

Adoption laws in India: Balancing religious personal laws and secular legislations

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Abstract—Adoption in India lies at the intersection of religious personal laws and secular legislations, reflecting the country's pluralistic legal framework. While Hindu law has long recognized adoption as a sacramental and legal institution, personal laws governing Muslims, Christians, Parsis, and Jews traditionally do not provide for adoption, offering only guardianship under the Guardians and Wards Act, 1890. The enactment of the secular Juvenile Justice (Care and Protection of Children) Act, 2015 introduced a uniform mechanism, enabling individuals irrespective of religion to legally adopt, thereby advancing the child's right to family care. However, tensions persist between religious autonomy under Articles 25 and 26 of the Constitution and the State's duty to ensure equality and the welfare of children under Articles 14, 15, and 21. Judicial pronouncements have often attempted to reconcile these competing interests, yet questions of enforceability, cultural sensitivity, and the push towards a potential Uniform Civil Code remain contested. This paper examines the evolution of adoption laws in India, the coexistence and conflict between personal and secular regimes, and the challenges in balancing respect for religious diversity with the need for a uniform child-centric adoption framework. The study argues for a harmonized legal approach that prioritizes the welfare of the child while upholding constitutional values of equality and secularism.

Index Terms— Consumer, grievance, ODR, Digital, economy, transactions, e-commerce

I. INTRODUCTION

Adoption in India is a complex and evolving legal and social institution, shaped by religious traditions, societal needs, and legislative reforms. The following introduction outlines the background, research problem, objectives, research questions, methodology, and scope for a study on Indian adoption laws. Adoption has deep historical roots in Indian society, with references in ancient texts and epics such as the Ramayana and Mahabharata. Traditionally, adoption was practiced to ensure lineage continuity and fulfill religious duties, especially among Hindus, where having a son was considered essential for ancestral rites.¹ In modern times, adoption serves as a means to provide family care for orphaned, abandoned, or surrendered children, and is recognized as a vital component of child welfare and social justice.² However, the legal framework for adoption in India remains fragmented, with different rules for various religious communities.

Research Problem and Rationale

Despite the constitutional vision of a uniform civil code, adoption laws in India are not uniform. The Hindu Adoption and Maintenance Act, 1956 (HAMA) governs Hindus, Buddhists, Jains, and Sikhs, while Muslims, Christians, Parsis, and Jews lack a personal law for adoption and must rely on the Guardians and Wards Act, 1890, which does not grant full parental rights 136. This disparity leads to legal ambiguities,

¹ Mitoko, O. (2020). Adoption Laws as a Means of Social Control Newton.

² Desai, G. (2016). An Overview of Child Adoption Laws in India. *Global journal for research analysis*, 4.

social challenges, and questions of equality and child welfare. The rationale for this study is to critically examine these inconsistencies and their impact on children and prospective parents.

Objectives of the Study

- To analyze the historical and contemporary legal framework of adoption in India.
- To assess the impact of religious personal laws and secular legislations on adoption practices.
- To identify gaps and challenges in the current adoption system.
- To propose recommendations for harmonizing adoption laws in line with constitutional principles and child welfare.

Research Questions

- How do religious personal laws and secular legislations interact and conflict in the context of adoption in India?
- What are the legal and social consequences of the lack of a uniform adoption law?
- Does the current legal framework adequately protect the best interests of the child?

Methodology

This study will employ a doctrinal and comparative legal methodology, analyzing statutes, case law, and scholarly commentary on adoption laws in India and selected international jurisdictions. A socio-legal approach will also be used to understand the practical implications and societal attitudes towards adoption.

Scope and Limitations

The study will focus on statutory adoption laws and their application across major religious communities in India, with particular attention to the Hindu Adoption and Maintenance Act, the Guardians and Wards Act, and the Juvenile Justice Act. It will not

cover inter-country adoption in detail or delve into the psychological aspects of adoption. Limitations include the evolving nature of legislation and the diversity of social practices across regions.

II. CONCEPTUAL FRAMEWORK OF ADOPTION

Historical perspective of adoption in India

Adoption in India has evolved from ancient religious and patriarchal customs to a complex, rights-based legal framework. Historically, adoption was primarily a means to secure lineage, perform religious rites, and ensure inheritance, especially among Hindus. Modern adoption now emphasizes child welfare, legal equality, and inclusivity.

