



FAMILY LAW

# Kerala High Court Upholds Biological Parent's Consent Requirement in Step-Parent Adoption

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## Introduction

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The formation of blended families is increasingly common, with step-parents playing crucial roles in children's lives. However, the legal process of adoption, particularly when a biological parent is still alive and involved, is a complex and sensitive matter. A fundamental principle enshrined in law is that a step-parent cannot adopt a child without the consent of the existing biological parent, barring exceptional circumstances.

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## The Primacy of Biological Parent Rights

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The cornerstone of family law is the recognition of the inherent rights of biological parents. These rights stem from the natural bond between parent and child and are protected by both statutory and constitutional provisions. The right to parent, to raise, and to make decisions for one's child is considered a fundamental liberty.

## Ammu Ajit vs. Central Adoption Resource Agency: Kerala High Court

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**Background:** After the mutual divorce of the child's biological parent, the mother was granted permanent custody of the child, while the father was granted interim custody. The stepfather applied for the child's adoption following the mother's second marriage. However, the Child Welfare Committee (CWC) rejected the proposal because of the biological father's concerns. In order to overturn the CWC judgment and order CARA to relax the adoption process so the stepfather may adopt without the biological father's approval, the mother and stepfather went to the High Court.

**Ruling:** The Kerala High Court has ruled that adoption by step-parent cannot be permitted unless the biological parent of the child gives consent for adoption in the light of Section 56 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Regulation 55 of the Adoption Regulations, 2022. The child has to be surrendered by the biological parent by jointly executing a consent letter with step-parent. The Court further clarified that Central Adoption Resource Agency (CARA) cannot relax the requirement of obtaining biological parent's consent for adoption under the Regulation 63 of the Adoption Regulations, 2022 due to the legal implications of an adoption.

The Court thus observed that the substantive and statutory right of the biological parent over the custody of his child cannot be waived or relaxed by CARA, but such rights could only be determined by a competent Civil Court. The Court ruled that the Adoption Regulations of 2022, formulated under Section 58 of the Juvenile Justice Act, are applicable to children from earlier marriages surrendered by biological parents for adoption by step-parents. The child must be surrendered by the biological parent through a consent letter, attested by witnesses and certified by the CWC. The court also noted that a joint application for adoption can only be filed after obtaining the pre-approval letter. The biological father had not given consent for adoption, but the court interpreted the regulations as requiring the biological parent to surrender the child. The court also ruled that the child's ties with their biological parent are irrevocably and permanently severed, affecting their inheritance and succession rights

## Present Scenario

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Indian courts have consistently upheld the principle that a step-parent cannot adopt a child without the consent of the biological parent, except in rare and compelling circumstances.

- Courts have emphasized that adoption severs the legal ties between the child and the biological parent. Therefore, it is a serious step that requires careful consideration and the consent of all parties involved.

- Judgments have highlighted the importance of the child's welfare, but this does not automatically override the rights of the biological parent. Courts have held that the child's best interests are generally served by maintaining the relationship with their biological parents.
- Cases where a biological parent has abandoned the child, is deemed unfit, or has demonstrably failed to fulfill their parental responsibilities are the limited exceptions where a court may consider adoption without consent. Even in these cases, stringent evidence is required.
- The courts are very reluctant to terminate parental rights, unless it is proven that the parent has forfeited those rights.

## The Importance of Consent

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The requirement of biological parent consent is not merely a legal formality. It reflects the deep-seated recognition of the parent-child bond and the importance of preserving family ties. It also aims to prevent arbitrary or unilateral decisions that could have profound consequences for the child.

## Conclusion:

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The legal landscape in India firmly protects the rights of biological parents. A step-parent's desire to adopt a child, however well-intentioned, cannot override these rights without the biological parent's consent. While the welfare of the child remains the paramount consideration, courts recognize that this welfare is generally best served by respecting and preserving the natural family relationships. Therefore, adoption without biological parent consent is permitted only in the most exceptional and compelling circumstances, where the courts must be convinced that the biological parent has forfeited his or her parental rights.

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