

UNIFORM CIVIL CODE AND ADOPTION LAWS IN INDIA: THE NEED FOR A UNIFORM FRAMEWORK

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Abstract:

The issue of adoption laws in India remains fragmented due to the existence of diverse personal laws governing different religious communities. While the Hindu Adoption and Maintenance Act (HAMA), 1956, provide a structured legal framework for adoption among Hindus, Muslims, Christians, and Parsis largely rely on guardianship laws under the Guardians and Wards Act, 1890, due to the absence of formal adoption provisions. The Juvenile Justice (Care and Protection of Children) Act, 2015, serves as an enabling legislation, permitting adoption across religious communities, but it does not completely unify adoption laws under a singular legal framework. This paper explores the inconsistencies in adoption laws across different personal laws, their impact on legal rights, and the need for a uniform adoption framework under the Uniform Civil Code (UCC).

The study employs doctrinal research, analyzing statutes, judicial pronouncements, and scholarly literature to examine legal ambiguities, challenges in interfaith adoptions, and inheritance rights issues arising due to the absence of uniformity. A review of international best practices highlights the advantages of a secular adoption framework that prioritizes child welfare over religious considerations. Judicial decisions, such as *Shabnam Hashmi v. Union of India* (2014), have underscored the necessity of uniform adoption rights, reinforcing the argument that adoption should be a fundamental right. The paper further assesses legislative efforts, particularly the role of the Juvenile Justice Act, in bridging legal disparities.

The study concludes that a unified adoption law under the UCC will provide legal clarity, ensure gender-neutral and religion-neutral adoption rights, and protect the best interests of the child. Recommendations include codifying a secular adoption law, balancing religious rights with legal reforms, strengthening the role of the Central Adoption Resource Authority (CARA), and fast-tracking adoption procedures to create a more inclusive and effective legal system.

Keywords: Uniform Civil Code, Adoption Laws in India, Hindu Adoption and Maintenance Act, Juvenile Justice Act, Guardians and Wards Act, Interfaith Adoption, Child Welfare, Legal Reforms, Central Adoption Resource Authority, Personal Laws.

INTRODUCTION

Background of the Study

The Uniform Civil Code (UCC) is a proposed legal framework aimed at standardizing personal laws across different religious communities in India. Article 44 of the Directive Principles of State Policy in the Indian Constitution emphasizes the need for a UCC to replace diverse personal laws with a common legal framework governing marriage, divorce, inheritance, and adoption. While personal laws regulate adoption within specific religious groups, the absence of a uniform adoption law leads to legal inconsistencies and unequal rights for adoptive parents and children.

Adoption is a crucial legal process that provides permanent family care to children deprived of parental care. It ensures the welfare, identity, and security of children by granting them legal parenthood. While Hindus can adopt under the Hindu Adoption and Maintenance Act (HAMA), 1956, Muslims, Christians, and Parsis do not have personal laws permitting adoption. Instead, they rely on the Guardians and Wards Act (GWA), 1890, which grants only guardianship rather than full parental rights. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) enables adoption across religious communities but coexists with personal laws, leading to multiple legal pathways for adoption in India. This fragmented system raises concerns regarding legal clarity, inheritance rights, and uniformity in child welfare policies. The lack of a single, secular adoption law under the UCC is an ongoing legal debate requiring judicial and legislative scrutiny.

RESEARCH OBJECTIVES

This research aims to address the following key objectives:

1. To examine the disparities in adoption laws under different personal laws – Adoption in India is governed by multiple legal frameworks, including HAMA, GWA, and the JJ Act. This study aims to assess the differences in eligibility criteria, legal rights, and procedural complexities across these laws.
2. To analyze the feasibility of a Uniform Adoption Law under the UCC – The research will evaluate whether a common legal framework can harmonize adoption laws while respecting religious beliefs and cultural traditions.
3. To assess the judicial and legislative stance on the need for a uniform framework – The study will analyze court rulings, parliamentary debates, and policy discussions to determine the feasibility and challenges of implementing a unified adoption law under the UCC.

RESEARCH QUESTIONS

To achieve the above objectives, the study will explore the following research questions:

1. **What are the inconsistencies in adoption laws under different personal laws in India?**
 - How do adoption rights differ under Hindu, Muslim, Christian, and Parsi laws?
 - What are the legal consequences of these variations for adoptive parents and children?
2. **How does the absence of a uniform adoption law affect children, parents, and legal rights?**
 - Does the lack of uniformity lead to discrimination against certain communities?
 - How do inheritance laws and parental rights differ across legal frameworks?
3. **What would be the benefits and challenges of integrating adoption laws under the UCC?**
 - What legal, social, and administrative hurdles may arise in implementing a Uniform Adoption Law?
 - What best practices from international adoption laws can India incorporate?

