



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE EVOLUTION OF ADOPTION JURISPRUDENCE IN INDIA: LEGAL FRAMEWORK, PROCEDURES AND CHILD PROTECTION MECHANISMS

~ *Mahati.B*

ABSTRACT:

This was because of a recently drastic shift in adoption law (which had now moved from a process primarily for the salvation of souls to an internal legal system concerned about the welfare and protection of children). This article is to try and review the adoption laws, with special focus on Historical Importance Of Hindu Adoptions and Maintenance Act (HAMA), 1956. Adoption practices were even regulated by old Hindu texts meant at getting a boy to perform the last rites of someone in his family lineage — historically giving women an unenviable position of sacrificing their right to equality and what should be a child/human right, agency. The initial major constitutional attempt to preserve some of these constructs, whilst modernising them by removing the gender-specific prohibitions and implicitly recognising daughters, was made in HAMA 1956. But the study identifies a persistent tension within law: HAMA functions as personal law limited to certain communities without having, in contrast with more modern international standards, effective power to monitor decisions and ongoing checking after adoption.¹

The ever-widening ambit of the Juvenile Justice (Care and Protection of Children) Act that supports a secular x-axis overarching framework focused on coalescing Indian adoption results with international norms aimed at the maximal application on a, preferably, singular basis — the best interests of children. This is a study of these responses within the Central adoption resource authority (CARA) and CARINGS digital portal, which provides an ushering in of

¹ Saras Bhaskar, *Adoption in India – The Past, Present and the Future Trends*, available at: [ResearchGate PDF](#)

technology-induced administrative reforms in order to achieve greater transparency into a system that has been for far too long imbued with private informalities and potential for trafficking. This critique is most effectively represented in cases such as *Shabnam Hashmi v. Union of India*, where the Supreme Court stated that personal laws regulating the marriages of all Indians have become "problematic" (binding only Hindus and presenting a legal vacuum for other communities like Muslims), and ordered that the government create a Uniform Civil Code for all citizens. The paper highlights some serious issues including, imposition of national attendance in view of immense mismatch between supply and local uptake; inadequate coverage and novel complexities with the legal framework impeding free for adoption approval and newly emerged system bottlenecks constricted by recent provincialisation of jurisdiction to District Magistrates. Hence, the paper recommends a standard law giving effect to contemporary child protection standards over archaic personal laws so that legalisation of adoption can protect Indian children from further violations of their rights.²

INTRODUCTION:

In India, adoption laws exist as a complex system legally and socially by which a person or couple voluntarily take another person under their care and make such individual legitimate children of them as parents (not only taken into the family, but also severing all parental rights of biological: if any. Before it was because of religious sacrament (a Hindu belief which sees the³ male-child as a necessary component of subsequent generation, with nirvana only being possible if conducted after death by the son who is viewed as the salviator). As early Hindu philosophy decreed that such rites could not be performed by women, and therefore an adoption of a daughter (female) was seen to be impossible. The situation regarding adoption of children in India, however, underwent a watershed moment with the passing of the Hindu Adoptions and Maintenance Act (HAMA) in 1956⁴. This is a revised version of the Law of Adoptions removing its male-dominant biases by allowing adoption of daughters (restricted to recognized customs and with full legal status granted), thus such amendments could only be applicable to Hindus, Sikhs, Buddhists & Jains. Adoption is still a personal law but HAMA has made adoption *meno* better forcing legislation on all other religious communities (Muslim, Christian,

² *International Social Work*, Wiley Online Library, available at: [Wiley Article](#)

⁴ The Hindu Adoptions and Maintenance Act, 1956, No. 78 of 1956, India Code, available at: [India Code – HAMA 1956](#)

Parsi) that does not have special personal law providing for adoption stuck with the 1890 Guardians and Wards Act which only creates legal guardianship without any familial ties.

An adoption based on the juvenile justice (Care and Protection of Children) Act ⁵ was also away from religious or matrimonial status, and as a result this too helped in shift towards child protection mechanisms. And, Central Adoption Resource Authority (CARA) ⁶ is coordinating from 2015 between releases of information on adoptee and adoptive families to undertake processes and enforce best interest of the child principle while amendments made in certain rigidity in 2021 extended much more regulatory power of it. What has changed, an incremental improvement but one which not by any serious measure can be celebrated as a significant milestones, is the shift from what at least professes to have a sacramental basis down into indirect welfare law (in the sense that whose homes families are regarded as stable and secure -as defined by legalities- everywhere) where incredibly pathetic adoption rates for children wanting parents continue next to representative millions of people looking for family. This is an exploratory research analysis of the current changes in law, and It analyses how HAMA 1956 & Juvenile Justice Act (the two major statutes as parapatries adaptors) has influenced child-rights. This paper attempts to provide an overview of historical context and legal disposition behind adoption laws with the aim of explaining what still clouds a uniform civil code for adoptions while ensuring safeguards protecting children who are adopted in a country which is based on multiculturalism.

