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An Assessment of Adoption Law Particularly Concerning Child Welfare & Safe-Keeping in Indian Legislative System

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ABSTRACT

The term 'adoption' derives from the Latin adoptare*, to choose for oneself, and refers to taking another's child as one's own. Adoption is the legal process by which a child who is not born to a person becomes that person's child, with all the rights and duties of a natural-born child; it gives a child who needs love, care and protection a permanent family, and requires patience and dedication from the parents. In India, adoption among Hindus is governed by the Hindu Adoptions and Maintenance Act, 1956, which made adoption a secular act turning on the actual giving and taking of the child, while the personal laws of Muslims, Christians, Parsis and Jews do not recognise adoption and leave them to guardianship under the Guardians and Wards Act, 1890 or to the Juvenile Justice (Care and Protection of Children) Act, 2015. This paper examines the conditions that the 1956 Act lays down for a valid adoption and their effects, and asks whether its limits by religion and by gender, including the bar on adopting a second child of the same sex, are consistent with equality and with the welfare of the child. It argues that these limits, together with the absence of full adoption under the other personal laws, make the case for a uniform adoption law applicable to all citizens irrespective of religion, with the welfare and best interests of the child at its centre. Every child needs a safe, secure and loving environment.*

Keywords: *Adoption, Legal process, Biological Parents, Protection, Hindu Adoptions and Maintenance Act, 1956, Juvenile Justice Act, 2015, Uniform Civil Code*

I. INTRODUCTION

Adoption is the act by which a person formally becomes the parent and caretaker of a child, assuming all the rights and responsibilities of a parent. A formal legal bond is thereby created between the child and the adoptive parent, and a child who is not related to them by birth lawfully becomes part of the family that adopts the child. Adoption is, in short, the legal process by which a person becomes the lawful parent of a child who is not his or her natural offspring, and by which the child acquires all the rights, privileges and duties of a natural-born child. The transfer from the biological parents to the adoptive parents is permanent. A lasting legal

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relationship is formed between the parent and the child, which gives a child in need a loving home, a secure environment and a family, and all parental rights and obligations pass from the natural parents to the adoptive parents.

Adoption requires certain formalities and ceremonies to be complied with so that parental status is conferred officially and lawfully. It is essentially a way of creating a family: it gives a child a secure and lasting future by formally integrating the child into a new family unit with full legal recognition.

In contemporary Hindu law, adoption transfers the adoptee from the family of birth to that of the adopter and confers on the child the rights and privileges of a legitimate natural-born son in the adoptive family. At the same time, the adopted child loses all the rights and privileges of a natural-born child in the family of birth.[1]

In the classical Hindu tradition, from Manu onwards, adoption was understood as both a legal and a sacred bond between the adoptive parents and the child. It was not only a spiritual or social undertaking but a recognised way of taking another's child as one's own, in the absence of a child of one's own, with all the rights and obligations of a natural-born child.

This paper examines the law of adoption in India, principally the Hindu Adoptions and Maintenance Act, 1956, identifies its limits with respect to religion and gender, and considers whether a uniform adoption law is needed. The study is doctrinal, based on the statutes, the decisions of the courts and the commentaries on them.

II. LITERATURE REVIEW

Paras Diwan, in his work *Modern Hindu Law*, emphasises that after the enactment of the Hindu Adoptions and Maintenance Act, adoption has become a purely secular act. He rejects the idea of a dual form of adoption, secular and spiritual, and stresses that a valid adoption must fulfil all the statutory requirements. A person may continue to hold traditional beliefs, such as a reluctance to adopt certain relatives or daughters, but such personal notions do not alter the fundamentally secular character of adoption under modern Hindu law.[2]

Poonam Pradhan Saxena defines adoption as the legal act of taking another person's child and raising the child as one's own within a family.[3] She points out that, historically, adoption among non-Hindu communities in India lacked a clear legal framework, which led to inconsistent judicial outcomes. She also distinguishes between the laws governing adoption: under the

[1] PARAS DIWAN, MODERN HINDU LAW 244 (Allahabad Law Agency 2021).
[2] Diwan, *supra* note 1.
[3] POONAM PRADHAN SAXENA, FAMILY LAW LECTURES: FAMILY LAW I 416 (LexisNexis 2022).

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Hindu Adoptions and Maintenance Act, adoption is viewed as both a religious and a secular act, whereas under the Juvenile Justice Act it is treated purely as a secular process aimed primarily at the welfare of the child.

III. Statement of the problem

Adoption in India has long been governed by the personal laws, and for Hindus it is now governed by the Hindu Adoptions and Maintenance Act, 1956 (HAMA). The law has historically set restrictions based on religion, sex and family structure. Under the old Hindu law, adoption was generally confined to male children and frequently took place within the family or among relations; girls, orphans, foundlings, deserted children and those outside the line of descent were excluded.