Adoption in India dates back thousands of years, with references in Hindu epics like the Ramayana and Mahabharata. Traditionally, adoption was adult-centric, focused on securing a male heir for religious and property reasons, and often arranged within extended families (kinship adoption).³ Under classical Hindu law, only Hindus could adopt, and the process was patriarchal, with women having limited rights.⁴

The Hindu Adoptions and Maintenance Act (HAMA) of 1956 codified adoption for Hindus, Buddhists, Jains, and Sikhs, granting more rights to women and formalizing the process.⁵ For non-Hindus, adoption was historically not recognized; they could only become guardians under the Guardianship and Wards Act, 1890. The Juvenile Justice (Care and Protection of Children) Act (JJ Act), especially after amendments in 2000 and 2015, introduced secular adoption, allowing all citizens to adopt regardless of religion and granting adopted children legal status equal to biological children.⁶ The Central Adoption Resource Authority (CARA) was established to regulate both domestic and international adoptions, with digitalization (CARINGS portal) streamlining processes since 2015.⁷

Outbursting the myths about adoption in context of Hindu adoptions & maintenance act, 1956. *International journal of health sciences*. <https://doi.org/10.53730/ijhs.v6ns5.9243>.

⁶ Desai, G. (2016). An Overview of Child Adoption Laws in India. *Global journal for research analysis*, 4.

⁷ Apparao, H. (1997). International Adoption of Children: The Indian Scene. *International Journal of Behavioral Development*, 20, 16 - 3. <https://doi.org/10.1080/016502597385405>.

³ Bhaskar, S., Hoksbergen, R., Baar, A., Mothiram, S., & Laak, J. (2012). Adoption in India - the Past, Present and the Future Trends. *Journal of psychosocial research*, 7, 321.

⁴ S., N. (2023). An Analysis of Adoption by Widow. *International Journal of Science and Research (IJSR)*. <https://doi.org/10.21275/mr231121212841>.

⁵ Singh, S., Mishra, S., Pathak, D., Ashutosh, K., & Tripathi, R. (2022). Adoption under Hindu law:

Adoption has shifted from informal, kin-based arrangements to formal, regulated processes emphasizing child rights and welfare.⁸ Recent reforms address inclusivity (single parents, widows, special needs children), but challenges remain, including bureaucratic delays, lack of uniform laws, and limited access for LGBTQ+ individuals.⁹ The focus is increasingly on the best interests of the child, with ongoing calls for further legal and policy reforms.¹⁰ Adoption in India has transformed from a religious and patriarchal institution to a more inclusive, child-centred legal process. While significant progress has been made, ongoing reforms are needed to address remaining social, legal, and procedural challenges and to ensure every child's right to a family. Socio-cultural and religious importance of adoption

Adoption in India is deeply rooted in both socio-cultural traditions and religious beliefs, shaping its practice and significance over centuries. While modern adoption emphasizes child welfare and legal rights, its origins and continued perceptions are strongly influenced by cultural norms and religious doctrines.

In Hinduism, adoption has ancient roots, primarily to ensure a male heir for performing ancestral rites and securing spiritual salvation (moksha). Sons were seen as essential for continuing the family lineage and for performing funeral rituals, believed to help ancestors attain heaven.¹¹ Hindu mythology and scriptures, such as the Vedas and epics like the Ramayana and

Mahabharata, reference adoption as a religious duty, especially when a biological son was absent.¹² Other religions in India historically did not formalize adoption in the same way, often relying on guardianship rather than full legal adoption.¹³ Traditionally, adoption was a means to address childlessness, maintain family property, and fulfill social expectations of parenthood. Adoption also provided social security for orphans and widows, offering them a place within a family and society. Over time, the focus has shifted from lineage and ritual to child welfare, inclusivity, and the rights of women and single parents to adopt.

Despite its religious roots, adoption can carry social stigma, especially as it may publicly signal infertility or disrupt traditional notions of biological kinship.¹⁴ Cultural beliefs sometimes discourage adoption, favouring secrecy or alternative solutions like gamete donation to preserve the appearance of biological continuity.¹⁵ Literature and social narratives have challenged these norms, promoting more inclusive and diverse family structures.

Distinction between guardianship and adoption

Guardianship and adoption are both legal mechanisms to provide care for children unable to live with their biological parents, but they differ significantly in terms of legal status, permanence, and parental rights. Guardianship is often chosen for older children or when maintaining a connection with the birth family is

⁸ Saranya, U., & Agarwal, R. (2025). Regulatory Rigor Or Rights Denied? - A Critical Examination Of Adoption Protocols For Abandoned Children In India. *International Journal of Environmental Sciences*. <https://doi.org/10.64252/wh800g53>.