Literature Review:

You train on climate fashion laws 1, Controversial satellite developers or as others 2 and more is literally emblazoned with India. Yet, rather than delving into the details of this history, a general reading in scholarship is to suggest that an adoption law was simply untenable until HAMA 1956. There are those who claim that HAMA was a truly pathbreaking statute — not only did it remove the gender bias in the adoption law and make daughters capable of being adopted, but it also enabled women (mainly widows) to adopt legally (this fact alone is elaborated conditionally thoroughly in most literature analysing HAMA). However, a major criticism of HAMA raised in the literature (e.g. Meena and Shruti) is that by ceasing to be some type of group or nonpersonal faith-based law, then the lack of any protection for Hindu

⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, India Code, available at: [India Code – Juvenile Justice Act 2015](#)

⁶ Central Adoption Resource Authority (CARA) Official Website

communities by HAMA meant relegation to only rights under the 1890 Guardians and Wards Act but no parental rights whatsoever.

There has been limited literature that has dealt with adoption in India and primarily addressed the secularisation of law as representative of the Juvenile Justice (Care and Protection of Children) Act. Out of the Literature review which looked to reform Indian law in line with international norms (that is, measurable standards as set by, among others, the UN Convention on the Rights of the Child; Hague Conference; etc.) as well as directly removed several changes made in 2015 so that they coincide with 2021. Recent studies have also documented how the best interest of child-in-care principle and CARINGS providing all these administrative efficiencies through India's institutionalized Central Adoption Resource Authority (CARA)(Sharma(2018),Garg(2023)) coalesce into rising friction to cause us continuous delays in most procedural processes which keeps 1000s of children stuck in vicissitudes of institutional care. There are also a few instances in the literature where advocates for its implementation such as *Shabnam Hashmi v. Union of India* showed efforts made by the judiciary to recommend implementing it in the country. Most authors agree that India made some moves towards a more justice responsive form of governance, but as most writers point out, this is seriously impeded by the existence of parallel religious personal laws.⁷

Historical Evolution of Adoption Laws:

Adoption in India is a long paradigm from lineage-and-sacrament based tradition to modern welfare oriented legal framework. Background to Adoption in India is a very old practice as the Laws of Hinduism suggest and the Dharmashastras which stressed for a male child so that it could perform Pinda Dana (a ceremony performed following death) so that his home would survive. During the period, daughters were considered as a religious duty rather than child protection policy hence daughter adoption was not incorporated into and gender discrimination spread in institutions. The first (and the first non-familial law) was the Guardians and Wards Act, 1890 which never made a parent-kid relationship yet is as yet treated as a legitimate guardianship abandoning many networks without any conventional way to reception.

The 1956 Act is one of the most significant turning points. This law was the Adoption of Children Act, 1956 — a post-Independence enactment that recognised innovative traditions

⁷International *Journal of Scientific & Technology Research*, available at: [IJST Research Paper PDF](#)

customarily by giving lawful enlistment to the selection of female youngsters and by extending qualification to incorporate ladies (and with certain restrictions widows, and single ladies) as potential guardians. This was later supplemented for decades by a more entrenched view of "the best interest of the child," and finally culminated in the Juvenile Justice (Care and Protection of Children) Act. In this regard, the employment of this fact-neutral framework combined with Central Adoption Resource Authority (CARA) conducive to harmonization provided an even footing for procedures and similar adoption laws across religions ultimately subverting the private law jurisprudence crafted as a patriarchal imperative into constructs that are progressively pro-layered systems for child protection and realization of universal rights harmonisation.⁸

The Current Statutory Landscape:

In India, which has followed HAMA based traditional laws on community, the adoption process focuses on a nation-wide secular and juvenile justice act-based system supervised by CARA with computerised innovations adopted from 2017.

But for years there has been an imbalance in supply and demand, with thousands of hopeful parents waiting to adopt, ready to wait and row or more, although the number available for placing legally is just around 2–4 thousand. Administrative bottlenecks and the dual-track legal system have pushed older children and those with special needs down from first-class citizens to second-class. These efforts aim at achieving harmonization of the law, and further streamlining the process of rapid and continuous rehabilitation.