Although the 1956 Act and its later amendments have extended adoption to both boys and girls and permit adoptions from outside the family lineage, significant legal and social issues remain. One is that HAMA confines adoption rights to Hindus, so that persons belonging to other religious communities cannot adopt on equal legal terms under their own personal laws.[4] This raises a serious question under the right to equality guaranteed by Article 14 of the Constitution, and it sits uneasily with the wider human wish to nurture and raise children regardless of religious belief.

Moreover, the Act limits the adoption of children of the same gender. This limit bears hardest on prospective parents who wish to adopt more than one child of the same sex, and it is difficult to reconcile with the welfare of children awaiting a family. These limitations point to a pressing need to rethink the present scheme of adoption so as to protect constitutional rights and reflect the realities of modern society.

IV. Benefits of adoption

The decision to adopt a child is a significant choice that offers precious rewards. Each family's experience is unique, but the journey is transformative. The benefits of adoption, as they appear to the author, include the following.

1. **Adoption fulfils a lasting wish to care for and nurture a child.** For many couples in India parenthood is the ultimate aspiration, and adoption fulfils it by bringing a child into the home and creating a strong family bond.
2. **Adoption offers the experience of parenthood.** Adoption offers a unique and transformative way to experience parenthood, although the journey may bring its own

[4] The Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India), § 2.

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challenges. For some individuals and couples, particularly those facing infertility, adoption offers an alternative path to creating a family.

3. **Adoption fulfils religious as well as secular motives.** Under Hindu law, adoption could serve two purposes: the performance of funeral rites and the continuation of the family line. Adoption therefore had both a religious (sacramental) and a secular side. Since ancient times adoption was motivated by religious and secular reasons, as it was believed that only an heir could perform the funeral rites, and a son was considered essential in a patriarchal structure to carry on the family line and name. The primary focus has now shifted to the welfare of the child.
4. **Adoption establishes a stable routine.** Adoption replaces a child's unpredictable past with a familiar daily routine in the new home. Children who may have experienced neglect or abuse can gain a sense of safety and protection in a healthy environment that promotes healing.
5. **Adoption can open the way to cultural experience.** Adoption, especially transracial adoption, can be an enriching experience that opens the way to a diverse culture for both the adopted child and the adoptive family. Modern adoption practice gives importance to integrating, educating the child about and celebrating the child's culture of birth.
6. **Adoption opens new interests.** Adoption can lead both adopted children and adoptive parents to new interests by introducing them to different cultures, views and activities. In transracial adoption in particular, families may explore the child's culture of origin, which can mean learning its music and art, cooking its traditional food or learning a new language.

V. The Hindu Adoptions and Maintenance Act, 1956

A. Section 2: application of the Act

Under Section 2 of HAMA, the Act applies to:[5]

- all persons who are Hindus by religion,
- Buddhists, Jains and Sikhs, and
- any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that such a person would not have been governed by Hindu law,

including:

[5] Hindu Adoptions and Maintenance Act § 2.

- children, legitimate or illegitimate, whose parents are Hindus, and
- persons who have converted to Hinduism.

Section 2 thus sets the extent of the Act: it determines who can adopt or be adopted under HAMA.

B. Section 5: adoptions to be regulated by the Act

Under Section 5 of HAMA, no adoption may be made by or to a Hindu except in accordance with the provisions of the Act, and an adoption made in contravention of them is void.[6] In other words:

- if the provisions of the Act are not fulfilled, the adoption is not valid;
- an adoption validly made under the Act cannot be revoked; and
- the adopted child cannot renounce the adoptive family and return to the family of birth.

An adoption may thus be made by a single person or by a married person with the consent of the spouse, and it must be made by or to a Hindu. The Supreme Court has read the words "by or to a Hindu" to cover an adoption made by one person under which the child also becomes the adopted child of another, such as the adopter's spouse.[7]

C. Section 6: requisites of a valid adoption

Section 6 of HAMA lays down the basic requirements for a valid adoption:[8]

- the person adopting must have the capacity, and also the right, to take in adoption;
- the person giving the child in adoption must have the capacity to do so;
- the child must be capable of being taken in adoption under the Act; and
- the adoption must comply with the other conditions of the Act, such as the actual giving and taking of the child.

Section 6 thus requires that every legal requirement concerning the adopter, the person giving the child, the child and the procedure be fulfilled.

[6] Hindu Adoptions and Maintenance Act § 5.
[7] *Sawan Ram v. Kalawanti*, AIR 1967 SC 1761 (India) (reading the words "by or to a Hindu" in section 5(1) to cover an adoption made by one person under which the child also becomes the adopted child of another).
[8] Hindu Adoptions and Maintenance Act § 6.

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D. Section 7: capacity of a male Hindu to take in adoption

Section 7 of HAMA lays down which Hindu males have the capacity to take a son or daughter in adoption. Under this section, any Hindu male who is:[9]

- of sound mind, and
- not a minor, that is, has attained majority,

may adopt a child. If he is married, he must first obtain the consent of his wife, and if he has more than one wife, the consent of all of them. The wife's consent is not needed if:

- the wife has died,
- she has completely and finally renounced the world,
- she has ceased to be a Hindu, or
- she has been declared of unsound mind by a court of competent jurisdiction.

