



## ADOPTION, CUSTODY AND PARENTING

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### Abstract

This particular paper would be dealing with the concepts of Adoption, custody and parenting. Adoption, Custody and Parenting are three different concept but very well related to each other. The three have become a need for the time. The reason for this nowadays is that many physical problems occur in both men and women. Reason why we need adoption. Adoption is a procedure where a “A parent legally takes another child and make him or her as his own”. Moving forward to what custody and parenting mean, Custody means “the protective care or guardianship of someone” on the other hand Parenting means “the way parents deals with their child”. All of these seem to go hand in hand. “Society” is something which is a stake to all the three concept. Any person living in the society when adopts has to go through all the stakes which the society give. A male and a female when they adopt they are questioned either on their physical condition or may be their love. Later on custody too is questioned on different ground. Years and years when the child grows up his/her parenting is questioned as to where have they come from and also about their caste, race etc. This happens specially in India where adopted child are usually questioned. Not with the society, at first, our own families are responsible. They are always first in

questioning and suggesting. This paper will be dealing with the facts as to where does this start from and how do we tend to stop them as only or initial steps will help all of these to stop.

### Introduction

“Let parents bequeath to their children not riches, but the spirit of revenue”. Parenting is a feeling which every man and women when they are married they want to feel. This is one of the beautiful feeling that exists in this entire world. Some kind of happiness which one can have after he has received all the kinds of happiness in the world. It is one of the most beautiful form of love.

In today’s world some of them are deprived of this beautiful feeling. This may be because of many physical issues which have been taking place. This may be because of female infertility or male infertility. It may be anything due to which a person may not be able to reproduce and have a baby due to which they may take a decision to adopt.

To adopt generally means “to take by choice into a relationship”. A person may take a child to make his own child. Mostly in cases of a couple which may not have a child can adopt one from orphanage. It is a legal way of making a child his/her own. Not necessarily a child can be adopted. In facts adults over the age of 18 may also be adopted but certainly they have different procedures for the same. For parents who adopt a child may be the only hope they have of becoming a family and a process of which they are to be forever grateful. For



birth parents, adoption may give them the chance to pursue their own hopes and dreams while still giving their child the best opportunity possible. For children who have been adopted, it would be a chance of their self-identity, life and the opportunities which would come up. Even an adopted child may feel the same love which his/her birthly mother would be able to give. If parents give the same the same kind of love then their love will not come to a lend where you need to compare. 1<sup>1</sup>

Custody refers to the fact of “Physical Custody” which means that a parent has the right to have a child live with him or her. A child can have joint physical custody in case where the child wants to live with both the parents. Joint physical custody works best if parents live relatively close to each other as it allows them to maintain a normal routine. In other case a child may live with one parent and he/she visits the other parent but with the one the custody has will have most of the right of visitation or parenting time with his or her child.

Legal custody of a child means having the right and obligation to make decisions about a child’s upbringing. A person who holds the custody will have the right to make the decision for his child for e.g.; schooling or anything.

Sole custody means even one parent can have the custody. For a few of them even the single parent is enough for providing the kind of parenting a child needs but in most of the cases the court has stopped providing for the same. But even a sole parent can take

care of the child very well. It goes without saying that there may be animosity between you and your soon to be ex spouse. The reason why one can have sole custody because the other person can take away your own child from yourself.

Custody is one thing the court should decide and should keep a check on the person if he is capable for that particular custody or not.<sup>2</sup>

Moving on to parenting we will deal with it in all the terms possible.

Parents are among the most important people in the lives of young or for that matter even the grown ups. From the time of birth a child rules on their parents for everything. Once they are left to live independently then it becomes difficult to manage. Therefore, parenting is needed all around. Parenting means the rights and duties parents apply on their children. They impose some rules and regulations to maintain their moral values. Parents are the only one who can provide you with proper knowledge, schooling and everything. Likewise, the adopted child also requires the same and when they are adopted it is the duty of the parents who have adopted him/her to provide them with the same kind of parenting which they would give their own child.

In short, when parents and other caregivers are able to support young children, their lives are enriched, and society is advantaged by such contributions.

