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From Sacramental Rites to Secular Rights: Analyzing the Statutory Friction in India's Adoption Laws

Krishna Manoj

Not flesh of my flesh, nor bone of my bone, But still miraculously my own." When the Supreme Court of India opened its landmark judgment in *Hamsaanandini Nanduri v. Union of India* (2026) with these moving words, it was not merely waxing poetic; it was fundamentally redefining the contours of motherhood and family integration in the modern era¹. In this sensational case, an adoptive mother challenged discriminatory social security frameworks that restricted maternity benefits only to women adopting infants under three months old. Striking down this age barrier as unconstitutional under Article 14², the Supreme Court delivered a profound proclamation: the legal, psychological, and emotional architecture of parenthood is not an exclusive by product of biology.

While this ruling marked a historic triumph for adaptive families, it simultaneously illuminated a deeper, systemic paradox within the Indian legal system. On one hand, higher judiciary benches actively expand the constitutional right to adopt as a facet of reproductive and decisional autonomy under Article 21³. On the other hand, the ground reality of adoption in India remains trapped in a bureaucratic labyrinth. Prospective parents face grueling multi-year waiting lists, conflicting religious personal laws, and ongoing institutional delays under the Central Adoption Resource Authority (CARA). This article critically examines the evolution of Indian adoption laws from a fragmented, faith-based system into a secular, uniform paradigm, analyzing the legislative friction that continues to stand between thousands of orphaned children and their legally recognized families.

¹ *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246 (India)

² INDIA CONST. art. 14.

³ INDIA CONST. art. 21.

Historically, the legal architecture governing adoption in India was not a singular, uniform mechanism, but rather a fragmented reflection of religious personal laws. For decades, the only codification providing a definitive, legally binding parental status to an adopted child was the Hindu Adoptions and Maintenance Act (HAMA), 1956⁴. Rooted deeply in sacramental traditions, HAMA applies strictly to Hindus, Buddhists, Jains, and Sikhs, emphasizing religious rituals like Datta Homam to signify the absolute transfer of a child from their biological family to an adoptive one. Conversely, non-Hindu communities—including Muslims, Christians, Parsis, and Jews—were entirely excluded from this framework, as their respective personal laws do not structurally recognize the concept of full, irrevocable adoption. Consequently, these communities were forced to look toward the restrictive provisions of the Guardians and Wards Act (GWA), 1890⁵. The GWA, however, merely establishes a temporary guardian-ward relationship that legally dissolves when the minor reaches eighteen years of age, entirely failing to confer biological parity, inheritance rights, or a permanent familial name. This stark legislative dichotomy created an inequitable environment where a child's right to a permanent family was explicitly dependent on religious identity, underscoring the urgent civil necessity for a comprehensive, faith-neutral adoption framework. The stark inequities of the personal law regime eventually catalyzed a monumental paradigm shift with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015⁶. Overriding the religious boundaries of the past, the Juvenile Justice Act established a uniform, secular pathway, declaring that any prospective adoptive parent, irrespective of their religious affiliation, could legally adopt a child. The statutory backbone of this modern, secular mechanism is the Central Adoption Resource Authority (CARA), which acts as the centralized nodal body monitoring and regulating all in-country and inter-country adoptions. By channeling all applications through a mandatory online portal, the CARA framework was designed to eliminate underground baby-selling rings and prioritize the supreme doctrine of "child welfare." Under this unified regime, the Supreme Court of India officially recognized that the right to adopt is a secular right, which cannot be withered away by religious personal laws⁷. However, this transition from a traditional, decentralized practice to a highly bureaucratized system has introduced significant institutional friction. In an effort to expedite the notoriously sluggish process, the legislature introduced the Juvenile Justice (Care and Protection of Children)

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

⁵ The Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 56, No. 2, Acts of Parliament, 2016 (India).

⁷ *Shabnam Hashmi v. Union of India*, (2014) 4 S.C.C. 1 (India).