⁹ Ranjan, R., Nath, S., Jha, S., & Narasimha, V. (2023). Single parent adoption in India: Mental health and legal perspectives and the way forward. *Journal of Postgraduate Medicine*, 69, 215 - 220. https://doi.org/10.4103/jpgm.jpgm_718_22.

¹⁰ Paul, S. (2022). Child Adoption In India: From A Human Rights Perspective. *Journal of Multidisciplinary Cases*. <https://doi.org/10.55529/jmc.21.28.35>.

¹¹ Bhaskar, S., Hoksbergen, R., Baar, A., Mothiram, S., & Laak, J. (2012). Adoption in India - the Past, Present and the Future Trends. *Journal of psychosocial research*, 7, 321.

¹² Singh, S., Mishra, S., Pathak, D., Ashutosh, K., & Tripathi, R. (2022). Adoption under Hindu law:

Outbursting the myths about adoption in context of Hindu adoptions & maintenance act, 1956. *International journal of health sciences*. <https://doi.org/10.53730/ijhs.v6ns5.9243>.

¹³ S., N. (2023). An Analysis of Adoption by Widow. *International Journal of Science and Research (IJSR)*. <https://doi.org/10.21275/mr231121212841>.

¹⁴ Bharadwaj, A. (2003). Why adoption is not an option in India: the visibility of infertility, the secrecy of donor insemination, and other cultural complexities.. *Social science & medicine*, 56 9, 1867-80 . [https://doi.org/10.1016/s0277-9536\(02\)00210-1](https://doi.org/10.1016/s0277-9536(02)00210-1).

¹⁵ Jain, J., Mehuriya, S., Gupta, S., & Sagar, R. (2025). Mental health aspects of adoption and the role of mental health professionals: A Narrative review. *Indian Journal of Psychiatry*, 67, 367 - 374. https://doi.org/10.4103/indianjpsychiatry.indianjpsychiatry_969_24.

important. It is less permanent and can be dissolved more easily, sometimes leading to less stability for the child.¹⁶ Adoption provides lifelong legal and emotional permanence, with the adoptive family assuming all parental rights and responsibilities. The child's legal relationship with the birth family is fully replaced by the adoptive family.¹⁷

Adoption creates a permanent, irrevocable parent-child relationship, fully transferring all legal rights and responsibilities to the adoptive parents. Guardianship, in contrast, is a more flexible, revocable arrangement that preserves some legal ties to the birth family and is often used when adoption is not suitable.

International perspective on adoption

Adoption, especially intercountry adoption, is a global phenomenon shaped by international law, ethical debates, and shifting demographic trends. The international community emphasizes child rights, ethical safeguards, and the best interests of the child as central to adoption practices.

UN Convention on the Rights of the Child (1989) and the Hague Convention (1993) set standards to protect children's rights, requiring that adoption only occurs with competent authorities' involvement, prioritizing the child's best interests, and preventing abuses like trafficking or financial exploitation.¹⁸ National laws implement these standards, specifying criteria for adoptive parents (age, health, financial stability) and ensuring children's consent and cultural identity are respected.¹⁹

Intercountry adoption rose after WWII but has declined sharply since the mid-2000s, due to stricter

regulations, concerns about trafficking, and increased domestic adoption in origin countries.²⁰ Most adoptions involve children moving from poorer to wealthier countries, raising concerns about "child markets" and the risk of exploitation. Recent bans (e.g., Russia's 2012 ban) highlight how geopolitics and national interests can conflict with child rights, sometimes leaving children without stable families.

International adoption can offer children stable, loving homes and cross-cultural opportunities, but also risks undermining social justice if it ignores poverty, discrimination, or the rights of birth families.²¹ Ongoing debates focus on balancing the child's need for a family with respect for their origins and preventing exploitation.

International adoption is increasingly regulated to protect children's rights and prevent abuse. While it can provide life-changing opportunities, it also raises complex ethical, legal, and cultural challenges that require ongoing vigilance and reform.

III. ADOPTION UNDER HINDU LAW

Evolution of adoption laws under Hindu personal law
Adoption under Hindu personal law has evolved from ancient religious customs to a codified legal framework, with significant reforms aimed at gender equality and child welfare.

Adoption was rooted in religious texts like Manusmriti and Dharmashastra, primarily to ensure male heirs for performing ancestral rites and inheritance. The process was patriarchal, with women having little to no rights in adoption decisions.²² Adoption was governed by

¹⁶ Sattler, K., & Font, S. (2020). Predictors of Adoption and Guardianship Dissolution: The Role of Race, Age, and Gender Among Children in Foster Care. *Child Maltreatment*, 26, 216 - 227. <https://doi.org/10.1177/1077559520952171>.