Thus, a Hindu male may adopt a child, but if he is married his wife's consent is in general essential to a valid adoption.

In *Bholooram v. Ramlal*, the Madhya Pradesh High Court held that the consent of the wife is essential to a valid adoption whether or not she is living with her husband; an adoption made without the consent of a wife who had lived apart from her husband for many years was declared invalid.[10]

In *Ghisalal v. Dhapubai*, the question was what amounts to a valid consent, and in particular whether the wife's silence, or her failure to object, could be treated as her consent to the adoption. The Supreme Court held that the consent of the wife must either be in writing or be reflected in an affirmative act voluntarily and willingly done by her; her mere presence as a spectator at the ceremony, her silence or her lack of protest cannot be treated as consent.[11]

E. Section 8: capacity of a female Hindu to take in adoption

Under Section 8 of HAMA, a Hindu woman is entitled to adopt a child in her own right if she:[12]

- is of sound mind,
- is not a minor, and
- if married, has the consent of her husband.

[9] Hindu Adoptions and Maintenance Act § 7.
[10] *Bholooram v. Ramlal*, AIR 1989 MP 198 (India) (adoption invalid for want of the consent of a wife who had lived apart from her husband for twenty to twenty-five years; "absence of objection" is not consent).
[11] *Ghisalal v. Dhapubai*, (2011) 2 SCC 298 (India).
[12] Hindu Adoptions and Maintenance Act § 8.

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The consent of the husband is not required if:

- the husband has died,
- he has been declared of unsound mind by a court of competent jurisdiction,
- he has ceased to be a Hindu, or
- he has completely and finally renounced the world.

Thus, a Hindu woman has her own right to adopt a child, but if she is married the consent of her husband is required unless one of the circumstances provided by the Act applies.

In *Vijayalakshmamma v. B.T. Shankar*, the Supreme Court held that a Hindu widow may adopt a child in her own right under the Act and does not need the consent of a co-widow.[13]

The customary rule that prevented a woman from adopting no longer applies. A married woman needs her husband's consent unless the conditions provided by the Act are satisfied, but she has the capacity to adopt a son or a daughter if she has none of her own.[14] Under the earlier law, by contrast, a woman could not adopt in her own right, though a widow could, in certain circumstances, adopt a son to her husband.[15]

F. Section 9: persons capable of giving in adoption

Section 9 of HAMA lays down who may give a child in adoption. Only the father, the mother or the guardian of a child has the capacity to do so:[16]

- **Father:** the father may give the child in adoption only with the consent of the mother.
- **Mother:** the mother may give the child in adoption only with the consent of the father. The father's consent is not needed if he has died, has been declared of unsound mind by a court of competent jurisdiction, has ceased to be a Hindu, or has completely and finally renounced the world.
- **Guardian:** where both parents are dead, have completely and finally renounced the world, have abandoned the child or have been declared of unsound mind, or where the parentage of the child is not known, the guardian may give the child in adoption, but only with the previous permission of the court, which must be satisfied that the adoption will be for the welfare of the child.

[13] *Vijayalakshmamma v. B.T. Shankar*, (2001) 4 SCC 558 (India).
[14] Hindu Adoptions and Maintenance Act §§ 8, 11(i)–(ii).
[15] *G. Appaswami Chettiar v. R. Sarangapani Chettiar*, (1978) 3 SCC 55 (India) (power of a Hindu widow, under the law before 1956, to adopt a son to her husband with his authority or with the consent of his kinsmen).
[16] Hindu Adoptions and Maintenance Act § 9.

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A child may therefore ordinarily be given in adoption by the parents with each other's consent, while a guardian may do so only with the previous permission of the court, given in the interest and for the welfare of the child.

In *Baljit Kumar v. State of Punjab*, the petitioner's parents had divorced and his mother had remarried. The Punjab and Haryana High Court held that, although an incorrect entry in the birth register may be corrected, the name of a step-father cannot replace that of the biological father; and that, while the biological father was alive, the step-father could not, together with the mother, give the child in adoption.[17]

By contrast, in *Shweta Gupta v. Rahul Keshav Jadhao*, the Allahabad High Court permitted a mother to give her son in adoption without the consent of the biological father. The marriage had been dissolved, the child had remained in the mother's care and custody, and the father had shown that he would never claim custody; the Court treated this as a renunciation of the child that could be taken into account in deciding the question of consent.[18]

The authority to give a child in adoption thus ordinarily lies with the natural parents acting with mutual consent, so long as they are alive and not legally disqualified.

Where a child has been abandoned, however, the guardian may give the child in adoption with the previous permission of the court. In *Sohan Lal v. Additional District & Sessions Judge*, the Allahabad High Court held that a child whose destitute mother had deserted him was an abandoned child, that the State Women Protection Home that had his care was his guardian, and that the child could be given in adoption to the petitioners with the court's permission.[19]

G. Section 10: persons who may be adopted

Under Section 10 of HAMA, no person may be taken in adoption unless the following conditions are fulfilled:[20]

- the child is a Hindu;
- the child has not already been adopted;
- the child is not married, unless a custom or usage applicable to the parties permits the adoption of married persons; and
- the child has not completed the age of fifteen years, unless a custom or usage applicable to the parties permits it.