<sup>1</sup><https://www.americanadoptions.com/adoption/adopt-ion-definition>

<sup>2</sup><https://www.nolo.com/legal-encyclopedia/types-of-child-custody-29667.html>



Reasons why Adoption, Custody and Parenting is needed

Adoption

Adoption is very personal decision which parents take and there may be several reasons why adoption is needed. There are few reasons to adopt a child:

1. Due to infertility, some couples cannot have a biological child.
2. Some women are facing medical conditions that make it difficult to carry pregnancy.
3. Some parents don't want to pass down some genetic disorder or disease to their child.
4. Single parent may want to start a family.
5. Even same sex couple want to become parents.
6. A lonely child can also have a loving home.
7. They can adopt in order to help their family members who are unable to have their own child or adopt.
8. Some can also raise a child older than an infant.
9. Adoption has more potential for success than treatment for infertility.<sup>4</sup><sup>3</sup>
10. Some want parents but are unable to have one. Like that way they help balance population growth.
11. Some may just want to adopt.

Custody

Custody depends upon Parental needs. There are a few reasons as to why custody of a child is needed:

1. A child always needs a parents emotional and physical stability.
2. Child's academic, economic and physical needs are other aspects why parents ask for custody.
3. Child's preference as to with which parent does he/she wants to live with and is comfortable with.
4. Child needs to stay away from any kind of abusive and violent situation so that his/her upbringing isn't affected in any way.

Parenting is one of the most important thing you need in your life .

As discussed above is one of the most important thing you need in your life . There are reasons for that too:

1. A person can learn his moral values which will help him/her to adopt good values for future.
2. Parents can provide with financial support.
3. They can provide with better education.
4. Parents are best at providing with good health to their children.
5. Parents give you with your own identity i.e., your name, surname, personal identity, parental identity, family etc.

Laws relating to the various aspects

Adoption

Adoption in English Law

<sup>3</sup><https://www.americanadoptions.com/adopt/why-people-adopt>

<sup>4</sup><https://www.lawyers.com/legal-info/family-law/child-custody/key-factors-in-modifying-child-custody.html>



The English Law started recognizing adoption during the latter half of the nineteenth century. Legal existence came up during 1926. The purpose of this act was to prevent the biological parents from claiming back their children. The final act had come up in 1958.

English law is quiet similar to that of the Hindu law in case of the adopted child.

#### Adoption in India

The custom and practice of adoption in India dates back to the ancient times. Although the act of adaption remains the same, the objective with which this act is carried out is differed. Adoption is not permitted in the personal laws like Muslims, Christians, Parsis and Jews in India. Hence, they opt for guardianship of a child through the Guardians and Wards Act, 1890.

Indian citizens who are Hindus, Jains, Sikhs or Buddhists are allowed to formally adopt a child. The adoption is under the Hindu Adoption and Maintainance Act of 1956 that was enacted in India as part of Hindu Code Bills.<sup>5</sup>

#### Hindu Law

Hindu law is the only law in India which treats an adopted child as being equivalent to a natural born child. Under the old Hindu law, only a male could be adopted and an orphan could not be adopted. The restrictions have always been based on the Gotras and the Castes. A female child could not be adopted under the Hindu law. Also,

<sup>5</sup><https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/>

only a male was supposed to adopt a child with the consent and dissent of his wife.

Such restrictions have changed with the due course of time and new laws have now come up.

#### Hindu Adoption and Maintainance Act,1956

The Act to some extent reflect the principles of equality and social justice by removing several gender based discriminatory provisions.

#### Capacity to Adopt:

A male of sound mind can adopt a child. If the man is married the consent of th wife is important. Likewise, a woman of sound mind can adopt a child if she is:

- Unmarried
- Divorced
- Widowed
- Her husband suffers from certain disabilities

1. Ceased to be a Hindu
2. Has renounced the world
3. Has been declared to be of unsound mind by the court

Section 9 of this act deals with the fact that only the mother or the guardian can make a decision to the decision of giving child in adoption. The father can give the child in adoption only if the mother gives the consent for the same. The mother can give the child in adoption if the father is dead or has completely renounced the world.

#### Guardians and Wards Act,1890

This act became the only non-religious universal law regarding the guardianship of



the child, applicable to all India except the state of Jammu and Kashmir. This law is particularly outlined for Muslims, Christians, Parsis, Jews and other personal laws which does not support adoption.

It was stated that any child below the age of 18 is a minor and to adopt certain procedures were required after the completion of which the child could be adopted. The procedure would start only after an application has been placed. The application would deal with all kinds of information about the guardianship. After the submission of the application the court fixes a date of hearing. The court would then consider the evidence before making the decision.