¹⁷ Palacios, J., Adroher, S., Brodzinsky, D., Grotevant, H., Johnson, D., Juffer, F., Martínez-Mora, L., Muhamedrahimov, R., Selwyn, J., Simmonds, J., & Tarren-Sweeney, M. (2019). Adoption in the service of child protection: An international interdisciplinary perspective. *Psychology, Public Policy, and Law*. <https://doi.org/10.1037/law0000192>.

¹⁸ Zubareva, A. (2024). Protecting children's rights in intercountry adoption. *Uzhhorod National University Herald. Series: Law*. <https://doi.org/10.24144/2307-3322.2024.82.3.34>.

¹⁹ Burke, G., & Allison, L. (2024). Unraveling the Impacts of the 2012 Russian Adoption Ban on Childs Rights and Global Dynamics. *Journal of Student Research*. <https://doi.org/10.47611/jsrhs.v13i1.6474>.

²⁰ Selman, P. (2012). The Global Decline of Intercountry Adoption: What Lies Ahead?. *Social Policy and Society*, 11, 381 - 397. <https://doi.org/10.1017/s1474746412000085>.

²¹ Hollingsworth, L. (2003). International adoption among families in the United States: considerations of social justice. *Social work*, 48 2, 209-17 . <https://doi.org/10.1093/sw/48.2.209>.

²² Mishra, A. (2024). From Tradition to Reform: A Comparative Study of Personal Laws in India. *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2024.v06i06.31550>.

uncodified customs, often excluding women and girl children from full participation.

This act codified adoption for Hindus, Buddhists, Sikhs, and Jains, standardizing procedures and expanding eligibility. It marked a shift from religious to legal regulation, allowing both sons and daughters to be adopted and granting some rights to women, though with limitations. Initially, women especially widows and unmarried women had limited rights to adopt. HAMA improved their status but still required married women to obtain their husband's consent. This amendment granted Hindu women equal rights to adopt, regardless of marital status, removing the requirement for a husband's consent and allowing unmarried women to adopt independently. Despite reforms, HAMA remains religiously exclusive (only Hindus can adopt under it), and some gender and child welfare concerns persist, such as the lack of explicit focus on the child's best interests.

Hindu adoption law has transitioned from patriarchal, religious customs to a more egalitarian, codified system. The 1956 Act and 2010 amendment were pivotal, especially for women's rights, but ongoing reforms are needed to address remaining gaps and prioritize child welfare.

Provisions of the Hindu Adoption and Maintenance Act, 1956

The Hindu Adoption and Maintenance Act, 1956 (HAMA) is the principal legislation governing adoption and maintenance among Hindus in India. It codifies the process, rights, and obligations related to adoption, aiming to address historical gender biases and adapt to evolving social needs. Despite reforms, the Act continues to face criticism for certain limitations and ambiguities.

HAMA applies to Hindus, Buddhists, Jains, and Sikhs, and sets out who can adopt, who can be adopted, and

the conditions for a valid adoption. The Act requires the adopter and adoptee to be Hindu, and outlines specific criteria regarding age, consent, and capacity for both males and females. Notably, it grants women more rights to adopt, though some gender-based restrictions persist, such as the need for a married woman to obtain her husband's consent unless he is deceased or declared unfit.²³ Maintenance provisions under HAMA include the right to food, shelter, education, and medical care for wives, children, parents, and dependents, with courts determining the amount based on need and ability to pay.²⁴

Rights and Obligations of Adoptive Parents and Adopted Children

Adopted children are granted the same legal status as biological children, including inheritance and maintenance rights. Adoptive parents assume full parental responsibilities and obligations.²⁵ The Act also provides maintenance rights for illegitimate children and widows, reflecting a broader commitment to social justice.²⁶

Judicial Interpretation and Evolving Practice

Courts have clarified that adoption under HAMA is not a fundamental right under Article 21 of the Constitution, but have emphasized the welfare of the child as paramount. Judicial decisions have also addressed issues like the legitimacy of adopted children and the rights of widows to adopt.²⁷ The Supreme Court has played a role in interpreting the Act to protect children's interests and address ambiguities, especially regarding the status of adopted children and the rights of women.

Contemporary Challenges and Criticisms

HAMA is criticized for being religion-specific, excluding non-Hindus from its purview and relying on

²³ Singh, S., Mishra, S., Pathak, D., Ashutosh, K., & Tripathi, R. (2022). Adoption under Hindu law: Outbursting the myths about adoption in context of Hindu adoptions & maintenance act, 1956. *International journal of health sciences*. <https://doi.org/10.53730/ijhs.v6ns5.9243>.

