

A STUDY ABOUT THE LAW OF PRE-ADOPTION FOSTER CARE IN INDIA

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ABSTRACT

Pre-adoption foster care constitutes a significant yet relatively underexplored component of India's adoption framework, serving as a transitional arrangement between institutional care and the finalisation of legal adoption. Recognised under the Juvenile Justice (Care and Protection of Children) Act, 2015 and regulated through the Adoption Regulations, 2022 framed by the Central Adoption Resource Authority (CARA), it enables a child who has been declared legally free for adoption to be placed with prospective adoptive parents before the issuance of the adoption order. This mechanism promotes early family integration, facilitates emotional bonding, and reduces the adverse effects associated with prolonged institutionalisation while ensuring continued legal supervision during the transition period.

This article examines the legal and institutional framework governing pre-adoption foster care in India by analysing its conceptual foundation, statutory basis, procedural requirements, and the roles of the various authorities involved in its implementation. It further explores the rights of children, the responsibilities of prospective adoptive parents, and the safeguards embedded within the adoption process to ensure that every placement is guided by the paramount consideration of the child's best interests. The article also evaluates the evolving judicial approach that has consistently emphasised child welfare as the governing principle in adoption-related decision-making.

The study critically analyses the practical challenges affecting the implementation of preadoption foster care, including procedural delays, disparities in institutional capacity, inconsistent monitoring mechanisms, and the need for greater awareness among stakeholders. It argues that while the existing statutory framework provides a robust legal foundation, its effectiveness depends upon efficient institutional coordination, professional support services, and uniform implementation across jurisdictions.

The article concludes by proposing measures aimed at strengthening pre-adoption foster care through enhanced institutional capacity, timely disposal of adoption proceedings, improved counselling and post-placement support, standardised monitoring practices, and greater adherence to child-centric principles. It contends that an effectively implemented pre-adoption foster care system is indispensable to ensuring that children awaiting adoption are provided with a secure, stable, and nurturing family environment, thereby advancing the broader objectives of child welfare and permanent family-based care envisioned under Indian and international law.

Keywords: Pre-adoption foster care, adoption, child welfare, CARA, Juvenile Justice Act, Adoption Regulations, best interests of the child, alternative care.

I. Introduction

The right of every child to grow up in a safe, nurturing, and stable family environment is a fundamental principle of contemporary child rights jurisprudence. While adoption provides children who are orphaned, abandoned, or surrendered with the opportunity to become permanent members of a family, the period between the identification of prospective adoptive parents and the formal grant of an adoption order is equally significant. During this transitional phase, Indian law recognises the institution of pre-adoption foster care, which enables a child to reside with the prospective adoptive parents before the adoption is legally finalised. This arrangement seeks to minimise

prolonged institutionalisation, facilitate emotional bonding, and ensure that the child's transition into the adoptive family occurs in a secure and supportive environment.¹

Pre-adoption foster care occupies a distinctive position within India's child protection framework. Unlike ordinary foster care, which is generally intended as a temporary alternative care arrangement without necessarily culminating in adoption, pre-adoption foster care is intrinsically linked to an ongoing adoption process. It commences only after a child has been matched with eligible prospective adoptive parents in accordance with the statutory procedure and continues until the competent authority grants the final adoption order. During this period, the prospective adoptive parents assume responsibility for the child's day-to-day care while remaining subject to statutory obligations, supervision by adoption authorities, and the conditions prescribed under law.²

The legal framework governing pre-adoption foster care has undergone substantial transformation in recent years. The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, followed by the Adoption Regulations, 2022 framed by the Central Adoption Resource Authority (CARA), reflects a shift towards a child-centric and rightsbased approach to adoption. These reforms emphasise family-based care over long-term institutionalisation, streamline adoption procedures, and strengthen safeguards intended to protect the welfare of children throughout the adoption process. The statutory recognition of pre-adoption foster care illustrates the legislature's acknowledgement that successful adoption depends not only upon legal formalities but also upon the gradual development of trust, attachment, and emotional security between the child and the prospective adoptive family.³

International child rights instruments further reinforce this approach. The Convention on the Rights of the Child recognises that children should, wherever possible, grow up in a family environment conducive to their overall development, while the United Nations Guidelines for the Alternative Care of Children encourage family-based alternative care in preference to institutional placement. These principles have significantly influenced the evolution of India's adoption laws and the incorporation of structured pre-adoption foster care within the statutory framework.⁴

Despite its importance, the practical implementation of pre-adoption foster care continues to encounter several challenges. Delays in legal proceedings, inconsistencies in monitoring practices, limited awareness among prospective adoptive parents, and varying administrative capacities across States often undermine the effectiveness of the existing framework. Moreover, the temporary legal status of children during the pre-adoption period raises important questions regarding accountability, welfare monitoring, and the extent of legal responsibilities assumed by prospective adoptive parents before the adoption order is granted.