[17] *Baljit Kumar v. State of Punjab*, AIR 2016 P&H 140 (India).
[18] *Shweta Gupta v. Rahul Keshav Jadhao*, AIR 2018 (NOC) 757 (All) (India).
[19] *Sohan Lal v. Additional District & Sessions Judge, Court No. 9, Lucknow*, AIR 2015 All 33 (India).
[20] Hindu Adoptions and Maintenance Act § 10.

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In short, an unmarried Hindu child below the age of fifteen who has not been adopted before may be taken in adoption. Unless a custom or usage prevalent in the community permits otherwise, the adoption of a married or over-age child is invalid.[21]

In *Kondiba Rama Papal v. Narayan Kondiba Papal*, the Supreme Court upheld the decision of the Bombay High Court that the adoption of a person aged about twenty-two was valid. In the old Bombay State a custom permitting the adoption of a person of any age, married or not, had been judicially recognised, and a custom once judicially recognised need not be proved again in later cases.[22]

H. Section 11: other conditions for a valid adoption

Section 11 of HAMA lays down further conditions that must be complied with in every adoption:[23]

- if a son is to be adopted, the adoptive father or mother must not have a Hindu son, son's son or son's son's son living at the time of adoption;
- if a daughter is to be adopted, the adoptive father or mother must not have a Hindu daughter or son's daughter living at the time of adoption;
- if a male adopts a female, the adoptive father must be at least twenty-one years older than the child;
- if a female adopts a male, the adoptive mother must be at least twenty-one years older than the child; and
- the child must actually be given and taken in adoption, with the intention of transferring the child from the family of birth to the adoptive family.

All these requirements must therefore be fulfilled for an adoption to be valid, including the age-gap rule and the actual giving and taking of the child. The conditions are mandatory: the word "must" cannot be read as "may", and a breach of any of them invalidates the adoption.[24] An adoption validly made is not invalidated by the adoptive mother's later marriage.[25]

In *Sandhya alias Supriya Kulkarni v. Union of India*, the constitutional validity of Section 11(i) and (ii) was challenged under Articles 14 and 21 of the Constitution, on the ground that every person has the right to determine the size of his or her family and that the restriction to one son and one daughter by adoption infringes that right. The Bombay High Court declined to strike

[21] *Ratan Singh v. Rajaram*, AIR 2020 MP 135 (India).
[22] *Kondiba Rama Papal v. Narayan Kondiba Papal*, (1991) 2 SCC 218 (India).
[23] Hindu Adoptions and Maintenance Act § 11.
[24] *Hanmant Laxman Salunke v. Shrirang Narayan Kanse*, AIR 2006 Bom 123 (India).
[25] *Narinderjit Kaur v. Union of India*, AIR 1997 P&H 280 (India).

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the provisions down. It observed that a person may have any number of biological children "by grace of God", but that this does not support a claim to have any number of children by adoption; Article 21 cannot be stretched to embrace such a right. The Court left the question of relaxing the restriction to Parliament.[26]

VI. THE DATTA HOMAM RITUAL IS NOT MANDATORY

The 1956 Act made adoption clearly secular by making the datta homam unnecessary. The core legal requirement is the actual giving and taking of the child, with the intention of transferring the child physically from the family of birth to the adoptive family.[27] The performance of the datta homam was essential under the Shastric Hindu law, but this religious requirement of the old Hindu law was removed when HAMA came into force.[28]

The position before the Act is illustrated by *M. Gurudas v. Rasaranjan*. The case concerned the alleged adoption of a daughter before 1956. The Supreme Court observed, at the interlocutory stage, that to prove a valid adoption it would be necessary to show that there had been an actual giving and taking ceremony, and that under the law then in force the performance of the datta homam was imperative, subject to exceptions, and the adoption of a daughter was not recognised.[29] The 1956 Act kept the first of these requirements, the actual giving and taking of the child (Section 11(vi)), but changed the other two: the datta homam is no longer essential, and a daughter may now be adopted.