²⁴ A., & Bala, M. (2025). Historical Perspectives And Parameter Of Maintenance Under Hindu Law In India. *Metallurgical and Materials Engineering*. <https://doi.org/10.63278/mme.vi.1785>.

²⁵ S., N. (2023). An Analysis of Adoption by Widow. *International Journal of Science and*

Research (IJSR). <https://doi.org/10.21275/mr231121212841>.

²⁶ Panda, P. (2016). Right to Maintenance of Hindu Women under Hindu Adoption and Maintenance Act. *Indian journal of applied research*, 6, 205-208.

²⁷ Hazarika, R. (2024). Right To Property and Maintenance of Illegitimate Child Under Hindu Law. *International Journal of Membrane Science and Technology*. <https://doi.org/10.15379/ijmst.v10i5.3439>.

religious definitions. The Act does not explicitly prioritize the child's welfare, and some gender-based restrictions remain. There are also calls for a uniform adoption law to address inconsistencies and ensure equal rights for all children and parents, regardless of religion. Bureaucratic hurdles and societal myths about adoption persist, and the law has not fully eradicated stigma or ensured timely placements for children in need.²⁸

IV. ADOPTION UNDER MUSLIM, CHRISTIAN AND PARSI LAWS

Adoption laws in India are deeply influenced by religious traditions, resulting in significant differences for Muslims, Christians, and Parsis. Unlike Hindus, who have a codified adoption law, these communities lack personal adoption statutes, leading to reliance on guardianship laws and secular statutes for child welfare and legal recognition.

Traditional Islamic law does not recognize full adoption (tabanni) as it severs the child's lineage (nasab) from biological parents, which is prohibited. Instead, Muslims may become guardians under the Guardians and Wards Act, 1890 (GWA), but the adopted child does not gain inheritance rights or full legal status as a biological child. The Juvenile Justice (JJ) Act, 2015, now allows Muslims to adopt under secular law, but this can conflict with personal law principles.²⁹

Both communities lack personal adoption laws. Christians and Parsis can only become guardians under the GWA, 1890, not legal parents. The JJ Act, 2015, provides a secular route for adoption, but inheritance rights under the Indian Succession Act, 1925, remain unclear for adopted children, especially for Christians.³⁰ Guardianship under GWA does not confer the same rights as adoption—children do not

become legal heirs and may lose status upon reaching adulthood.

The Supreme Court's decision in *Shabnam Hashmi v. Union of India* affirmed that secular adoption laws (JJ Act) override personal laws, enabling all citizens, regardless of religion, to adopt legally. However, practical and procedural ambiguities persist, especially regarding inheritance and recognition under personal law.

Traditional Position of Adoption under Muslim Personal Law

Muslim personal law traditionally prohibits adoption in the Western sense (tabanni), which severs a child's biological lineage and grants full legal status as a child of the adoptive parents. Instead, Islamic law emphasizes the preservation of nasab (lineage) and offers alternative care arrangements.

- **Tabanni (Adoption)**- Tabanni refers to the legal adoption that creates a parent-child relationship, including inheritance and lineage rights. This is explicitly prohibited in Islamic law, as it disrupts the child's original lineage and inheritance rights.³¹ The Qur'an and Sunnah stress that an adopted child must retain their biological identity and cannot be considered a true child of the adoptive parents.
- **Kafala (Guardianship/Fostering)**- Kafala is the Islamic system of guardianship or foster care. It allows a family to care for, raise, and support a child who is not biologically theirs, without conferring the status of a biological child. Under kafala, the child keeps their original family name and lineage, and does not automatically inherit from the guardian, though a guardian may leave a bequest (wasiyyah). Kafala is recognized in international law (e.g., UN Convention on the

²⁸ Saranya, U., & Agarwal, R. (2025). Regulatory Rigor Or Rights Denied? - A Critical Examination Of Adoption Protocols For Abandoned Children In India. *International Journal of Environmental Sciences*. <https://doi.org/10.64252/wh800g53>.

²⁹ Hasbiyalla, I. (2025). Legal Analysis of Child Adoption: An Islamic Perspective and Implementation in Religious Courts. *VRISPRAAK : International Journal of Law*. <https://doi.org/10.59689/vris.v9i1.1152>.

³⁰ Ranjan, R., Nath, S., Jha, S., & Narasimha, V. (2023). Single parent adoption in India: Mental health and legal perspectives and the way forward. *Journal of Postgraduate Medicine*, 69, 215 - 220. <https://doi.org/10.4103/jpgm.jpgm.718.22>.