Against this backdrop, this article examines the concept, legal framework, and procedural aspects of pre-adoption foster care in India. It analyses the statutory provisions governing the placement process, evaluates the rights and responsibilities of stakeholders, explores the safeguards incorporated within the existing legal regime, and critically assesses the challenges affecting implementation. The article concludes by proposing reforms aimed at strengthening pre-adoption foster care as an essential component of India's child protection and adoption system.

II. Understanding Pre-Adoption Foster Care

Pre-adoption foster care is a statutory arrangement under which a child who has been legally declared eligible for adoption is placed in the care and custody of the prospective adoptive parents before the formal adoption order is passed by the competent authority. Although the child begins living with the prospective adoptive family during

¹ Conven on on the Rights of the Child, adopted Nov. 20, 1989, 1577 U.N.T.S. 3, arts. 3, 20.

² Adop on Regula ons, 2022, regs. 40–42 (India).

³ Juvenile Jus ce (Care and Protec on of Children) Act, 2015, No. 2 of 2016, §§ 2(52), 56–73 (India); Adop on Regula ons, 2022.

⁴ United Na ons Guidelines for the Alterna ve Care of Children, G.A. Res. 64/142, U.N. Doc. A/RES/64/142 (Dec. 18, 2009); Conven on on the Rights of the Child, arts. 20–21.

this period, the placement remains provisional and is subject to continued legal oversight until the adoption is legally completed. The arrangement serves as an intermediate stage between institutional care and permanent adoption, enabling the child to experience family life while ensuring that the adoption process progresses in accordance with the law.⁵

Unlike conventional foster care, which primarily functions as a temporary child protection measure for children who may eventually be reunited with their biological families or placed under another permanent arrangement, pre-adoption foster care is directly linked to an identified adoption. Its primary objective is not merely to provide temporary care but to facilitate the child's gradual integration into the prospective adoptive family. The placement therefore possesses a clear legal purpose and is intended to culminate in a final adoption order, provided all statutory requirements are satisfied.⁶

The institution of pre-adoption foster care reflects a broader shift in child welfare philosophy from institutional care towards family-based care. Contemporary child rights jurisprudence increasingly recognises that prolonged residence in childcare institutions, despite meeting basic physical needs, cannot adequately substitute for the emotional security, attachment, and personalised care available within a family environment. Early placement with prospective

adoptive parents enables the child to develop stable emotional bonds, adjust to the family's social and cultural environment, and experience continuity of care before legal adoption is finalised.⁷

Objectives of Pre-Adoption Foster Care

The foremost objective of pre-adoption foster care is to promote the best interests of the child, which constitutes the guiding principle of Indian child protection law. The arrangement seeks to reduce the period of institutionalisation and facilitate the child's transition into a permanent family in a manner that is emotionally secure and developmentally appropriate. It also allows prospective adoptive parents to assume day-to-day parental responsibilities under the supervision of the adoption authorities, thereby enabling an assessment of the child's adjustment to the family environment before the adoption attains legal finality.⁸

Another significant objective is to ensure continuity of care. Frequent movement between institutions and caregivers may adversely affect a child's psychological well-being, particularly in the case of infants and young children. By allowing the child to reside with the prospective adoptive parents during the pendency of adoption proceedings, the legal framework minimises disruptions and promotes the development of attachment, trust, and emotional stability. The arrangement thus serves both protective and rehabilitative functions within the broader adoption process.

Pre-adoption foster care also advances administrative efficiency. Since adoption proceedings may require verification of documents, post-placement reports, and judicial or administrative scrutiny before an adoption order is issued, allowing the child to remain with the prospective adoptive family during this interval prevents unnecessary delays in family integration without compromising statutory safeguards. Continuous supervision by the Specialised Adoption

Agency ensures that the child's welfare remains protected throughout this transitional period.⁹

⁵ Adop on Regula ons, 2022, regs. 40–42.

⁶ Juvenile Jus ce (Care and Protec on of Children) Act, 2015, §§ 56–73; Adop on Regula ons, 2022.

⁷ Conven on on the Rights of the Child arts. 3, 20, 21; United Na ons Guidelines for the Alterna ve Care of Children, G.A. Res. 64/142 (Dec. 18, 2009).

⁸ Juvenile Jus ce (Care and Protec on of Children) Act, 2015, § 3 (general principles), especially the principle of the best interests of the child.

⁹ Central Adop on Resource Authority, Adop on Regula ons, 2022, regs. 40–42.