Critical Issues and Legal Challenges:

The adoption saga for India is also complicated by a history of tension between laws based on religion and an attempt to institute a secular uniform code. New Development in Alternative Children part of this dilemma is related with the conflict between Hindu Adaptations and Maintenance Act (HAMA) gave issue a fundamental area treating adoptive youngsters on one hand, and the secular and non-Hindu driven attitude of the new enactment called New Juvenile Justice (JJ) on another. In contrast, HAMA can get a bit relocated and accepted quickly but deprives CARA from certifications & follow up in terms of pre posting adoption measures.

⁸ *Journal of Social Welfare and Family Law*, Taylor & Francis Online, available at: [Taylor & Francis Article](#)

The 'two-track' system means that adoptions carried out via HAMA can effectively be "to no avail" or lack adequate protection for children, so some become susceptible to trafficking or even "re-homed" out of the reach of regulation. The parents also cannot adopt a child because they are hardly guardians—the adoption must happen through a formal legal process under, and governed by the Guardians and Wards Act of 1890, which really only acknowledges that an adoption according to a defined/legal process is recognised as having status in law capable of making them heirs and thus enabling full parental rights.⁹

The tug of war system built on the demand and supply mismatch and administrative delays. This includes an years long legal process to declare any child "adoption ready" (that means legally cleared for adoption) while ward couples are often on a waitlist that stretches multiple years. And the inertia is compounded with many of those children in institutional care are, in fact, not available for adoption as they either have a history which makes them unadoptable or no legal documentation supporting their status. To me, the most unsettling part is how this season of drag can become a mental health problem—kids really don't stand a chance against aging-out of these money-spinners for pre-adolescents and are left as little more than eternal parasites at parent-fest; basically, lifers on the trash-heap. Moreover, many older children with special needs — some of whom are in the existing pool but rarely selected by domestic parents — and their siblings suffer neglect on a grand scale. This is a glaring space that would need an expedient and easy mechanism while maintaining the sanctity of religious doctrines but at the same time balancing them with the more wholesome spirit of child welfare which strives to protect the best interest of a child from administrative impediments and legal fragmentation.

Multi-Dimensional Factors Influencing Adoption:

The current evolution of adoption law is through a combination of both internal and external influences. Your most important motion socially is the move from very primitive religious patriarchy to modern egalitarianism! A son who was then 'religiously beneficial' to perform last rites had prompted a previous adoption but changing societal factors have rendered the adopting of children progressively welfare- or family-oriented. Progressive reforms like the JJ Act and previous legal provisions such as HAMA — both secular — made the adoption of girl children socially and lawfully acceptable, challenging some of the invisibility around single-parent adoptions towards girls. And yet negative attitudes about "illegitimacy"—a fierce

⁹ *International Social Work*, Wiley Online Library, available at: [Wiley Article](#)

disapproval of nonmarital births, preferences for having a "live clear five," and darker skin colors along with numerous other medical ancestry barriers transcending into family statuses—also dampen the ratio.

It establishes an intentionally thorny economic relationship between wealthy would-be adoptive parents and the degraded lives that one might choose to bear a child in order to give them up. And this is why regulation key (to reduce the transfer of infant selling and human trafficking, although the latter exists always conveniently), due to costs of motherly long-term care child requires as well as legal expenses incurred (adoption) external oscillating political grounds, through are UCC debate factor common. So many non-Hindu congregations have to perform tokenism due to the lack of uniformity among religions whereas the Guardians and Wards Act does not grant complete legal parentage in case of a Hindu youth outside a church. Legislative harmonization is slowed down because the enactment of laws and personal laws is such a politically sensitive issue that this political caution also puts the brakes on legislative harmonization.

Similarly, this need was addressed by CARA completely disrupting the adoption landscape with the launch of their Central Adoption Resource Information & Guidance System (C A R - I N G S) in tech space. The whole registration system, local and national has been made more transparent by digitizing it with the children's data fed into a national database reducing local corruption opportunities. But this high-tech solution also brings with it problems — one being access for rural families, and a husbanding of some sort of bureaucratic mechanism to leverage a profiler coded to serve a population that might not know how to convert points from one emotion in children into another. All of these factors also keep the adoption process in India as a dynamic space, constantly navigating between ancient customs and contemporary times, where society has moved far beyond traditional roles, into technology and rights.¹⁰

Government Initiatives and Policy Response:

With a shifting structure that is rooted in religious conviction — personal law — to the humane, operationally pragmatic and administration-based process underpinning adoption, the government and strategy response seems to be well considered. The most distinguished give away for the remedy was HAMA, The Hindu adoptions and maintenance act 1956 which law

¹⁰ *Journal of Social Welfare and Family Law*, Taylor & Francis Online, available at: [Taylor & Francis Article](#)

embraced by Hindus from this enactment then onwards dominated pro-abortion because of exclusion of males in like manner prohibiting a male police quantum prescribed that other than where one adoption female tyke could guarantee a man consolidate. But knowing that HAMA should have been inadequate for non-Hindu communities, the government moved cautiously towards enacting what was eventually to become the Juvenile Justice (Care and Protection of Children) Act. The Act was also further amended in a big way as to what constitutes adoption, thus making it a major policy through 'secular status of Indians where all citizens irrespective of faith shall be entitled to adopt the child' (in 2015 and 2021).

