Year : 1986

⁸⁸⁸ Italy's Constitutional Court allows singles to adopt foreign minors, ending 40-year ban, The Hindu (march 26, 2024) <https://www.thehindu.com/news/international/italys-constitutional-court-allows-singles-to-adopt-foreign-minors-ending-40-year-ban/article69359593.ece#:~:text=Italy's%20Constitutional%20Court%20rule%20on,adopt%20from%20within%20the%20country.>

⁸⁸⁹ *supra*

⁸⁹⁰ The Juvenile Justice (care and protection of children) act no. 2, Gazette of India, Jan 1, 2015

⁸⁹¹ Central adoption resource authority (CARA), Guidelines Governing Adoption of Children, 2022, Ministry of Women & Child Development, Government of India

⁸⁹² *Malvika Rajkotia v. Union of India, W.P. (C) 758/2024 (India)*

⁸⁹³ *Shabnam Hashmi v. Union of India, (2014) 4 SCC 1 (India)*

⁸⁹⁴ *ABC v. The state (NCT of Delhi), (2015) 10 SCC 1 (India)*

⁸⁹⁵ *Sushmita Sen v. Municipal corporation of Gr. Mumbai, W.P. (C) 3124/2007 (Bombay H.C.)*

⁸⁹⁶ *Sushmita Sen v. Municipal corporation of Gr. Mumbai, W.P. (C) 3124/2007 (Bombay H.C.)*

⁸⁹⁷ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3

⁸⁹⁸ Hague Convention on Protection Of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167

⁸⁹⁹ UNICEF, State of the World's Children 2023, United Nations Children's Fund (2023)

⁹⁰⁰ National Commission for Protection of Child Rights (NCPCR), Annual Report 2022-23, Ministry of Women & Children Development, Government of India

⁹⁰¹ *Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 1 (India)*

Overview: this particular case gave a judgment on the regulation of adoptions taking place between two countries' citizen. The supreme court of India in this case laid out strict guidelines to ensure prevention of child trafficking and unethical adoption practices. Although the case majorly focused on inter country adoption, it also laid necessary set of guidelines and framework for all sorts of adoption taking place in India.

2. **Shabnam Hashmi v. Union of India**⁹⁰²

Year : 2014

Overview: in the case of Shabnam Hashmi v. union of India, a Muslim social activist sought lawful recognition of her status as an adoptive parent although her personal laws did not recognise adoption. The supreme court of India in this case stated that right to adopt is a fundamental right under article 21⁹⁰³ of the Indian constitution which is applicable on every Indian citizen no matter what religion they pursue. The apex court stated that the juvenile justice (care and protection) act, 2015 (JJ act)⁹⁰⁴ is a secular law, not specific to a particular religion , enables every Indian citizen to adopt a child irrespective of their religion.

3. **Shabnam Jahan v. State of Maharashtra**⁹⁰⁵

Year : 2023

Overview: in the recent judgment of Shabnam Jahan v. State of Maharashtra, the high court of Bombay stated the eligibility of s working, single and divorced woman to adopt a child. The district court in this matter had previously rejected her application for adoption, reason being her marital and employment status that it might prevent her to completely focus on the welfare of

the child. The Bombay high court overruled on this decision stating that being a single working woman doesn't automatically deprive her off the right to adopt a child. The court emphasised that the juvenile justice (care and protection) act, 2015 (JJ act)⁹⁰⁶ very much allows a single working person to adopt a child, provided that they're mentally and physically fit and capable enough financially and emotionally to look for the wellbeing of the child.

Policy Suggestions

In order to promote further inclusivity and equality, the juvenile justice (care and protection) act, 2015 (JJ act)⁹⁰⁷ must be amendment waiving off restrictions imposed on single male to adopt female children just like it is allowed for females individuals to adopt male or female child as cited in *Sushmita Sen v. Union of India* ⁹⁰⁸ . the adoption must be accepted after considering all the obligations related to safety, comfort and welfare of the child. Making adoption eligibility be based on capability and not the gender of the parent.

Additionally in order to ensure equality in India and across religions, a uniform civil code (UCC) should be implemented to allow every Indian citizen the parental rights, irrespective of their religious background. Furthermore the adoption procedure for single parents must be simplified by taking into consideration the following points – reduce waiting time for them, reduce the red tapes' bureaucratic and rigorous scrutiny , also they can be provided with financial and legal aid in order to promote adoptions for children's welfare.

With coming times, the single parent adoption is most likely to get more legal and societal recognition and acceptance in India. As more successful cases resurface and societal attitude changes on a positive note. In addition

⁹⁰² *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India)

⁹⁰³ India Constitution Art.21

⁹⁰⁴ The Juvenile Justice (care and protection of children) act no. 2, Gazette of India, Jan 1, 2015

⁹⁰⁵ *Shabnam Jahan v. State Of Maharashtra*, W.P. (C) 1475/ 2019 (Bombay High Court)

⁹⁰⁶ The Juvenile Justice (care and protection of children) act no. 2, Gazette of India, Jan 1, 2015

⁹⁰⁷ The Juvenile Justice (care and protection of children) act no. 2, Gazette of India, Jan 1, 2015

⁹⁰⁸ *Sushmita Sen v. Municipal corporation of Gr. Mumbai*, W.P. (C) 3124/2007 (Bombay H.C.)

to that statutory actions is important too, in order to make sure that any outdated or discriminatory barriers are removed from the system of adoption, making it more efficient and fair. It should focus more on child's upbringing in a nurturing environment rather than strict family norms or setup. With legal support and societal acceptance single parent adoption in India can be encouraged and fully accepted practice, helping thousands of children seeking for a loving home and a stable future.

Conclusion

Over the past years, single parent adoption has gained legal and societal recognition in India under the juvenile justice (care and protection) act, 2015 (JJ act)⁹⁰⁹. Although there remains other challenges and barriers encompassing – gender based restrictions, judicial biases and rigorous procedures. The Hindu Adoption and Maintenance Act (HAMA)⁹¹⁰ still impose strict restrictions, especially on men. Furthermore, non-Hindu individuals face difficulties under personal laws, as they are not allowed the right of guardianship under the Guardianship and Wards act, 1890⁹¹¹ instead of adoption rights.

Landmark judgments like *Shabnam Hashmi v. Union of India (2014)*⁹¹², of *Malvika Rajkotia v. Union of India (2024)*⁹¹³ and *ABC v. The state (NCT of Delhi) (2015)*⁹¹⁴ have helped to create a more inclusive legal pathways for single parent adoption, although courts and other adoption agencies prioritise married couple making the process for single individuals tedious and troublesome.

GRASP - EDUCATE - EVOLVE

⁹⁰⁹ The Juvenile Justice (care and protection of children) act no. 2, Gazette of India, Jan 1, 2015

⁹¹⁰ The Hindu Adoptions and Maintenance Act, No. 78 of 1956, Gazette of India, Dec.21, 1956

⁹¹¹ The Guardianship and Wards Act, No. 8 of 1890, Gazette of India, March 21, 1890

⁹¹² *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India)

⁹¹³ *Malvika Rajkotia v. Union of India*, W.P. (C) 758/2024 (India)

⁹¹⁴ *ABC v. The state (NCT of Delhi)*, (2015) 10 SCC 1 (India)