#### Muslim law

Adoption is a little different under the Islamic law. The word used for the same is kafala.

#### Rules under the concept of Adoption

1. Adoptive child has to retain his adoptive name and not his or her biological name.
2. He/she inherits from his adoptive parent and not his/her adoptive parent automatically.
3. If he has got the property from his biological parents then his adoptive parents have to take care of the same.

#### Intercountry Adoption

This is a process of adoption by which you:

1. Adopt a child from a country other than your own through permanent legal means.

2. Bring that child to your country of residence to live with you permanently

Inter country adoption is the same as that of the domestic adoption. Both consists of legal transfer of parental rights and responsibilities from child's birth parents or other guardian to a new parent or parents.<sup>6</sup>

#### Custody

1. Physical Custody - The parent who has been granted physical custody is usually the primary guardian and the child lives the parent.

2. Legal Custody - Either the parent can make decisions which affect the welfare of the child such as medical treatment, religious practice and education. Both parents continue to share the legal child custody until he reaches the age of 18.

3. Joint Custody - Both the parents have been given the legal and the physical custody of the child.<sup>7</sup>

#### The Guardians and Wards Act, 1890

Here the court must work in the interest of the minor taking into consideration sex, age, religion, the character of the guardian, death of a parent(s) and the relation of the child and the guardian. The minor's preference may be taken into consideration. The welfare of the child is taken into paramount consideration.

<sup>6</sup><https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/>

<sup>7</sup><http://legodesk.com/blog/child-custody-laws/>



**Child Custody under the Hindu law-Hindu Minority and Guardianship Act 1956**

Under this act custody of all children under 5 years of age is given to the mother. The custody of boys and unmarried daughter is given to the father. Custody of illegitimate children is given to the mother first and then the father while the guardianship of a married girl is given to her husband.

**Child Custody under the Muslim Law**

The concept of custody is called "Hiznat". In this case the custody is given solely to a mother unless she is seen as an unfit guardian.

**Child Custody under the Christian Law**

As there is no such mention in the The Indian Divorce Act,1869 the custody rights becomes applicable for all matters pertaining to Christian Children and their guardianship.

**Child Custody under the Parsi Law**

Under this act also as there is no mention, the court has to pass an order within 60 days related to custody of Parsi children and their guardianship.

**Guidelines for Adoption of child by CARA (Central Adoption Resource Authority)**

Citizens in a living in relationship cannot adopt. Single parent can adopt child with same gender. Eligibility criteria for prospective adoptive parents

1. The prospective adoptive parents shall be physically, mentally and emotionally

stable, financially capable and shall not have any life threatening medical condition.

2. 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:-

A. The consent of both the spouses for the adoption shall be registered, in case of a married couple.

B. A single female can adopt a child of any gender.

C. A single male shall not be eligible to adopt a girl child

3. No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

4. In case of couple, the composite age of prospective adoptive parents shall be counted.

5. The minimum age difference between the child and either of the prospective adoptive parents shall not be less than 25 years.

6. The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.

7. Couples with 3 or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of registration 2 hard to place children as mentioned in regulation 50 in case of relative adoption by step-parent.<sup>8</sup>

**Parenting**

<sup>8</sup>[http://cara.nic.in/Parents/eg\\_ri.html](http://cara.nic.in/Parents/eg_ri.html)



Parents have the knowledge about the fact as to how their child should come up with their own personality but at times they too lack them because of which their children may be at a loss in case of the kind of personality they should hold. The task of ensuring children's healthy development does not solely depend upon the parents but also the government/community which may provide programs and services to support parents and families. Society benefits socially and economically from providing future generations of parents with the support they need to raise healthy children.

Parenting is always defined as a mechanism of socialization that is to prepare children to meet the demands of their environment and take advantage of opportunities within the environment. Parents usually train their children for socially accepted physical, economic and psychological situation in which they are going to survive and thrive. All young children gain attachment from their parents and usually learn what their parents teach them. In any case the children aren't attached then they may not listen to them and follow the wrong path but most parents handle this situation very wisely because they have been much more experienced .

Parents possess different levels and quality of access to knowledge that can formation of their parenting attitudes and practices. Even if a child has been adopted or a single parent has him/her as custody the parent can adopt the same kind of parenting as they would have adopted for their own child. They would still provide their adopted child with the same kind of parenting. Parenting knowledge, attitudes and practices are shaped in part by parent's own experiences

and circumstances, expectations, and practices learned from others or may be family friends.