This study adopts a doctrinal research approach, analyzing statutory provisions, judicial decisions, and scholarly literature to critically assess India's adoption laws.

1. Doctrinal Research

- **Statutory Analysis:** Examines the provisions of HAMA (1956), GWA (1890), JJ Act (2015), and relevant case laws.
- **Judicial Review:** Analyzes significant Supreme Court and High Court rulings on adoption and UCC, such as *Shabnam Hashmi v. Union of India (2014)*.
- **Legislative Review:** Studies parliamentary debates and reports on adoption reforms and UCC implementation.

2. Comparative Legal Analysis

- **Comparison of Personal Laws:** Evaluates differences between Hindu, Muslim, Christian, and Parsi adoption laws.

- **Analysis of the Juvenile Justice Act, 2015:** Assesses how the Act facilitates interfaith adoptions and the challenges it faces.
- **International Perspective:** Reviews adoption laws in secular democracies such as the U.S., U.K., and France to identify global best practices.

The study aims to provide a comprehensive analysis of India's adoption laws and their compatibility with a Uniform Civil Code. It will examine whether a single adoption law can ensure legal clarity, promote child welfare, and uphold the constitutional principle of equality while addressing concerns about religious freedom. By integrating judicial insights, legislative reforms, and comparative legal perspectives, this research will contribute to ongoing policy discussions on adoption under the UCC.

ADOPTION LAWS UNDER DIFFERENT PERSONAL LAWS IN INDIA

Adoption in India is governed by a complex legal framework influenced by religious personal laws and secular statutes. While Hindus have a codified law under the Hindu Adoption and Maintenance Act (HAMA), 1956, other religious communities such as Muslims, Christians, and Parsis either lack a formal adoption law or rely on the Guardians and Wards Act, 1890 (GWA). The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) provides an alternative, enabling adoption across all religious communities under a uniform legal process. This paper examines these different legal frameworks and highlights their inconsistencies.

➤ **Hindu Adoption and Maintenance Act (HAMA), 1956**

The Hindu Adoption and Maintenance Act (HAMA), 1956, is the principal legislation governing adoption among Hindus, Buddhists, Jains, and Sikhs. It provides a clear legal structure for adoption with specific eligibility criteria for both adoptive parents and the adopted child.

Eligibility Criteria for Adoptive Parents and Adopted Child

- Any Hindu male can adopt if he is of sound mind, not a minor, and has obtained the consent of his wife (if married).
- A Hindu female can adopt if she is unmarried, divorced, or widowed. A married woman cannot adopt a child independently.
- The child must be Hindu, under the age of 15, and not previously adopted.
- There must be a 25-year age gap between the adoptive parent and the adopted child in cases where a female adopts a male child.

Gender-Based Distinctions and Inheritance Rights

- HAMA treats **adoption as irrevocable**, granting the adopted child the **same rights as a biological child**, including full **inheritance rights** in the adoptive family.
- **Gender-based restrictions** exist, as a married woman cannot adopt without her husband's consent, whereas a married man can adopt with his wife's consent.

➤ **Muslim Law on Adoption (No Formal Provision for Adoption)**

Muslim personal law in India does not recognize adoption in the same way as Hindu law. Instead, it follows the Islamic concept of Kafala, a guardianship system where an individual takes care of an orphaned child without granting them full filial status.

Concept of Kafala (Guardianship) Instead of Adoption

- Under Sharia law, a child retains their biological lineage, and the guardian does not become the child's legal parent.
- The child may live with the guardian, receive education and care, but does not acquire the guardian's surname or legal status as their child.

Lack of Inheritance Rights for Adopted Children

- Since Islam prohibits altering lineage, an adopted child does not automatically inherit from the adoptive family.

- However, the guardian can make a will (wasiyat) allocating up to one-third of their property to the child.

➤ **Christian and Parsi Adoption Laws**

Christians and Parsis do not have a distinct personal law governing adoption. Instead, they are subject to the Guardians and Wards Act, 1890 (GWA), which provides for guardianship rather than adoption.