Even before the Act, in *Bal Gangadhar Tilak v. Shrinivas Pandit*, the Privy Council held that the datta homam was not essential to the validity of an adoption where the child adopted belonged to the same gotra as the adoptive father, and laid emphasis on the giving and taking.[30]

Similarly, in *Lakshman Singh Kothari v. Rup Kanwar*, the Supreme Court held that there can be no valid adoption unless the child is transferred from one family to another by the ceremony of giving and taking, the object of which is to secure due publicity for the adoption.[31]

In *Kashi Nath Rai v. Mahadeo Rai*, the Patna High Court held that the giving and taking ceremony is essential to a valid adoption and that the execution of an adoption deed cannot take the place of the actual transfer of the child.[32]

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[26] *Sandhya alias Supriya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).
[27] Hindu Adoptions and Maintenance Act § 11(vi) & proviso.
[28] SINGHAL'S FAMILY LAW (PART 1) 245 (Singhal Law Publication 2015).
[29] *M. Gurudas v. Rasaranjan*, (2006) 8 SCC 367 (India).
[30] *Bal Gangadhar Tilak v. Shrinivas Pandit*, (1915) 42 IA 135 (PC) (India).
[31] *Lakshman Singh Kothari v. Rup Kanwar*, AIR 1961 SC 1378 (India).
[32] *Kashi Nath Rai v. Mahadeo Rai*, AIR 1977 Pat 199 (India).

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It is therefore clear from the case law and from the Act that the key legal requirement for a valid adoption is the actual giving and taking of the child, with the intention of transferring the child from the family of birth to the adoptive family; it does not matter whether the datta homam has been performed.

VII. Effects of a valid adoption

A. Legal effects

The principal legal effects of a valid adoption under Section 12 of HAMA are as follows.[33]

- **Legal relationship between the adoptive parents and the child:** once the adoption is complete, the adopted child is treated as a natural-born child for all purposes.
- **Ties with the family of birth end:** once the adoption is complete, the child's ties with the natural parents come to an end, except for the rules on prohibited degrees of marriage.
- **Rights of the adopted child:** the adopted child is entitled to all the rights of a natural-born child, including the right to inherit property.
- **A new identity:** the adopted child is recognised as a member of the adoptive family, with a new name, status and identity.
- **Duties of the adoptive parents:** the adoptive parents have all the duties and responsibilities towards the child that they would have towards a natural-born child, such as care and maintenance.
- **Irrevocability:** a valid adoption cannot be cancelled, and the child cannot return to the family of birth.

Once an adoption is legally made, the status of the adopted child is thus transformed for all legal, social and emotional purposes. The child becomes a permanent member of the adoptive family, with all the rights of a natural-born child, and the parents are bound by all the responsibilities they would owe to a natural-born child. All the ties of the child with the family of birth are severed, subject to the proviso to Section 12, which preserves the following:[34]

- the child cannot marry any person whom he or she could not have married if he or she had continued in the family of birth;

[33] Hindu Adoptions and Maintenance Act § 12; *see Namdev Vyankat Ghadge v. Chandrakant Ganpat Ghadge*, [2003] 2 SCR 299 (India) (adopted child deemed the child of the adoptive parent for all purposes from the date of adoption; under proviso (c), a son adopted after the adoptive father's death could not divest the father's heirs of property already vested in them).

[34] Hindu Adoptions and Maintenance Act § 12 proviso.

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- any property that vested in the child before the adoption continues to vest in the child, subject to the obligations attached to it, including any obligation to maintain relatives in the family of birth; and
- the adopted child does not divest any person of an estate that vested in that person before the adoption.

A valid adoption also serves several secular, social and emotional purposes.

B. Emotional and psychological effects

Adoption also has emotional and psychological effects on all concerned. The following are offered as the author's observations, except where a study is cited.

- **Attachment:** some adoptees experience difficulties of attachment arising from early separation from their birth parents, which can make it harder to form secure relationships later in life.
- **Mental health:** a meta-analysis of studies comparing adopted and non-adopted children found that adoptees showed somewhat more behaviour problems, although the differences were small, and that they were considerably more likely to be referred to mental health services; most international adoptees were nevertheless well adjusted.[35]
- **Identity and grief:** adoptees may grapple with questions about their identity and feel loss or grief in relation to their biological families, particularly in closed adoptions where information about the birth parents is limited.
- **Resilience and support:** despite these challenges, many adoptees show resilience, and therapy and a supportive environment can help them cope and develop healthily.
- **Birth parents:** birth parents may feel deep grief and loss after placing a child for adoption, and this can persist and affect their well-being.
- **Adoptive parents:** adoptive parents may face particular challenges in understanding and meeting the emotional needs of their adopted children, especially where the child experienced trauma before the adoption.

Adoption is thus a complex experience with lasting effects on everyone involved. It can provide a loving and supportive environment for a child, but it also brings challenges that call for understanding and support from families and professionals, and an awareness of these effects can help all concerned build healthier relationships.

[35] Femmie Juffer & Marinus H. van IJzendoorn, *Behavior Problems and Mental Health Referrals of International Adoptees: A Meta-analysis*, 293 JAMA 2501 (2005), https://doi.org/10.1001/jama.293.20.2501.