³¹ Fauzi, A., Indrajaya, D., Zikri, A., Zulfahmi, Z., & K, H. (2023). Controversy of Adopted Children Status and Foster Father in the Marriage Process Based on Islamic Law Perspective. *Journal of Progressive Law and Legal Studies*. <https://doi.org/10.59653/jpills.v1i02.100>.

Rights of the Child, Article 20) as a form of child protection, but it is not equivalent to adoption.³²

- Guardianship (Wilayah and Hadhana)- Islamic law distinguishes between wilayah (legal guardianship, often over property or marriage) and hadhana (physical custody or care).³³ Guardianship is meant to protect the child's welfare, but does not create inheritance or full parental rights.

Legal framework for Christians and Parsis regarding adoption

Adoption rights for Christians and Parsis in India are shaped by the absence of personal adoption laws, leading to reliance on secular statutes and resulting in significant legal and social challenges. Christians and Parsis do not have codified personal laws permitting full adoption. Instead, they must use the Guardians and Wards Act, 1890 (GWA), which only allows for guardianship, not full legal parenthood. Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) allows any Indian, regardless of religion, to adopt a child with the same legal status as a biological child. However, the application of inheritance rights under the Indian Succession Act, 1925 (ISA) remains unclear for adopted children of Christian and Parsi parents.³⁴ The ISA, which governs succession for Christians and Parsis, does not recognize adopted children as legal heirs, creating ambiguity and potential denial of inheritance rights even after adoption under the JJ Act.

- In case of Shabnam Hashmi v. Union of India (2014)³⁵ The Supreme Court affirmed that adoption under the JJ Act is a secular right available to all, regardless of religion. However, it did not resolve the conflict between the JJ Act and personal succession laws, leaving inheritance rights for adopted children uncertain.

- In case of Phillips Alfred Malvin v. Y.J. Gonsalvis (1999)³⁶ Highlighted the limitations of guardianship for Christians, as guardianship does not confer full parental rights or inheritance.
- In case of Mary Roy v. State of Kerala (1986)³⁷ Addressed gender discrimination in Christian inheritance law, but did not resolve adoption-related succession issues.

Criticism of the Absence of a Uniform Adoption Law
The lack of a uniform adoption law leads to unequal rights for non-Hindus, with Christians and Parsis unable to confer full legal status and inheritance rights to adopted children under their personal laws. The current system perpetuates gender injustice and fails to prioritize the best interests of the child, as recognized by international conventions. Legal scholars and courts have advocated for a UCC to harmonize adoption laws, ensure equal rights, and eliminate religious disparities. However, implementation faces resistance due to concerns over religious autonomy and cultural identity.

V. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015: ADOPTION, CARA, AND THE SECULAR LEGAL FRAMEWORK

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is India's primary law for the care, protection, and rehabilitation of children in conflict with the law and those in need of care. It introduced a secular, uniform adoption procedure applicable to all religions, aiming to prioritize the best interests of the child and align with international standards.

The JJ Act was enacted in response to public demand for stricter juvenile laws and to fulfill India's obligations under the UN Convention on the Rights of the Child and other international treaties. Its objectives include child protection, rehabilitation, and

³² Duca, R. (2014). Family Reunification: The Case of the Muslim Migrant Children in Europe. *The Journal of Social Sciences Research*, 1, 111-120. <https://doi.org/10.30958/ajss.1-2-2>.

³³ Muniroh, S., & Nasution, K. (2021). The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah. *Millah*. <https://doi.org/10.20885/millah.vol21.iss1.art4>.

³⁴ Mishra, A. (2015). Bridging the gap between the Juvenile Justice Act 2000 and Christian Personal Law — Inheritance Rights of Adopted and Illegitimate Children in India. <https://doi.org/10.2139/ssrn.2551287>.

³⁵ (2014) 4 SCC 1

³⁶ AIR 1999 KER 187

³⁷ (1986) 2 SCC 209

reintegration, with a focus on restorative justice and non-stigmatization.³⁸

Adoption Procedure and Role of CARA

The Act streamlines adoption by establishing clear procedures for declaring children legally free for adoption and setting criteria for prospective adoptive parents.³⁹ The Central Adoption Resource Authority (CARA), under the Ministry of Women and Child Development, regulates, monitors, and facilitates both domestic and inter-country adoptions, ensuring ethical practices and child welfare. Specialized Adoption Agencies and Child Welfare Committees play key roles in the process.

Universal and Secular Application

The JJ Act allows any Indian citizen, regardless of religion, to adopt, making adoption a secular right and superseding personal laws.⁴⁰ The Supreme Court in *Shabnam Hashmi v. Union of India* affirmed the Act's universal application, enabling non-Hindus to adopt with full legal status for the child.