Distinction from Foster Care and Adoption

Although pre-adoption foster care shares certain features with general foster care, the two institutions differ significantly in their purpose, legal consequences, and duration. Foster care is an independent alternative care arrangement intended to provide temporary family-based care for children who cannot remain with their biological families. Such placement does not necessarily result in adoption and may conclude upon family reunification, restoration, or another long-term care arrangement.

Pre-adoption foster care, in contrast, is inseparably connected with an ongoing adoption process. It is available only after the child has been lawfully matched with eligible prospective adoptive parents through the statutory adoption procedure. The placement is therefore not an independent welfare measure but a transitional phase leading towards permanent legal parenthood.

Similarly, pre-adoption foster care differs from adoption itself. During the foster care period, prospective adoptive parents exercise physical custody and undertake responsibility for the child's daily care; however, they do not yet acquire the complete legal status of adoptive parents. The legal parent-child relationship, together with all consequential rights relating to inheritance, succession, and parental authority, arises only upon the issuance of the adoption order by the competent authority. Until then, the placement remains subject to statutory supervision and may, in exceptional circumstances, be reviewed or discontinued if the child's welfare so requires.¹⁰

The distinction is therefore crucial because pre-adoption foster care balances two competing considerations. On the one hand, it enables the child to begin life within a family at the earliest opportunity. On the other, it preserves adequate legal oversight to ensure that the placement continues to serve the child's best interests until adoption is formally completed.

III. Legal Framework Governing Pre-Adoption Foster Care in India

The legal framework governing pre-adoption foster care in India reflects a transition from fragmented adoption practices to a comprehensive statutory regime centred on the rights and welfare of the child. Contemporary adoption law does not treat pre-adoption foster care as a mere administrative convenience but as an integral component of the adoption process, intended to ensure that children are placed in a secure family environment at the earliest possible stage while maintaining adequate legal safeguards. The present framework is primarily governed by constitutional principles, the Juvenile Justice (Care and Protection of Children) Act, 2015, the Adoption Regulations, 2022, and the institutional oversight exercised by the Central Adoption Resource Authority (CARA). Together, these legal instruments establish the conditions under which pre-adoption foster care may be granted, regulate the responsibilities of stakeholders, and seek to ensure that every placement is guided by the paramount consideration of the child's best interests.

Constitutional Foundation

Although the Constitution of India does not expressly recognise a right to adoption or preadoption foster care, several constitutional provisions collectively provide the normative foundation for child protection and family-based care. Article 15(3) empowers the State to enact special provisions for children, while Article 39(e) and (f) of the Directive Principles of State Policy require the State to protect children against exploitation and to ensure that they develop in conditions of freedom, dignity, and healthy growth. Further, Article 45 directs the State to provide early childhood care, reflecting the constitutional commitment to child welfare.

Judicial interpretation of Article 21 has considerably expanded the scope of the right to life by recognising that children are entitled not merely to survival but also to conditions that promote their physical, emotional, intellectual, and social development. This constitutional vision reinforces the preference for family-based care over

¹⁰ Juvenile Jus ce (Care and Protec on of Children) Act, 2015, §§ 61, 63, 66; Adop on Regula ons, 2022.

prolonged institutionalisation and informs the legislative framework governing adoption and pre-adoption foster care. Consequently, statutory provisions regulating pre-adoption foster care must be interpreted consistently with the overarching constitutional objective of securing the best interests of the child.¹¹

The Juvenile Justice (Care and Protection of Children) Act, 2015

The principal legislation governing adoption in India is the Juvenile Justice (Care and Protection of Children) Act, 2015. Chapter VIII of the Act establishes a comprehensive legal framework for the adoption of orphaned, abandoned, and surrendered children and declares adoption to be a means of ensuring the child's right to a permanent family.

Although the Act does not contain an elaborate definition of pre-adoption foster care, it expressly contemplates such placement as part of the statutory adoption process. The Act authorises adoption only after the child has been declared legally free for adoption by the competent authority and prescribes safeguards governing identification, registration, counselling, matching, and placement of children with eligible prospective adoptive parents. These safeguards ensure that pre-adoption foster care is not an informal custodial arrangement but a legally regulated stage within the adoption process.

The Act further embodies the general principles applicable to all decisions concerning children, including the principles of the best interests of the child, family responsibility, safety, dignity, equality, and institutionalisation as a measure of last resort. These principles influence every stage of pre-adoption foster care, requiring authorities to prioritise the child's emotional security and long-term welfare over administrative convenience or procedural formalities.¹²

The Adoption Regulations, 2022

The operational framework for pre-adoption foster care is primarily contained in the Adoption Regulations, 2022, framed by CARA under the Juvenile Justice Act. The Regulations provide detailed procedures governing the adoption process and expressly regulate the placement of children in pre-adoption foster care.