Parenting can not only affect children but also parents. For instance when a child is not behaving well anywhere or lacks at any point of time parents are questioned on their parenting and at times both of them are questioned at the same point of time.

#### Cases

Every legal research should be related with cases. There are few cases which defined adoption and custody in different aspects.

Supreme Court in Pawan Kumar Pathak vs. Mohan Ilasad has reiterated that an adopted son is no less than natural son, when it comes to claiming the right to inherit the properties of his father. Division bench comprising of Justice A.K Sikri and R.K Agarwal made this observation in appeal arising out of suit filed by an adopted son, claiming his right to inherit properties which belonged to his father, who died inestate. Another relative suit claiming that the appellant is not the son hence the latter filed an application to bring on record adoption deed registered around forty years ago. The Trial court dismissed the application holding it as an inadmissible evidence and the High Court also refused to interfere with that order. Thereafter the adopted son approached the Apex court.

The court referred to Section 3(57) of the General Clauses Act,1897 which says that "son" in the case of anyone whose personal law permits adoption shall include an adopted son. The Bench added "Once the law recognizes adopted son to be known



as...son, will fail to understand why it was necessary for the appellant to plead that he was the adopted son. His averment to the effect that he was the only son, according to us, would be sufficient to lay the claim of inheritance on that basis". 10<sup>9</sup>

The Supreme Court had stayed an order of the Gujarat High Court asking a mother to take her eight-year-old son to the United Kingdom, because of a judicial order passed there in a custody battle initiated by her estranged husband. Under the Indian law maximum importance is given to the best interests to the child and so either parent does not have clear primacy to be granted the custody of the child.

A Supreme Court bench headed by Justice Vikramjit Sen had ruled that an unwed mother does not have to take consent from the biological father of the child, or reveal his identity for sole guardianship of the child.

The court is 'parenpatraie' or ultimate guardian of the child. 11<sup>10</sup>

### Societal Impacts of Adoption & Child Custody

1. Lack of Trust: In case of adoption, often it is seen that people are against the idea of adoption. The major reason behind it is that they lack sufficient knowledge regarding the concept of adoption. They would rather choose to be ignorant. Also, there aren't much resources that would actually prove

the purity and originality of child adoption centres. Moreover, it is easy to convince the public that adoption should not be practiced rather than making them aware of the proper facts and laws relating the same.

In the case of child custody, trust lacks in every possible aspect on can look onto. One parent does not trust the other when it comes to taking care of their child. The child do not trust one of the parent or even refuse to have recognized them. The court do not trust that divorce will end up any future problems for the child.

2. Following The Ancestral Path: Ancient India had the tradition of female foeticide and infanticide. When the couple suffered from 'girl child curse', i.e., giving birth to only girl child, their last resort was adoption. Couples would adopt a male kid to make him their successor. The ancestors started a trend that is still prevailing in the present times that is to treat the girl child as a burden. Every now then there are news of abandoning girl child, right after their birth. Most common place to abandon an infant is the dustbin. So much for a 'progressive' country!

Since the times immemorial, society has believed that a wife is supposed to be there for her husband in his good and bad. And the gates of heaven would not open for her if she ever defies her husband or decided to leave him. Divorce was never an option back then. So no matter how hard the situation was, the lady was supposed to adjust and child was supposed to learn the same.12<sup>11</sup>

<sup>9</sup><https://www.livelaw.in/adopted-son-no-less-natural-son-inherit-fathers-properties-reiterates-sc/>

<sup>10</sup><https://yourstory.com/2016/05/custody-rights-divorce/>

<sup>11</sup>[http://marripedia.org/effects\\_of\\_adoption\\_on\\_the\\_child\\_s\\_social\\_adjustment](http://marripedia.org/effects_of_adoption_on_the_child_s_social_adjustment)





3. Uncompromising Outlook of The Modern India: Our country has a history of discriminating against castes, which apparently is still prevailing. The majority is follower of Hinduism, hence while adopting the first thought that comes to their mind is, to which caste the child they are going to adopt, belongs to? How will know they know whether the child adopted is even Hindu? Apparently, people also believe that adopting a child means pitying for him, sympathize with a kid with no family. Instead of making the child believe that he is just a charity case, people need to show more love to him. Just because he is adopted does not mean there shall lie any difference in the definition of parenting.