No Separate Personal Law for Adoption; Governed by GWA, 1890

- The Guardians and Wards Act, 1890, treats adoption as a temporary guardianship, meaning the legal relationship does not equate to full parental rights.
- The guardianship ceases once the child turns 18 years old, after which the child is no longer legally bound to the adoptive parents.

Adoption Grants Guardianship, Not Full Parental Rights

- Under GWA, an adopted child does not receive automatic inheritance rights.
- If the adoptive parents wish to transfer property to the child, they must make a will or gift deed to ensure inheritance.

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

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) is a secular law that enables adoption across all religious communities. Unlike personal laws, the JJ Act provides a uniform and legally binding adoption process, ensuring that all adopted children have the same legal rights as biological children.

An Enabling Law Allowing Adoption across Religious Communities

- The JJ Act allows any single or married person to adopt a child, regardless of religious identity.
- It ensures that adopted children receive full legal recognition and inheritance rights, similar to HAMA.
- The adoption process under this law is regulated and must be finalized through a court order to gain legal validity.

Role of Central Adoption Resource Authority (CARA)

- **CARA** is the regulatory body under the JJ Act that oversees adoption procedures in India.
- It ensures transparency, maintains a national database of children available for adoption, and sets eligibility criteria for prospective adoptive parents.
- It facilitates inter-country adoption under the Hague Convention on Adoption, ensuring compliance with international standards.

India's adoption laws remain fragmented due to the coexistence of personal laws and secular statutes. The Hindu Adoption and Maintenance Act (HAMA), 1956, provides a clear legal framework but applies only to Hindus, while Muslims, Christians, and Parsis lack a codified adoption law and must rely on guardianship provisions. The Juvenile Justice (Care and Protection of Children) Act, 2015, offers a universal adoption process, but it does not completely replace religious laws, leading to legal ambiguities and inconsistencies.

A Uniform Civil Code (UCC) incorporating a single secular adoption law would resolve these disparities, ensuring that adoption is treated as a fundamental child welfare issue rather than a religious practice. Such a framework would remove discriminatory barriers, provide legal clarity, and prioritize the best interests of the child, fostering a more inclusive and equitable adoption system in India.

CHALLENGES ARISING DUE TO LACK OF UNIFORMITY IN ADOPTION LAWS

The absence of a uniform adoption law in India has resulted in significant legal ambiguities, as different religious communities are governed by distinct personal laws that dictate the process of adoption. The Hindu Adoption and Maintenance Act, 1956, exclusively applies to Hindus, while Muslims, Christians, and Parsis do not have a dedicated personal law for adoption and must rely on the Guardians and Wards

Act, 1890, which only grants guardianship rights rather than full parental rights. Additionally, while the Juvenile Justice (Care and Protection of Children) Act, 2015, allows for adoption irrespective of religion, it coexists with personal laws, creating inconsistencies and confusion in legal interpretation and application. The lack of a uniform framework results in legal uncertainties regarding parental rights, succession, and the rights of the adopted child.

The denial of formal adoption rights to Muslims, Christians, and Parsis under their personal laws poses another major challenge. Since Islamic law does not recognize adoption in the same way as Hindu law does, Muslims must rely on the Kafala system, which grants guardianship but does not establish a full parent-child relationship. Similarly, Christians and Parsis are not legally permitted to adopt under their personal laws and are instead subject to the Guardians and Wards Act, which does not provide adopted children with the same legal status as biological children. This disparity prevents many prospective parents from adopting children with full parental rights, limiting the opportunities for orphans and abandoned children to be integrated into stable families.

Inheritance and succession issues further complicate the situation, as different personal laws create discrepancies in the property rights of adopted children. Under the Hindu Adoption and Maintenance Act, adopted children enjoy full rights in the adoptive family, including inheritance. However, under the Guardians and Wards Act, guardianship does not grant an automatic right to inheritance, leaving the child vulnerable to exclusion from family property. The Juvenile Justice Act attempts to provide a uniform legal status for adopted children but does not override personal laws, leading to continued uncertainty in matters of succession.

The complexity of interfaith adoptions is another significant concern, especially when adoptive parents belong to different religious communities. In cases where one parent follows Hindu law while the other follows a different religion, legal conflicts may arise regarding the validity of adoption and the child's subsequent legal rights. The absence of a clear uniform adoption law results in bureaucratic hurdles and procedural complications, particularly in securing inheritance and succession rights for the adopted child in interfaith families.