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C. Judicial interpretation of Sections 12 and 13

In *Neelawwa v. Shivawwa*, a man who already had a daughter was given in adoption; after the death of his first wife he married again. On his death intestate, the Karnataka High Court held that the daughter, born before the adoption, was entitled to succeed together with his widow as a Class I heir under Section 8 of the Hindu Succession Act, 1956, even though he had acquired the property by reason of the adoption. The adoption removed him from his natural family but did not sever the tie of blood between him and his daughter.[36]

In *Ankush Narayan Shingate v. Janabai*, the Bombay High Court held that, on a proper reading of Section 11(vi) with Section 12, when either spouse adopts a child, all the ties of the child in the family of birth are completely severed and replaced by those created by the adoption in the adoptive family, and the child becomes the child of both spouses.[37]

Adopted children are therefore entitled to inherit property in the same way as biological children: if an adoptive parent dies intestate, the adopted child has the same rights of inheritance as a natural-born child. After the adoption, however, the child cannot claim the property of the biological parents or coparcenary property in the family of birth, although property already vested in the child remains with the child. The biological parents may still leave such property, or a part of it, to the child by will.[38]

Under Section 13 of HAMA, an adoption does not deprive the adoptive parents of the power to dispose of their property. They retain full control over it and may dispose of it by gift, sale or will, subject to any agreement to the contrary.[39]

In *Chiranjilal Shrilal Goenka v. Jasjit Singh*, the Supreme Court held that, reading the proviso to Section 12 with Section 13, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will, but that this power is subject to any agreement to the contrary between the parties, such as one made between the adoptive and the natural parents at the time of the adoption.[40]

VIII. Old Hindu law and modern Hindu law of adoption compared

A. Under the old Hindu law

- A married man could adopt a son without the consent of his wife.

[36] *Neelawwa v. Shivawwa*, AIR 1989 Kant 45 (India).
[37] *Ankush Narayan Shingate v. Janabai*, AIR 1966 Bom 174 (India).
[38] Hindu Adoptions and Maintenance Act § 12; The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India), § 30.
[39] Hindu Adoptions and Maintenance Act § 13.
[40] *Chiranjilal Shrilal Goenka v. Jasjit Singh*, (2001) 1 SCC 486 (India).

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- A minor who had attained the age of discretion could adopt.[41]
- A married woman or a widow could not adopt, during her husband's lifetime or after his death, except with the authority of her husband or the consent of his kinsmen (sapindas).[42]
- For a valid adoption, the boy had to be of the same caste as the adoptive father.
- The adoption of a married person was permitted only in the Bombay school, and the restrictions on the age of the boy were not uniform across the schools.
- The adoption of an illegitimate boy or of a boy born deaf and dumb was not permitted.
- Only the natural parents could give a child in adoption.
- The natural father could give his son in adoption without the consent of his wife.

B. Under the Hindu Adoptions and Maintenance Act, 1956

Under the modern law, a married woman has the same authority as her husband. Thus:

- a married man cannot adopt without the consent of his wife, or of all his wives if he has more than one;
- a minor cannot adopt;
- the child to be adopted must be below the age of fifteen, unless a custom prevalent in the community permits otherwise;
- a married woman or a widow may adopt, during her husband's lifetime with his consent under Section 8, which may be dispensed with in the circumstances that section provides;
- the natural father cannot give his child in adoption without the consent of the mother, under Section 9;
- there is no bar on the adoption of an illegitimate child or of a child born deaf and dumb; and
- a child may be given in adoption by the natural parents and, with the permission of the court, by a guardian.

[41] *Vijayalakshmamma*, *supra* note 13.
[42] *Appaswami Chettiar*, *supra* note 15.

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IX. Basic features of the Hindu Adoptions and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act, 1956 sets out the legal framework for adoption and maintenance among Hindus in India. It codifies traditional practice and lays down clear rules on who can adopt, who can be adopted and who is entitled to maintenance.

A. General overview

- Enacted in 1956 as part of the Hindu Code Bills.
- Applies to Hindus, Buddhists, Jains and Sikhs.
- Governs two main areas: adoption and maintenance.
- Applies to Hindus only, so that a person who belongs to another religion, such as a Muslim, Christian, Parsi or Jew, cannot adopt under it.

B. Adoption provisions

i. Persons who may adopt

- A Hindu male who is of sound mind and not a minor, with the consent of his wife if he is married.
- A Hindu female who is of sound mind and not a minor, with the consent of her husband if she is married.

ii. Persons who may be adopted

- The child must be a Hindu.
- The child must be unmarried, unless custom permits otherwise.
- The child must not have been adopted before.
- The child must be below fifteen years of age, unless custom permits otherwise.

iii. Age-gap conditions

- A male adopting a female child must be at least twenty-one years older than the child (Section 11(iii)).
- A female adopting a male child must be at least twenty-one years older than the child (Section 11(iv)).

iv. Legal consequences

- The adopted child acquires the full status of a natural-born child.
- All ties with the biological family are severed.

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C. Maintenance provisions

Persons entitled to maintenance:

- a wife, even if living separately, unless she is unchaste or has ceased to be a Hindu;
- minor children, legitimate or illegitimate;
- aged or infirm parents; and
- a dependent widowed daughter-in-law.

Extent of maintenance:

- it depends on the financial capacity of the person liable; and
- it includes food, clothing, shelter, education and medical care.

Right to claim maintenance:

- maintenance may be enforced through the courts if it is not provided voluntarily.