Conflicts and Overlaps with Personal Laws

Despite the JJ Act's secular framework, conflicts persist especially regarding inheritance, as personal succession laws (e.g., Indian Succession Act for Christians and Parsis) may not recognize adopted children as legal heirs. Judicial pronouncements support the JJ Act's supremacy in adoption, but ambiguity remains in property rights and succession. The JJ Act, 2015, establishes a uniform, secular adoption system in India, with CARA as the central authority. While it is judicially supported over personal laws for adoption, unresolved conflicts especially around inheritance highlight the need for further legal harmonization to fully protect adopted children's rights.

³⁸ Bajpai, A. (2018). The Juvenile Justice (Care and Protection of Children) Act 2015: an analysis. *Indian Law Review*, 2, 191 - 203.

<https://doi.org/10.1080/24730580.2018.1552233>.

³⁹ Agarwal, S., & Kumar, N. (2016). Juvenile Justice (Care and Protection of Children) Act 2015: A Review. , 3, 5-9.

<https://doi.org/10.20896/saci.v3i3.165>.

⁴⁰ Mishra, A. (2015). Adopted and illegitimate child under indian christian law: revisiting inheritance rights. . <https://doi.org/10.2139/ssrn.2551287>.

VI. CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS OF ADOPTION LAWS IN INDIA

Adoption laws in India intersect with core constitutional rights and international human rights standards. The challenge lies in balancing equality, dignity, and non-discrimination with religious freedom, while ensuring the best interests of the child. Articles 14 & 15 guarantee equality before the law and prohibit discrimination based on religion, sex, or other grounds. Exclusion of certain groups (e.g., LGBTQ+ couples, non-Hindus) from adoption rights has been criticized as violating these principles, undermining equal access to family life and legal protection.⁴¹

Article 21 states the right to life and personal liberty includes the right to dignity, family, and personal development. Judicial interpretations have expanded Article 21 to encompass the right to a family and the welfare of children, reinforcing that adoption laws must protect the dignity and holistic development of both children and prospective parents.

Articles 25-28 protect freedom of religion but allow the state to regulate secular aspects of social relations, such as adoption, to ensure equality and public welfare.

Courts have generally held that religious freedom does not override the state's power to enact secular, egalitarian adoption laws, especially when such laws serve the best interests of the child and do not interfere with essential religious practices.⁴²

UNCRC & Hague Convention both emphasize the child's best interests, non-discrimination, and the right to family. The UNCRC and Hague Convention require that adoption processes prioritize the child's welfare, informed consent, and protection from exploitation, and that children's views and cultural identities are respected. States must ensure that adoption laws and practices align with these international standards,

⁴¹ Kumar, N. (2025). From Marriage to Family: Examining Adoption, Surrogacy, and Custody Rights of Same Sex Couples in India. *International Scientific Journal of Engineering and Management*. <https://doi.org/10.55041/isjem04717>.

⁴² Nambiar, Y. (2025). Reinterpreting Article 25: Religious Freedom and the Changing Nature of Secularism in Contemporary India. *International Journal of Science and Research (IJSR)*. <https://doi.org/10.21275/sr25723224504>.

providing safeguards and support for children and adoptive families.

The law and courts increasingly prioritize the best interest of the child over rigid religious or institutional preferences, advocating a child-centred approach in both domestic and intercountry adoption. While religious agencies may seek exemptions, the focus remains on preventing discrimination and ensuring every child's right to a loving, secure family.

VII. COMPARATIVE AND JUDICIAL ANALYSIS OF ADOPTION LAWS: INDIA, UK, AND USA

A comparative and judicial analysis of adoption laws reveals evolving legal standards, landmark judgments, and lessons India can draw from international models to enhance child welfare and legal clarity.

Indian courts have played a pivotal role in interpreting adoption laws to uphold constitutional values of equality and child welfare. While the Shah Bano case primarily addressed maintenance, it set a precedent for prioritizing statutory and constitutional mandates over personal laws, emphasizing gender justice and equality. Judicial scrutiny has highlighted that while regulatory rigor in adoption is essential to prevent abuse, excessive bureaucracy can delay a child's right to family, calling for a balance between protection and expediency. Courts have also referenced international human rights frameworks, such as the UNCRC, to reinforce the best interests of the child as a guiding principle in adoption cases.