Judicial delays and varying interpretations of adoption laws have also led to inconsistencies in legal outcomes. The landmark case of *Shabnam Hashmi v. Union of India* (2014) was a step forward in recognizing adoption as a legal right for all, irrespective of religious identity. The Supreme Court upheld the right to adopt under the Juvenile Justice Act, ruling that any citizen, regardless of their religious background, could legally adopt a child. However, since the judgment did not strike down existing personal laws, the parallel existence of multiple legal frameworks remains a source of confusion. Courts often face prolonged delays in resolving adoption-related disputes, further complicating an already fragmented legal landscape.

The absence of a uniform adoption law in India thus creates significant legal challenges that impact prospective adoptive parents, children, and judicial authorities. The lack of a comprehensive framework leads to legal uncertainties, unequal rights, and procedural difficulties, underscoring the urgent need for a Uniform Civil Code that establishes a single, secular adoption law to ensure legal clarity, consistency, and the welfare of children across all communities.

UNIFORM CIVIL CODE: THE NEED FOR A UNIFORM ADOPTION FRAMEWORK

The need for a uniform adoption framework under the Uniform Civil Code (UCC) is rooted in the principle of legal equality and the removal of discriminatory practices. Article 44 of the Indian Constitution directs the state to implement a Uniform Civil Code to ensure uniformity in personal laws,

including adoption. The current legal framework allows different religious communities to follow separate adoption laws, leading to inconsistencies and legal ambiguities. A common adoption law would provide clarity and equality by ensuring that all citizens, irrespective of their religion, have the same rights and obligations when adopting a child. This would eliminate the existing disparities and ensure that adoption laws align with constitutional principles of equality and justice. A secular adoption law is necessary to shift the focus from religious considerations to child welfare. Adoption should be treated as a child-centric issue rather than being governed by religious doctrines. A uniform framework would ensure that all children, regardless of their background, receive equal rights and protection under the law. Universal eligibility criteria for adoptive parents, clear inheritance rights for adopted children, and a streamlined adoption process would remove the existing legal uncertainties. A well-defined secular adoption law would provide legal security to both adoptive parents and children, ensuring that the best interests of the child remain the primary focus.

International best practices also highlight the advantages of a uniform adoption framework. The Hague Adoption Convention sets global standards for inter-country adoptions, ensuring transparency and safeguarding children's rights. Many multi-religious countries have successfully implemented uniform adoption laws that prioritize child welfare over religious distinctions. India can take inspiration from these global models to develop a comprehensive and inclusive adoption law that aligns with international human rights standards while ensuring a fair and efficient adoption process for all citizens.

JUDICIAL AND LEGISLATIVE STANCE ON ADOPTION AND UCC

Judicial pronouncements in India have consistently favoured the idea of uniformity in adoption laws, emphasizing equality and legal clarity. In *Shabnam Hashmi v. Union of India (2014)*, the Supreme Court ruled that the right to adopt is a fundamental right under the Juvenile Justice (Care and Protection of Children) Act, 2015, irrespective of religious affiliation. The Court held that all individuals, regardless of their personal laws, could legally adopt under the JJ Act, ensuring that adoption is a child-centric process rather than one dictated by religious beliefs. However, the judgment did not explicitly override personal laws, allowing their parallel existence, which continues to create inconsistencies. Similarly, in *Javed v. State of Haryana (2003)*, the Supreme Court stressed the importance of legal uniformity in personal laws, observing that differential treatment based on religious customs is contrary to the constitutional principle of equality. While the case primarily dealt with personal laws in the context of marriage and governance, it underscored the broader need for a Uniform Civil Code, including a uniform adoption framework.

Legislative efforts have also been directed toward creating a more uniform adoption law. The Juvenile Justice Act, 2015, marked a significant step by allowing interfaith adoption and establishing the Central Adoption Resource Authority (CARA) to regulate adoption procedures nationwide. The Act enables all citizens, including those from communities that do not traditionally recognize adoption, to legally adopt children. Parliamentary debates have frequently highlighted the need for a Uniform Civil Code to ensure consistency in personal laws, including adoption. Recent initiatives and discussions on UCC indicate a growing legislative intent to bring uniformity to adoption laws, eliminating disparities across religious communities and ensuring equal adoption rights for all citizens. However, resistance from certain religious groups and concerns about infringing on personal laws have delayed concrete legislative action.