D. Legal safeguards

- An adoption must follow the prescribed procedure; otherwise it is void.
- Maintenance claims may be contested, and the amount altered, according to financial capacity and circumstances.
- The Act brings uniformity and clarity to the personal law of Hindus.

X. Adoption under other personal laws

India is a land of many religions, and each person follows a religion according to his or her belief. Adoption under the personal laws in India varies with religion: Hindus have a codified law, while others rely on guardianship provisions. The position under the different personal laws is as follows.

A. Hindu law

- Adoption is governed by the Hindu Adoptions and Maintenance Act, 1956.
- The Act applies to Hindus, Buddhists, Jains and Sikhs.
- It allows full legal adoption, giving the adopted child the same rights as a biological child.
- A person may not adopt a son while having a living Hindu son, son's son or son's son's son, or a daughter while having a living Hindu daughter or son's daughter, and the adopter must be capable and eligible under the Act.

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B. Muslim law

- There is no formal law of adoption.
- The relationship is recognised only as *kafala* (guardianship), not as full legal parenthood.
- The child does not automatically gain rights of inheritance and retains ties with the biological parents.

C. Christian and Parsi law

- There is no specific law of adoption.
- A child is taken under the Guardians and Wards Act, 1890, which provides guardianship rather than full adoption.
- The child does not become a legal heir, and the guardianship ends when the child attains majority.

D. Secular option

- The Juvenile Justice (Care and Protection of Children) Act, 2015 permits adoption irrespective of religion.
- It provides full legal adoption and is used by non-Hindus and by foreign prospective parents; it is discussed in the next part.

Hindu personal law thus recognises adoption, while Muslim, Christian and Parsi personal law does not. The purpose of adoption is to rescue the helpless, the unwanted, the destitute or the orphaned child and to provide the child with parents and a home. Adoption among Hindus is governed by the Hindu Adoptions and Maintenance Act, 1956 (Act No. 78 of 1956). Muslim personal law does not recognise adoption; acknowledgement of paternity is the nearest approach to it. The personal laws of the Parsi and Christian communities also do not recognise adoption, and here a child may be taken from an orphanage with the permission of the court under the Guardians and Wards Act, 1890.[43] That Act provides a legal framework for guardianship rather than adoption, which makes it the relevant law for Muslims, Christians, Parsis and Jews.[44] Buddhists and Jains, on the other hand, are governed by the Hindu Adoptions and Maintenance Act, 1956.[45]

[43] Romit Agrawal, *Adoption: Under Hindu, Muslim, Christian and Parsi Laws*, Legal Service India, https://www.legalserviceindia.com/articles/hmcp_adopt.htm (last visited Nov. 21, 2026).
[44] Agrawal, *supra* note 43.
[45] Hindu Adoptions and Maintenance Act § 2(1)(b).

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XI. Adoption under the Juvenile Justice Act, 2015

Outside the 1956 Act, the principal route to full adoption is the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 56 provides that adoption shall be resorted to for ensuring the right to a family for orphan, abandoned and surrendered children, and allows a child to be adopted by a relative irrespective of religion; the Act does not apply to adoptions made under the Hindu Adoptions and Maintenance Act, 1956. Indian prospective adoptive parents, irrespective of their religion, may apply to a Specialised Adoption Agency, and a single man is not eligible to adopt a girl child.[46] Since 1 September 2022 the adoption order is made by the District Magistrate instead of a court.[47] On the order, the child becomes the child of the adoptive parents for all purposes, including intestacy, and all the ties of the child in the family of birth are severed and replaced by those created in the adoptive family, an effect that parallels Section 12 of the 1956 Act.[48]

The procedure is governed by the Adoption Regulations, 2022, framed by the Central Adoption Resource Authority (CARA), the statutory body that promotes in-country adoption and regulates inter-country adoption. Under the Regulations, any prospective adoptive parent may adopt, irrespective of marital status and whether or not he or she has a biological child; the consent of both spouses is required; and the age difference between the child and either parent must be at least twenty-five years. The Regulations contain no bar like the 1956 Act's on adopting a child of the same sex as a living child; instead, couples with two or more children are considered only for children with special needs and children who are hard to place, except in relative and step-parent adoptions.[49]

In *Shabnam Hashmi v. Union of India*, the Supreme Court described the juvenile justice law (then the Act of 2000 as amended in 2006) as an enabling and optional legislation that any person may use irrespective of religion, and called it "a small step in reaching the goal enshrined by Article 44 of the Constitution"; it declined, however, to declare the right to adopt a fundamental right.[50] The juvenile justice law thus gives non-Hindus a secular route to full adoption, but only for children who are orphaned, abandoned or surrendered, or who are adopted

[46] The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India), §§ 56–58.
[47] The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, No. 23, Acts of Parliament, 2021 (India) (substituting the District Magistrate for the court in sections 56(5), 58 to 61, 63, 64 and 65(4), with effect from Sept. 1, 2022).
[48] Juvenile Justice (Care and Protection of Children) Act § 63.
[49] Juvenile Justice (Care and Protection of Children) Act § 68; Adoption Regulations, 2022, reg. 5 (India) (notified Sept. 23, 2022).
[50] *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India).