Lessons for India from International Models

- **Streamlining Procedures:** International models, especially in the UK and USA, emphasize timely judicial and administrative action, reducing delays that can harm child welfare. India can benefit from further simplifying and standardizing adoption protocols.
- **Post-Adoption Support:** Comprehensive post-adoption services, including mental health and integration support, are standard in the UK and USA but limited in India. Expanding these

services can improve outcomes for adopted children.

- **Inclusivity:** Legal recognition of same-sex and single-parent adoptions in the UK and USA promotes equality and non-discrimination. India could consider similar reforms to align with constitutional and human rights standards.
- **Child Participation:** International best practices encourage considering the child's views in adoption proceedings, a principle India can further integrate.

Indian adoption law has evolved through judicial activism and international influence but faces challenges in procedural efficiency, inclusivity, and post-adoption support. Learning from the UK and USA, India can further reform its system to ensure every child's right to a family is realized swiftly and equitably.

VIII. CHALLENGES AND THE WAY FORWARD FOR ADOPTION LAWS IN INDIA

India's adoption laws face significant challenges rooted in religious sensitivities, procedural hurdles, and concerns over inter-country adoption and child trafficking. Moving forward requires harmonizing personal and secular laws, with careful consideration of a Uniform Civil Code (UCC) or hybrid models.

Adoption is governed by personal laws for Hindus (HAMA, 1956), while Muslims, Christians, Parsis, and Jews lack equivalent statutes, relying instead on guardianship laws that do not confer full parental rights.⁴³ Efforts to introduce a uniform adoption law have faced strong resistance, especially from minority communities, who view such moves as threats to religious identity and autonomy. Many fear that a UCC could lead to cultural homogenization and undermine religious freedoms protected by the Constitution.⁴⁴

The current system is fragmented, with procedural ambiguities and bureaucratic delays, especially under the Juvenile Justice Act and CARA guidelines, leading to prolonged institutionalization of children. Lack of clarity and uniformity in procedures for non-Hindus

⁴³ Mishra, A. (2024). From Tradition to Reform: A Comparative Study of Personal Laws in India. *International Journal For Multidisciplinary Research*.
<https://doi.org/10.36948/ijfmr.2024.v06i06.31550>.

⁴⁴ Chakladar, A. (2025). Uniform civil code in india: constitutional mandate and the challenge of cultural pluralism. *International Journal of Humanities and Social Science*.
<https://doi.org/10.53555/eijhss.v10i1.251>.

creates legal uncertainty and limits the rights of adopted children.⁴⁵

Despite international guidelines, inter-country adoption in India is vulnerable to delays, lack of oversight, and risks of child trafficking and rights violations.⁴⁶ Safeguards exist but are inconsistently enforced, and children's best interests are sometimes compromised by procedural inefficiencies.

There is a growing consensus that harmonizing personal laws with secular legislation is essential for equality and child welfare. Judicial pronouncements have emphasized that adoption is a secular matter and can be regulated by the state without infringing on essential religious practices.

IX. CONCLUSION

The legal framework governing adoption in India reflects a constant endeavour to balance the diverse personal laws rooted in religion with the constitutional mandate of equality, dignity, and child welfare. Traditional personal laws—particularly under Hindu, Muslim, Christian, and Parsi communities—have historically shaped the rights and limitations related to adoption, often creating disparities in legal recognition and practice. The enactment of secular legislations such as the Hindu Adoption and Maintenance Act, 1956 (HAMA) and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) has progressively broadened and secularised the adoption landscape, enabling individuals irrespective of religious identity to legally adopt.

Despite these advancements, tensions persist between religious autonomy and the need for uniform, child-centric laws. Judicial pronouncements have repeatedly emphasised that the welfare of the child must remain the paramount consideration, even when personal laws present restrictions. The JJ Act has emerged as a transformative instrument by recognising adoption as a universal legal right and by providing a structured, transparent, and secular mechanism for prospective parents.

Ultimately, harmonising personal laws with secular adoption statutes requires a sensitive, constitutionally guided approach that respects cultural diversity while ensuring that no child is denied a family due to rigid legal boundaries. A future trajectory toward a more uniform and inclusive adoption framework anchored in the best interests of the child will strengthen India's commitment to social justice, equality, and human rights.

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⁴⁵ Dequen, J. (2019). Filiation and adoption among muslims in india: the quagmires of a religious minority law. *Journal of Law and Religion*, 34, 336 - 355. <https://doi.org/10.1017/jlr.2019.39>.

⁴⁶ Saranya, U., & Agarwal, R. (2025). Regulatory Rigor Or Rights Denied? - A Critical Examination Of Adoption Protocols For Abandoned Children In India. *International Journal of Environmental Sciences*. <https://doi.org/10.64252/wh800g53>.