The Regulations permit a child to be placed in pre-adoption foster care only after the prospective adoptive parents have formally accepted the child referred to them and have executed the prescribed pre-adoption foster care undertaking. Before taking physical custody of the child, the prospective adoptive parents must agree to provide proper care, protection, nutrition, healthcare, and emotional support while complying with all statutory requirements until the adoption order is issued.

The Regulations also assign continuing responsibilities to the Specialised Adoption Agency. Even after the child is placed with the prospective adoptive parents, the agency remains responsible for monitoring the child's welfare, extending necessary counselling and support, maintaining records, and ensuring compliance with the prescribed legal procedure. This

continuing supervision distinguishes pre-adoption foster care from completed adoption, where parental authority becomes legally absolute subject only to the ordinary operation of law.

Another important feature of the Regulations is the emphasis on transparency and accountability through CARA's digital adoption platform. The use of a centralised online system facilitates registration, matching, documentation,

¹¹ INDIA CONST. arts. 15(3), 21, 39(e), 39(f), 45.

¹² Juvenile Jus ce (Care and Protec on of Children) Act, 2015, No. 2 of 2016, §§ 3, 56–73.

monitoring, and coordination among adoption agencies, thereby reducing procedural delays and enhancing uniformity in adoption practices across the country.¹³

Role of the Central Adoption Resource Authority (CARA)

The Central Adoption Resource Authority functions as the statutory nodal authority responsible for regulating and monitoring adoption throughout India. Established under the Ministry of Women and Child Development, CARA formulates regulations, supervises adoption agencies, maintains the national adoption database, facilitates inter-State and inter-country adoptions, and ensures compliance with domestic and international legal standards.

In relation to pre-adoption foster care, CARA performs both regulatory and supervisory functions. It prescribes the procedural requirements governing placement, standardises documentation, issues operational guidelines, and oversees the functioning of Specialised Adoption Agencies and State Adoption Resource Agencies. Through periodic inspections, digital monitoring, and grievance redressal mechanisms, CARA seeks to ensure that children placed in pre-adoption foster care continue to receive adequate protection until adoption is legally finalised.

Thus, the Indian legal framework adopts a carefully balanced approach. While it seeks to facilitate the early placement of children in permanent family environments, it simultaneously retains institutional oversight until the adoption order is granted. This balance between family integration and legal supervision represents one of the defining features of India's contemporary adoption regime.¹⁴

IV. Procedure and Institutional Mechanism

The legal recognition of pre-adoption foster care is accompanied by a structured procedural framework designed to ensure that every placement is lawful, transparent, and consistent with the best interests of the child. Unlike informal custodial arrangements, pre-adoption foster care can commence only after the completion of several statutory requirements prescribed under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022. The process involves multiple institutions, each entrusted with distinct responsibilities to safeguard the child's welfare while facilitating timely adoption. The coordinated functioning of these authorities seeks to balance the objective of early family integration with the need for continued legal supervision until the adoption order is granted.

Declaration of the Child as Legally Free for Adoption

The adoption process begins with the determination that a child is legally eligible for adoption. A child who has been orphaned, abandoned, or surrendered cannot be placed in pre-adoption foster care unless the competent authority has formally declared the child legally free for adoption in accordance with the Juvenile Justice Act. This declaration ensures that all efforts towards restoration with the biological family, wherever legally required, have been exhausted and that adoption represents the most appropriate permanent rehabilitation measure for the child. Without such declaration, no adoption proceedings or pre-adoption placement can lawfully take place.¹⁵

Registration and Assessment of Prospective Adoptive Parents

Prospective adoptive parents are required to register through the designated adoption system maintained by CARA and submit the prescribed documents relating to their identity, financial capacity, health, and family background.

¹³ Adopt on Regulations, 2022, regs. 40–42.

¹⁴ Central Adopt on Resource Authority, Adopt on Regulations, 2022.

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 36–38, 56–61. ¹⁶ Adopt on Regulations, 2022, regs. 9–15.

A comprehensive Home Study Report is then prepared by an authorised social worker or recognised agency to evaluate the applicants' suitability to adopt.

The Home Study Report extends beyond financial capability and examines the emotional preparedness, parenting abilities, family support system, health status, motivation for adoption, and overall capacity of the applicants to provide a safe and nurturing environment. This assessment plays a crucial role in determining whether the proposed placement would advance the child's long-term welfare.¹⁶

Matching and Acceptance of the Child

Once the prospective adoptive parents are declared eligible, the Specialised Adoption Agency refers the profile of a child found suitable in accordance with the matching criteria prescribed under the Adoption Regulations. The referral includes medical records, developmental assessments, and other relevant information necessary to enable the prospective adoptive parents to make an informed decision.