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within the family. It does not replace the personal laws, and that gap is the subject of the next part.

XII. THE NEED FOR A UNIFORM CIVIL CODE FOR ADOPTION

The Uniform Civil Code envisaged by Article 44 of the Constitution is intended to provide a common set of laws, applicable throughout the country, governing adoption, marriage, divorce and other personal matters for all citizens irrespective of religion, in the interest of equality, gender justice and national integration. Its aim is secular: to replace the different religion-based personal laws, which its proponents regard as discriminatory, with a single body of law, leaving religion a matter of private faith rather than a source of civil rights. In India adoption is governed by different personal laws founded on religion, which results in inequality and creates legal difficulties. A uniform civil law is needed for the following reasons.

1. **Absence of uniformity in the personal laws governing adoption.** Adoption in India is governed by several personal laws based on religion, which results in inequality and creates legal obstacles to adopting a child. Hindus are governed by the Hindu Adoptions and Maintenance Act, while Muslims, Christians and Parsis generally rely on the Guardians and Wards Act, 1890, which does not give the child full legal status.
2. **Equal adoption rights for all citizens irrespective of religion.** The personal laws often contain unequal provisions, particularly for women, in matters of adoption, and a uniform civil code would help ensure equal rights for all citizens irrespective of religion and sex. Under the Hindu Adoptions and Maintenance Act, for example, an adopted child acquires all the rights of a natural-born child, including inheritance and family status, while guardianship under the Guardians and Wards Act gives the child no automatic right of inheritance.

In *Mohd. Ahmed Khan v. Shah Bano Begum*, a case on a divorced Muslim wife's claim to maintenance, the Supreme Court regretted that Article 44 had remained a dead letter and observed that a common civil code would help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies, adding that piecemeal attempts by the courts to bridge the gap between personal laws cannot take the place of a common civil code.[51] The case did not concern adoption, but its reasoning applies to it.

1. **Promoting unity and national integration.** A uniform civil code is seen as an instrument for strengthening national unity by bringing all citizens under one

[51] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (India).

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common law irrespective of religion, and so helping to bridge religious divisions in personal matters.

2. **Removing the confusion of parallel systems.** A uniform civil code would remove the complexity created by parallel systems of personal law and bring uniformity and simplicity to the process.
3. **The welfare and best interests of the child.** The multiplicity of personal laws sometimes causes delay, confusion and even the refusal or non-recognition of an adoption. To give priority to the welfare and best interests of the child, a uniform code becomes a priority.

In *Lakshmi Kant Pandey v. Union of India*, which laid down norms and safeguards for the adoption of Indian children by foreign parents, the Supreme Court noted that the Adoption of Children Bill, 1972, which was intended to provide a uniform law of adoption applicable to all communities, had been dropped, and that the Bill of 1980 had not been enacted. In the absence of a statute providing for adoption by foreign parents, such adoptions were being made through guardianship under the Guardians and Wards Act, 1890. The Court treated the welfare of the child as the primary object of adoption.[52] Its directions led to the creation of the Central Adoption Resource Agency, the forerunner of CARA.[53]

A uniform civil code is therefore needed:

- to bring uniformity to the personal laws governing adoption;
- to ensure equal adoption rights for all citizens irrespective of religion;
- to promote unity and national integration;
- to remove the confusion created by parallel systems of personal law; and
- to secure the welfare and best interests of the child.

The adoption of a uniform civil code would bring clarity, gender equality and equal justice for all citizens to the law of adoption.

XIII. Conclusion

The Hindu Adoptions and Maintenance Act, 1956 made adoption among Hindus a secular legal act. It made the religious requirement of the datta homam unnecessary and left the actual giving and taking of the child as the essential requirement, extended the capacity to adopt and to give in adoption to women, permitted the adoption of daughters and of abandoned children, and

[52] *Lakshmi Kant Pandey v. Union of India*, (1984) 2 SCC 244 (India).
[53] *Shabnam Hashmi*, *supra* note 50.

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made the adopted child the child of the adoptive family for all purposes. The courts have insisted that its conditions be strictly observed: the consent of the spouse must be real, the age and age-gap rules are mandatory, and an adoption deed cannot take the place of the actual transfer of the child.

The Act nevertheless remains confined to Hindus and limits adoption by gender, barring the adoption of a second child of the same sex. Muslims, Christians, Parsis and Jews have no full adoption under their personal laws and must rely on guardianship under the Guardians and Wards Act, 1890, or on the secular but limited route of the Juvenile Justice Act, 2015. The courts have declined to remove these limits themselves and have left the matter to Parliament. This paper therefore argues that a uniform adoption law, applicable to all citizens irrespective of religion and placing the welfare and best interests of the child at its centre, is the appropriate way to give every child in need a permanent, secure and loving family.

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