A key feature of this reform is to promote the existing regulator (the Central Adoption Resource Authority or CARA) under Ministry of Women and Child Development. The two most popularly types of adoption that you need to know about are usually as domestic or international adoptions, both administered by CARA – (Central Adoption Resource Authority) is the apex body of all aspects of adoption for countries following Hague Convention on Inter-country Adoption. A fairly recent effort at government planning aimed at his prerogative — streamlining or 'de-judicialisation' of the process — also means withdrawing this from courts and giving it to District Magistrates who would be authorised to hand out order/dockets for adoption and sidestep congestion. The second major tech reform coming was the online platform CARINGS (Child Adoption Resource Information and Guidance System) — also due to an openness that promises protection against corruption. Together, these policy actions move away from the earlier "sitaj-type," "guardian-only" identification under the Guardians and Wards Act (1890), ensuring that each adopted child receives full legal status and protection throughout India.

Judicial Precedents and Comparative Analysis:

Adoption Jurisprudence - Merging of Secular Child-Centric Model in Law with Personal Laws: The wheel was set in motion to establish 'best interest of child' doctrine as sacrosanct through trail-blazing judicial interventions Laxmi Kant Pandey (1984), and Yashwanth Goutham (2018) leading to establishment of Central Adoption Resource Authority ("CARA"). The 2014 Shabnam Hashmi judgment highlighted again that the JJ Act is a non-sectarian path which offers both full legal status to all citizens regardless of religion. That means the country joins the ranks of countries employing a 'dual-track' system – the one mandating Hindu Adoptions and Maintenance Act (HAMA) permitting an adoption which would be valid if celebrated in religious form or recorded by deeds but is only recognised internationally to limited degrees

with comprehensive supervision restricted to compulsory outcomes portal generated under the 2021 amended Juvenile Justice (Care and Protection of Children). Indexed-kids-computerisation :JJ ACT Services toolkit & HAMA adoptive parent list on Eid-mi homes website] digitized List for future adoptions. Even with such legal machinery, all this would be tricky, and from 2023 onwards the trend would be towards "de-judicialization" to expedite matters — while a growing supply-demand chasm gapes between adoptable children and wannabe-parents — like a waiting list. Then, the system is modernized more into institutional authority and renewable rehabilitation por ceny duetble dprivilege divlent on some heirs.

Strategic Solutions and Recommendations:

Considering the aforementioned liabilities of the existing state of adoption jurisprudence in India, a three pronged approach may be adopted to mitigate these problems consisting of legislative harmonization, administrative simplification and social rehabilitation of adoption. Primarily, it has been suggested — UCC implementation or a statutory poise for the Operative Work (JJ Act) in short-term — as a transactional regime. It can help go over the 'legal liminality' that every non-Hindu communities are confronted with where right now, there is just an inappropriate Guardians and Wards Act of 1890 All HAMA adoptions must currently be enrolled on and checked by means of the CARINGS entryway so as to concoct a combo among the two for realizing consistency applying shields for defense and post-reception joint observation actually considering avoided openings in survey arrangements legislation (enabling illicit trafficking).

The administrative measures that need to be taken are the government would have to make a very large scale increase in relation to the number of children recognized as "legally free" for adoption. Who can there be | For larger CWCs much better camp-trained by the law do it with far more speed and ease? This should have been backed by a stringent timeline to disallow return of administrative bottlenecks like how neighbourhoods has done in relation to powers again assigned to District Magistrates. This supply-demand mismatch sends the country into dependence on Steven Seagal incentives for "Special Needs Adoption" which could be described to operate in possibly government-reimbursement based medical insurance or individually tailored counselling services associated with families which may have an interest concerning adopting older children and special needs children.