RECOMMENDATIONS FOR IMPLEMENTING A UNIFORM ADOPTION FRAMEWORK

A uniform adoption framework in India requires a well-structured approach to address the existing legal inconsistencies and ensure that all children receive equal rights regardless of their adoptive parents'

religious background. The following recommendations outline essential steps for implementing a uniform adoption law:

➤ **Codification of a Secular Adoption Law:**

- A single, comprehensive law should replace the fragmented legal system and apply to all citizens irrespective of their religion.
- Adoption should be legally recognized as a fundamental right rather than being dictated by religious personal laws.
- The law should ensure that adopted children receive equal parental rights, inheritance rights, and legal protections as biological children.

➤ **Balancing Religious Rights and Legal Reforms:**

- To avoid opposition from religious communities, the uniform law can be introduced as the default legal standard, with an optional adherence clause for religious groups.
- The framework should ensure that child welfare is prioritized over religious traditions, ensuring that adoption is not denied based on personal laws.
- Over time, religious and legal bodies should be encouraged to align their practices with the secular adoption framework to create uniformity in adoption rights.

➤ **Enhancing Awareness and Legal Literacy:**

- Large sections of the population remain unaware of their adoption rights under the Juvenile Justice (Care and Protection of Children) Act, 2015. Awareness campaigns should be launched to educate legal practitioners, prospective adoptive parents, and adoption agencies.
- CARA (Central Adoption Resource Authority) must take a proactive role in promoting uniform adoption laws, standardizing adoption procedures, and simplifying legal complexities for adoptive parents.
- The government and legal institutions should work together to increase accessibility to adoption-related legal assistance and counselling services.

➤ **Judicial and Administrative Reforms:**

- Adoption procedures should be **fast-tracked** by establishing dedicated adoption benches in courts to ensure quicker legal processing.
- Reducing bureaucratic hurdles in interfaith adoptions is essential, ensuring that legal procedures do not discriminate based on religious differences.
- The digitalization of adoption processes through online applications, tracking mechanisms, and quicker verifications can simplify the process and reduce unnecessary delays.
- The judiciary should issue clear guidelines on inheritance rights for adopted children to prevent legal disputes arising from differences in personal laws.

A uniform adoption framework in India is critical for ensuring legal clarity, reducing judicial inconsistencies, and providing every child with the right to a stable family environment. By codifying a secular adoption law, ensuring religious inclusivity, improving awareness, and implementing judicial reforms, India can move toward a more just, equitable, and child-centric adoption system.

CONCLUSION

The adoption laws in India remain fragmented due to the existence of multiple personal laws governing different religious communities. While the Hindu Adoption and Maintenance Act, 1956, provides a clear legal framework for adoption among Hindus, Muslims, Christians, and Parsis lack similar codified laws and must rely on the Guardians and Wards Act, 1890, which only grants guardianship rather than full parental rights. The Juvenile Justice (Care and Protection of Children) Act, 2015, has attempted to bridge this gap by allowing adoption irrespective of religion, but it does not override personal laws, leaving space for legal ambiguities and inconsistencies. The coexistence of multiple legal frameworks creates difficulties for prospective adoptive parents and adopted children, particularly in matters related

to inheritance, succession, and the recognition of legal parenthood. Judicial pronouncements have reinforced the need for a uniform adoption law, yet legislative efforts have not been sufficient to unify these laws under a single framework.

A Uniform Civil Code that includes adoption laws would ensure legal clarity, protection of child rights, and gender equality by establishing a single, secular framework applicable to all citizens. Adoption should be viewed primarily as a child welfare issue rather than being influenced by religious considerations. A uniform adoption law would eliminate discrepancies between different legal systems, providing every child with equal rights, including inheritance and a stable legal identity. The need for a uniform framework is also justified by constitutional principles, including Article 44 of the Indian Constitution, which advocates for a Uniform Civil Code to ensure equality and justice. A common adoption law would further align India's legal system with international standards, ensuring that children receive the same protection and legal status, regardless of the religious background of their adoptive parents.

Future legal reforms should focus on creating a seamless transition towards a uniform adoption framework. This would require continued legislative efforts to codify a single adoption law, judicial oversight to resolve conflicts arising from personal laws, and administrative mechanisms to ensure effective implementation. The role of the Central Adoption Resource Authority should be strengthened to standardize adoption procedures, fast-track interfaith adoptions, and spread legal awareness about adoption rights. A well-structured Uniform Civil Code on adoption would bring India closer to achieving a legal system that prioritizes the best interests of children, ensuring that every child has the right to a secure and legally recognized family environment.

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