After examining the child's records and, where applicable, meeting the child, the prospective adoptive parents communicate their formal acceptance through the prescribed procedure. The matching process is guided by the principle of the best interests of the child rather than the preferences of the applicants alone. Consequently, the suitability of the placement is assessed from the perspective of ensuring the child's emotional, physical, and developmental well-being. Execution of the Pre-Adoption Foster Care Undertaking

Following acceptance of the child, but before physical custody is transferred, the prospective adoptive parents are required to execute a pre-adoption foster care undertaking as prescribed under the Adoption Regulations. Through this undertaking, they agree to assume responsibility for the child's maintenance, healthcare, education, protection, and overall welfare until the adoption order is issued. The undertaking also requires the prospective adoptive parents to produce the child whenever required by the competent authorities, cooperate with post-placement supervision, and refrain from transferring the child's custody to any other person without legal authorisation. This document serves as an important safeguard by formally recognising the temporary yet legally regulated nature of the placement.¹⁶

Placement in Pre-Adoption Foster Care and Post-Placement Supervision

Upon execution of the prescribed undertaking, the Specialised Adoption Agency places the child in the physical custody of the prospective adoptive parents under pre-adoption foster care. From this stage onwards, the child begins residing with the prospective adoptive family while the adoption proceedings continue before the competent authority.

The placement, however, does not terminate institutional oversight. The Specialised Adoption Agency remains responsible for monitoring the child's adjustment to the family through periodic home visits and follow-up reports. These visits assess the child's physical health, emotional development, educational progress where applicable, interaction with family members, and overall well-being. The monitoring process also enables early identification of any difficulties that may require counselling, intervention, or additional support.

Such supervision reflects the preventive approach adopted by the statutory framework. Rather than merely responding to adverse situations after they arise, continuous monitoring seeks to ensure that the placement remains beneficial for the child throughout the transitional period preceding the adoption order.

¹⁶ Id. regs. 40–42.

Institutional Mechanism

The successful implementation of pre-adoption foster care depends upon coordinated action by several statutory authorities.

The Central Adoption Resource Authority (CARA) serves as the central regulatory body responsible for framing adoption policies, maintaining the national adoption portal, supervising adoption agencies, and ensuring uniform implementation of adoption laws across India.

The State Adoption Resource Agency (SARA) functions at the State level by coordinating adoption activities, monitoring Specialised Adoption Agencies, facilitating capacity building, and ensuring compliance with CARA's regulations.

The Specialised Adoption Agency (SAA) occupies the most significant position in the practical implementation of pre-adoption foster care. It is responsible for the care of children awaiting adoption, preparation of child study reports and medical examination reports, matching children with eligible prospective adoptive parents, obtaining the pre-adoption foster care undertaking, providing counselling, conducting post-placement supervision, and assisting in obtaining the final adoption order.¹⁷ The District Magistrate, who exercises jurisdiction over adoption proceedings under the Juvenile Justice Act, examines the statutory requirements and issues the final adoption order after being satisfied that the adoption serves the best interests of the child. Until this order is passed, the placement continues as pre-adoption foster care under statutory supervision.

Significance of the Procedural Framework

The elaborate procedural safeguards governing pre-adoption foster care demonstrate that the placement is neither an informal transfer of custody nor an automatic consequence of matching a child with prospective adoptive parents. Instead, it represents a carefully regulated transitional arrangement that combines early family integration with continued legal oversight. By requiring comprehensive assessments, documented undertakings, institutional monitoring, and judicial scrutiny, the law seeks to minimise risks while facilitating the child's smooth transition from institutional care to permanent family life.

V. Rights, Safeguards, and Judicial Approach

Pre-adoption foster care is not merely a procedural stage preceding adoption but a legally regulated arrangement intended to safeguard the interests of the child during a period of transition. Although the child resides with the prospective adoptive parents before the adoption order is issued, the placement remains subject to statutory safeguards designed to ensure the child's safety, dignity, and overall well-being. The legal framework therefore imposes corresponding rights and obligations upon all stakeholders, including the child, the prospective adoptive parents, Specialised Adoption Agencies, and regulatory authorities. Judicial interpretation has further strengthened these safeguards by consistently affirming that the best interests of the child constitute the paramount consideration in every adoption-related decision. Rights of the Child During Pre-Adoption Foster Care

The child remains the central focus of the entire adoption process. Even during pre-adoption foster care, the child is entitled to protection against neglect, abuse, exploitation, discrimination, and any form of treatment detrimental to his or her physical or emotional development. The placement does not diminish these rights; rather, it seeks to ensure that they are realised within a family environment instead of an institutional setting.¹⁸

The child also possesses the right to receive appropriate healthcare, nutrition, education, emotional support, and opportunities for holistic development. Prospective adoptive parents are expected to provide an environment that

¹⁷ Central Adoption Resource Authority, Adoption Regulations, 2022; Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 56–73.