In child custody scenario, it is often believed that if the mother isn't earning then the custody should be transferred to the father. What could possibly a mother can do? How is she supposed to work and take care of the child at the same time? Well, the actual question that people should ask, when the custody is handed over to either of the parent, are they able enough to fulfil the duties of both mother and father?

4. Maintenance of Secrecy: No matter how much the country is advancing, how much it is developing, the rigidity in thinking or beliefs are ever present. We follow the system of closed adoption, which means there is absolutely no communication between the biological and adoptive parents of the child. It is very uncomfortable of the adoptive parents to tell their child that they are adopted. Reason behind the issue is the fear of being hated by their child.

When a couple is going through a marital crisis, the rest of the family try to keep it a secret from the child. The reason to main

such secrecy is the fear that his childhood will be tarnished. In such a scenario, every phase of the child is equally at stake. If he is still a child, he might get involved in school related problems or will be subject to victimization. If he is a teenager, he might suffer from anxiety, depression or bullying. <sup>12</sup>

5. Social Behaviour: It is often believed that the adopted child is more violent and aggressive than the non-adopted child and it will be the same in future. Classic Indian paranoia. Reason behind such an uncanny belief might be the fact that before adoption he was raised in a different environment. It is not the case always. There are kids who can easily adjust and learn to live the way the adoptive family teaches him to. But if by any chance the uncanny belief is true it should not mean that child will retain the same aggressive nature forever. The more understanding the adoptive mother is, the more educated the family is, the more quickly the adopted child learns to control the aggression.

Child Custody becomes important for the child who has witnessed the hostile environment at home. such environments might have different impacts. First possibility is that he cannot concentrate at school, resulting in poor grades. Secondly, when the child will be unable to seek equal amount of love, care and support from both the parents, he will look for methods that could bring him peace and hence that would inculcate the habit of substance abuse. <sup>13</sup>

<sup>12</sup>[https://www.researchgate.net/publication/236005514\\_Adoption\\_in\\_India\\_-\\_the\\_PastPresent\\_and\\_the\\_Future\\_Trends](https://www.researchgate.net/publication/236005514_Adoption_in_India_-_the_PastPresent_and_the_Future_Trends)

<sup>13</sup><http://www.legalserviceindia.com/article/Extra-marital-Relations-and-its-Impact-on-children.html>



## Parental Psychology

Adoption disclosure is an important indicator of the healthy development and psychological well-being of adopted children. Parents under a survey have shown up some concern.

The results showed that while many of the parents had talked openly about their adoption to their immediate families (95.3%) and others of their social network (88.4%), they were hesitant in telling their child. Only 12.8% of Indian parents had told their child about adoption, and 31.4% were planning to tell. The results of the logistic regression analysis who were above 6 months at adoption were more likely to have disclosures from their parents about their adoption. Some of the parents were about to tell their children about them. Not letting the child know about adoption and also letting the child know about adoption can affect the child and the parent both. Some don't just let their children know about adoption because they feel their child may not accept them or may just try living alone. The child after growing up may also react to the same by just taking much time or feeling that what must have happened to their birth parents. The parents now highly need to deal with the adoption disclosure. <sup>15</sup>

## Conclusion

Before dealing with the problems related to adoption, child custody and parenting the citizens first need to deal with the problem of lack of awareness. The couples without a

child should be given proper support. The child without parents should be showered with love. It is high time for people to change their thinking. Even the legal system of India allows such change. It is okay to welcome such good change. Maintaining such a rigid thinking forever is the last thing our country wants.

Society as mentioned is the first stake but before that comes our own family. Family members are the first one to deny adoption. They don't want the couples to adopt and secondly, when the couples adopt they look down upon them on the basis of their caste, race, religion or anything. Families don't allow them to pass inheritance to the adopted child. Mostly this happens in rural areas. If our own family does not support this system then how do we expect the society to do the same. We should now start accepting the fact that every child is precious and it is not the child's fault that he or she is born as orphan or is the reason for marital crisis between the parents or any other reason for that matter. It is not wise on the part of society to be judgmental on every cause. They aren't going to be present when a child is being adopted or being raised or even taken into custody for that matter. Society should not decide the fact that if a couple is adopting, it is only because they are unable to have their own child. Nobody knows the back story of it, the couple may have gone through some other medical issue or anything for that matter. Rather being judgmental, the society should broaden their horizon.

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<sup>14</sup><https://onlinelibrary.wiley.com/doi/abs/10.1111/cfs.12175>