Amendment Act, 2021, which took effect in late 2022⁸. This amendment controversially shifted the authority to issue final adoption orders away from the judiciary and placed it directly into the hands of District Magistrates (DMs). While the legislative intent was to cut through judicial backlogs, the ground reality has sparked intense debate. Critics and legal scholars argue that DMs are often overburdened with administrative and law-and-order duties, leading to unforeseen procedural logjams rather than the swift resolutions intended. This statutory evolution has effectively replaced judicial delays with administrative bottlenecks, forcing vulnerable children to languish in specialized adoption agencies for years before their legal status is finalized.

The coexistence of a traditional personal law framework and a modern secular statute has given rise to a profound jurisdictional tug-of-war within the Indian legal system. The primary point of friction lies between the independent operation of the Hindu Adoptions and Maintenance Act (HAMA), 1956, and the strict regulatory mandate of the Juvenile Justice (Care and Protection of Children) Act, 2015. Under HAMA, an adoption is legally complete the moment a valid Datta Homam ceremony occurs or a registered adoption deed is executed between the biological and adoptive parents.⁹ No external state permission is required. Conversely, the Juvenile Justice Act and CARA guidelines stipulate that no adoption can be legally recognized unless it moves through the centralized, state-monitored portal. This structural divergence has created a legal minefield, where an adoption perfectly valid under Hindu personal law is routinely treated as a legal nullity by passport offices, immigration authorities, and schools demanding a formal CARA registration certificate.

The higher judiciary has repeatedly been called upon to resolve this statutory gridlock, resulting in conflicting legal jurisprudence. In landmark deliberations, various High Courts have struggled to answer whether the secular Juvenile Justice Act completely eclipses HAMA. For instance, the High Courts have observed that CARA cannot mechanically invalidate an adoption deed executed cleanly under HAMA, provided the adoption involves a direct, relative-to-relative placement without any element of child trafficking. However, the administrative machinery frequently ignores these judicial nuances, insisting on uniform CARA compliance. This systemic dissonance creates immense hardship for adoptive families. Prospective adoptive parents find themselves trapped in a paradox: they are legally recognized

⁸ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, No. 23, Acts of Parliament, 2021 (India).

⁹ The Hindu Adoptions and Maintenance Act, 1956, § 16, No. 78, Acts of Parliament, 1956 (India).

as parents under personal law, yet functionally denied parental rights by a rigid administrative state that views any non-CARA adoption with suspicion. To truly safeguard the best interests of the child, the legislature must urgently clarify this boundary, explicitly harmonizing the traditional liberties of HAMA with the essential protective safeguards of the secular regime.

The evolution of adoption jurisprudence in India reflects a continuous, delicate struggle to balance traditional personal freedoms with the imperative of a modern, child-centric welfare state. As illustrated by the Supreme Court's progressive stance in *Hamsaanandini Nanduri* (2026), the higher judiciary is increasingly willing to look past rigid biological definitions to protect the emotional realities of adoptive families. However, as long as the sharp statutory conflicts between the Hindu Adoptions and Maintenance Act (HAMA) and the secular Juvenile Justice framework persist, true legislative equity cannot be realized. The current legal architecture unfortunately forces prospective parents to navigate a deep structural paradox. They must choose between a personal law system that lacks uniform administrative recognition and a secular system that is heavily burdened by bureaucratic delays, institutional friction, and recent administrative bottlenecks.

To resolve these systemic inefficiencies and protect vulnerable children, a multi-tiered legislative and administrative reform is urgently required. First, the legislature must introduce a clarifying amendment to explicitly reconcile HAMA and the Juvenile Justice Act, establishing a simplified, fast-track registration window within CARA specifically for inter-family and direct adoptions executed validly under personal laws. This would ensure these families receive full state validation without being forced into the main, multi-year waiting pool. Furthermore, the 2021 amendment assigning adoption order authority to District Magistrates must be reviewed; dedicated fast-track adoption tribunals or specialized family court cells should be empowered to handle these orders to prevent child welfare from being sidelined by an overburdened civil bureaucracy. Finally, CARA guidelines must adapt to contemporary social realities by expanding structural protections and clear pathways for single parents, unmarried partners, and queer couples, ensuring that a supportive environment remains the primary benchmark for a child's best interest. Ultimately, by bridging the gap between progressive judicial intent and ground-level administrative reality, India can build a truly seamless, secular, and compassionate legal ecosystem that honors the profound truth that a family is built on care, commitment, and love.