¹⁸ Convention on the Rights of the Child, arts. 3, 12, 19, 20, 21; Juvenile Justice (Care and Protection of Children) Act, 2015, § 3.

promotes stability, affection, and security, recognising that many children entering adoption may have experienced abandonment, institutionalisation, trauma, or disrupted attachments. The transition into the adoptive family must therefore be handled with sensitivity, patience, and adequate psychosocial support.

Where the child's age and level of maturity permit, his or her views should be accorded due consideration in matters affecting placement and adoption, consistent with the principles embodied in international child rights instruments and the child-centric philosophy of the Juvenile Justice Act.

Responsibilities of Prospective Adoptive Parents

During the pre-adoption foster care period, prospective adoptive parents assume primary responsibility for the child's day-to-day care while recognising that the adoption has not yet attained legal finality. Their responsibilities extend beyond meeting the child's physical needs and include providing emotional security, maintaining a safe home environment, ensuring regular medical care, facilitating education where applicable, and supporting the child's social and psychological development.

The Adoption Regulations further require prospective adoptive parents to comply with the terms of the pre-adoption foster care undertaking, cooperate with home visits conducted by the Specialised Adoption Agency, furnish information whenever required, and produce the child before the competent authorities if directed. They are expected to preserve the confidentiality of adoption records and act at all times in a manner consistent with the child's welfare.¹⁹

Institutional Safeguards

An important safeguard built into the statutory framework is the continued involvement of the Specialised Adoption Agency even after the child has been placed with the prospective adoptive parents. Periodic follow-up visits enable trained social workers to assess the child's adjustment to the new family environment, identify potential concerns, provide counselling where necessary, and verify compliance with statutory obligations.

The regulatory oversight exercised by the Central Adoption Resource Authority and the State Adoption Resource Agencies further strengthens accountability by ensuring that adoption procedures are implemented uniformly across the country. Digital documentation, prescribed timelines, standardised forms, and institutional monitoring collectively reduce the possibility of irregular placements while promoting transparency throughout the adoption process.

Another important safeguard lies in the temporary legal nature of pre-adoption foster care itself. Since the final adoption order has not yet been granted, the competent authority retains the power to intervene if circumstances arise demonstrating that continuation of the placement would not serve the child's best interests. This supervisory jurisdiction functions as an additional layer of protection during the transitional period.

Judicial Approach

Indian courts have consistently emphasised that adoption proceedings must be governed by the paramount consideration of the child's welfare rather than the competing claims or expectations of adults. The judiciary has repeatedly recognised that adoption is fundamentally a child welfare measure intended to secure a stable and permanent family for children deprived of parental care. In *Laxmi Kant Pandey v. Union of India*, the Supreme Court laid down comprehensive safeguards governing adoption procedures, particularly in relation to inter-country adoption. Although the decision predates the present statutory framework, its insistence upon rigorous scrutiny,

¹⁹ Adop on Regula ons, 2022, regs. 40–42.

institutional accountability, and protection against exploitation continues to influence contemporary adoption law and the regulatory framework governing pre-adoption foster care.²⁰

Similarly, judicial decisions interpreting the Juvenile Justice Act have consistently reaffirmed that procedural requirements should facilitate, rather than unnecessarily impede, lawful adoption, provided that the welfare and best interests of the child remain fully protected. Courts have also recognised that prolonged institutionalisation should be avoided wherever a suitable adoptive family is available, since family-based care ordinarily offers greater opportunities for emotional and developmental growth than institutional care.

Balancing Child Welfare and Legal Oversight

The legal safeguards governing pre-adoption foster care reflect an attempt to reconcile two equally important objectives. On one hand, the law seeks to enable children to experience the security and affection of a permanent family at the earliest possible stage. On the other, it recognises the need for continued legal supervision until the adoption is formally completed. The resulting framework neither permits unrestricted transfer of custody nor insists that children remain institutionalised until every procedural formality is concluded.