From a technological perspective, CARINGS improves greatly but should now focus on becoming an intuitive and user friendly platform with status updates on when prospective adoptive parents are in the queue so they can have live insight into where the wait begins to become psychologically taxing. The other pillar to broaden the usefulness of children legally becoming fit through a national highlight-out is Rolling out "Cradle Baby Scheme" guidance for nearby police and clinics. Third, and of course last but not least — post adoption support needs to be mandatory — placements need stabilization so the state should require periodic follow-up and access to adoption-competent MH services wherever warm hands are needed. Thus, only by shifting from a legalistic formalism to a broader approach focused on the well-being of children will it possible for India truly to guarantee compliance with the "best interest of the child" standard in (high-conflict) custody disputes.¹¹

Future Prospects and Expected Developments:

The jurisprudence on Adoption in India looks to be at the final stage of shaping a uniform civil and techno savvy regime for prospective adoption that is overriding conflicting personal laws. Probably the biggest change is moving from "unofficial" adoptions under HAMA to a national registry for these types of cases. The state would be obliged to run all adoption, even conduct some through private religious acts must go through CARA due this increase in judicial activism. The integration is also to ensure that adopted children through personal laws do not get hearings of a lesser standard and legal standing vis a vis those adopted out under the Juvenile Justice Act. Moreover, Clause 6 intends to afford considerable political and judicial pressure also transposing coverage beneath umbrella adoption legislation that will let even Muslims, Christians and Parsis (who're presently only Guardians) not just Custody but complete Parental fame on par with the other residents of India.

This, along with technology and procedural evolution will be front and center in the coming decade. In similar vain, adoption laws – recently decentralised from courts to District Magistrates — would be simplified again with deadlines for the prospective parents (the current mandatory 3-5 year wait is simply unacceptable). Future Predictions predicts a narrow increase in "open adoptions" -- the shrewdest cold law accepts that some contact with biological identity is preferable to total secrecy (the status quo). Socially, future policy might well be better pitched at children falling into the "hard to place" category: The financial and medical-subsidy

¹¹ *International Journal of Scientific & Technology Research*, available at: [IJST Research Paper PDF](#)

provision provided today is not sufficient inducement for families to adopt an older child (so-called) with special needs. For now they are trapped in institutions. Ultimately, future improvements could include mandated post-adoption therapy as the legal standard with increasing recognition from our mental health community over time of the three-part adoption triad and related complexities, leading to greater institutionalization of "adoption-competent" therapy. The permanence, publicity and buck-stopping legal irrebuttability of the entry of each child into a family will ultimately turn (as somewhere short of between the two extremes) on distinguishing formal administrative/microform efficiency from an ineluctably humanitarian—rights/protective rather than "efficiency" based character to all Indian adoption jurisprudence.

Conclusion:

In Indian adoption law writing there are hints of the prevalent ideas about a clean break from centuries old and tiresome religious mandates to embrace a new age of welfare and the wellbeing of children. So what we have as the Hindu method of adoption found in the Dharmashastras was, largely a device, a salvation mechanism to ensure that one had at least a son to perform funeral rites (Bajpai 2018; Bhargava 2005) One of the early milestone enactments in modernization of these practices in academia was the Hindu Adoptions and Maintenance Act (HAMA) 1956. Much has been written on HAMA and its landmark in getting rid of certain circumstances which prevented women from inheriting (Hindu daughters were not given property rights), establishing how they could come into possession of means through a method such as adoption & also enabling women to adopt (even lone widows). Certain criticisms are also associated with HAMA, since in the literature, it is claimed that HAMA continued to be a personal law and that those communities who were not Hindu had no choice but to look towards the 1890 Guardians and Wards Act which granted guardianship only and not parental rights (Meena & Shruti).¹²

The recent literature has rightly tended to treat changeable aspects of secularisation during the adoption process as an objective context, especially when seen through the lens of on the Juvenile Justice (Care and Protection of Children) Act. The literature reviewed is on 2015 and 2021 amendments, regarding whether they comply with the global frameworks like UN Convention on Rights of Child, Hague Convention vis-à-vis Indian law. Sharma (2018) and Garg (2023), who studied the role of CARA in implementing "the best interest of the child" paradigm. It illustrates the ongoing neglect of this research area with effectively describes a

¹² Google Scholar search results on "Adoption in India", available at: [Google Scholar Search](#)

tension between the administrative efficiencies afforded by new CARINGS digital portal, juxtaposed to children continuing to experience fragmented care whilst legal processes unfold. And there are such illustrative examples —like *Shabnam Hashmi v. Union of India* — which provide that—the judiciary wants a Uniform Civil Code to be enforced as it always cited in the literature [7,8]. Mapping the Indifferent Society —The literature indicates that while India is well on her way to generating a more egalitarian and a more transparent system, but the place of religions personal laws and composite culture will continue to be studied and renewed.¹³

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¹³ *Journal of Social Welfare and Family Law*, Taylor & Francis Online, available at: [Taylor & Francis Article](#)