This balanced approach represents one of the principal strengths of the Indian adoption regime. By combining early family placement with institutional monitoring and judicial oversight, the law seeks to ensure that pre-adoption foster care remains a child-centred mechanism that advances both immediate welfare and long-term permanence.²¹

VI. Challenges in the Implementation of Pre-Adoption Foster Care

Despite the existence of a comprehensive statutory framework, the effective implementation of pre-adoption foster care in India continues to face several legal, administrative, and practical challenges. While the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022 establish detailed procedural safeguards, their success largely depends upon the efficiency of institutions responsible for implementation. Delays in adoption proceedings, disparities in institutional capacity, inadequate monitoring, and limited awareness among stakeholders frequently hinder the objective of ensuring timely and child-centric placements. These challenges not only prolong the adoption process but may also adversely affect the emotional and psychological well-being of children awaiting permanent family care. Procedural Delays and Prolonged Institutionalisation

One of the most persistent challenges is the delay encountered at various stages of the adoption process. Before a child can be placed in pre-adoption foster care, several statutory procedures, including the declaration of the child as legally free for adoption, preparation of child study reports, registration and assessment of prospective adoptive parents, matching, and documentation, must be completed. While these safeguards are essential, administrative inefficiencies often result in avoidable delays.

Further delays may arise during the issuance of the final adoption order by the District Magistrate due to procedural backlogs, incomplete documentation, or coordination issues between different authorities. Consequently, some children remain in pre-adoption foster care for extended periods without acquiring the legal certainty associated with completed adoption. Such prolonged transitional arrangements may create uncertainty for both the child and the prospective adoptive parents.

²⁰ Laxmi Kant Pandey v. Union of India, (1984) 2 SCC 244.

²¹ Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 56–73.

Inconsistent Monitoring and Institutional Capacity

The effectiveness of pre-adoption foster care depends substantially upon regular monitoring by Specialised Adoption Agencies. However, the quality and frequency of post-placement supervision vary considerably across States owing to differences in infrastructure, staffing, and financial resources. Some agencies face shortages of trained social workers, resulting in irregular home visits and limited follow-up counselling.

The uneven institutional capacity of adoption agencies may also affect the quality of home study assessments, matching decisions, and post-placement support. Since adoption involves significant emotional and developmental considerations, inadequate professional supervision can compromise the objective of ensuring placements that genuinely serve the child's best interests.

Limited Awareness Among Prospective Adoptive Parents

Many prospective adoptive parents possess limited understanding of the legal nature of preadoption foster care. The distinction between temporary foster placement and completed adoption is not always fully appreciated, leading to misconceptions regarding their legal rights and obligations during the transitional period.

Inadequate awareness may also extend to issues such as trauma-informed parenting, attachment disorders, disclosure of adoption, and the psychosocial needs of children who have experienced institutional care. Although counselling is mandated under the statutory framework, its quality and accessibility differ across adoption agencies, highlighting the need for more structured parent preparation programmes.

Psychological and Emotional Challenges

The pre-adoption foster care period represents a significant adjustment for both the child and the prospective adoptive family. Children entering adoptive homes may experience anxiety, insecurity, behavioural changes, or difficulties in forming secure attachments, particularly if they have previously experienced abandonment, neglect, or multiple institutional placements. Likewise, prospective adoptive parents may face uncertainty while awaiting the final adoption order, especially where procedural delays occur.

The existing legal framework primarily regulates procedural compliance but offers comparatively limited statutory guidance regarding long-term psychological support during the transition period. Greater integration of counselling and mental health services would strengthen the child-centred objectives of pre-adoption foster care.

Need for Greater Uniformity in Implementation

Although CARA has established standardised regulations applicable throughout the country, practical implementation continues to vary across different States and adoption agencies. Differences in administrative practices, documentation procedures, timelines, and availability of professional support create inconsistencies that may affect similarly situated children and prospective adoptive parents.

Uniform implementation is particularly important because adoption directly concerns the fundamental rights and welfare of children. Greater standardisation of training programmes, monitoring protocols, digital record management, and institutional accountability would contribute to more consistent application of the statutory framework across jurisdictions.

Balancing Expeditious Adoption with Child Protection

A recurring challenge lies in balancing the need for expeditious adoption with the obligation to maintain rigorous child protection safeguards. Excessive procedural scrutiny may unnecessarily prolong institutionalisation, whereas inadequate verification may expose children to unsuitable placements. The legal framework must therefore continuously strive to maintain an appropriate balance between efficiency and caution.

Recent reforms, including the digitalisation of adoption procedures and the transfer of adoption jurisdiction to District Magistrates, have sought to reduce delays while preserving statutory safeguards. Nevertheless, their long-term effectiveness will depend upon adequate institutional resources, trained personnel, and consistent implementation throughout the country.

The continuing evolution of India's adoption system demonstrates that pre-adoption foster care cannot be viewed solely as a legal formality. Its effectiveness ultimately depends upon the coordinated functioning of legal institutions, professional support services, and child welfare agencies working together to ensure that every child is able to transition from institutional care to a permanent family environment in a safe, timely, and dignified manner.

VII. Suggestions and Recommendations

The legal framework governing pre-adoption foster care in India demonstrates a clear commitment to ensuring that children awaiting adoption are provided with a safe and nurturing family environment while maintaining appropriate legal safeguards. Nevertheless, the effectiveness of this framework depends not merely on the existence of statutory provisions but on their consistent and efficient implementation. Strengthening institutional capacity, enhancing accountability, and adopting a child-centric approach at every stage of the adoption process are essential to ensuring that pre-adoption foster care fulfils its intended purpose.

1. Strengthening Institutional Capacity

Specialised Adoption Agencies and State Adoption Resource Agencies should be adequately staffed with trained social workers, psychologists, and child welfare professionals. Regular training programmes should be conducted on child psychology, trauma-informed care, counselling techniques, and the implementation of the Adoption Regulations. Enhanced institutional capacity would improve the quality of home studies, matching procedures, postplacement supervision, and support provided to prospective adoptive families.

2. Ensuring Time-Bound Adoption Procedures

Although procedural safeguards are indispensable, unnecessary administrative delays should be minimised. Statutory timelines prescribed under the Adoption Regulations should be strictly adhered to, and digital case management systems should be utilised to monitor the progress of every adoption application. Expedious disposal of adoption proceedings by the District Magistrates would reduce prolonged uncertainty for children placed in pre-adoption foster care.

3. Strengthening Post-Placement Support

Pre-adoption foster care should not be limited to legal supervision alone. Regular counselling services should be made available to both children and prospective adoptive parents during the transition period. Professional guidance can assist families in addressing behavioural, emotional, and adjustment-related issues while facilitating the healthy development of parent-child relationships.

4. Standardising Monitoring Mechanisms

Uniform monitoring protocols should be implemented across all States to ensure consistency in post-placement supervision. Standardised reporting formats, periodic home visits, and digital documentation would enhance transparency and accountability while enabling early identification of concerns affecting the child's welfare.

5. Enhancing Awareness and Parent Preparation

Comprehensive orientation programmes should be conducted for prospective adoptive parents before placement. These programmes should explain the legal nature of pre-adoption foster care, the responsibilities arising from the foster care undertaking, the developmental needs of adopted children, and the importance of maintaining

confidentiality and respecting the child's identity. Better-informed parents are more likely to provide stable and supportive family environments.

6. Promoting a Child-Centred Approach

All authorities involved in adoption proceedings should consistently apply the principle of the best interests of the child rather than allowing procedural formalities to become ends in themselves. Every decision relating to placement, monitoring, and finalisation of adoption should prioritise the child's safety, emotional well-being, dignity, and long-term development.

VIII. Conclusion

Pre-adoption foster care has emerged as a vital component of India's contemporary adoption framework, bridging the gap between institutional care and permanent family placement. By permitting children to reside with prospective adoptive parents before the issuance of the final adoption order, the law seeks to minimise institutionalisation, encourage emotional bonding, and facilitate a smoother transition into family life. The statutory framework established under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022 reflects a significant shift towards a child-centric model that recognises family-based care as the preferred means of ensuring the holistic development of children deprived of parental care.¹

The procedural safeguards governing pre-adoption foster care illustrate a deliberate attempt to balance two competing objectives. On one hand, the law seeks to secure timely family placement for children who have been declared legally free for adoption. On the other, it retains institutional supervision until the adoption is legally finalised, thereby protecting children from unsuitable placements and ensuring continued accountability. The involvement of the Central Adoption Resource Authority, State Adoption Resource Agencies, Specialised Adoption Agencies, and the District Magistrate demonstrates the collaborative institutional framework through which these objectives are pursued.

Despite these legislative advancements, several practical challenges continue to impede the effective implementation of pre-adoption foster care. Procedural delays, disparities in institutional capacity, inconsistent monitoring practices, and limited awareness among stakeholders often prolong the adoption process and affect the child's transition to a permanent family. Addressing these shortcomings requires not only administrative efficiency but also sustained investment in professional training, digital infrastructure, counselling services, and uniform implementation of statutory standards.

Ultimately, the success of pre-adoption foster care cannot be measured solely by the number of adoptions completed or the speed with which applications are processed. Its true significance lies in its ability to ensure that every child experiences a secure, nurturing, and stable family environment during one of the most critical phases of the adoption journey. As India's child protection system continues to evolve, strengthening pre-adoption foster care through effective implementation, robust institutional support, and unwavering adherence to the best interests principle will remain indispensable to achieving the broader objective of securing every child's right to grow up in a loving and permanent family.

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