

**CHILD ADOPTION IN INDIA: A COMPARATIVE STUDY UNDER HINDU
ADOPTION AND MAINTENANCE ACT 1956 (HAMA) AND THE JUVENILE JUSTICE
(CARE AND PROTECTION OF CHILDREN) ACT 2015**

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ABSTRACT

There are various religions in India but there is no particular adoption law governing the adoption of all religions. Adoption of child in India was the domain of personal laws under which Hindus were able to adopt under the customary under the Hindu Adoptions and Maintenance Act 1956 (HAMA). While Muslims, Christians, Jews and Parsis do not have their own Personal law governing adoption because of which they cannot adopt a child and give him/her his family name. They can only become the guardian of the child under Guardians and Wards Act, 1890. Hindus, Sikhs, Buddhists, and Jains follow Hindu Adoption and Maintenance Act, 1956. The Government of India have taken steps to make a uniform law for adoption and enacted the Juvenile Justice (Care and Protection of Children) Act in 2000. This law was religion-agnostic and applied to both Hindus and non-Hindus; for Hindus, it existed in parallel to the HAMA. It has since been replaced by the Juvenile Justice (Care and Protection of Children) Act 2015, read with allied rules and regulations such as the Adoption Regulations 2017 (the JJ Act). This This paper focuses majorly on the adoption of child under various religions and also look into the major distinction in relation to adoption of children under HAMA and JJ Act 2015. This paper also analyses whether these two parallel Acts are sufficient to cater the need of Child who could be adopted and parents who are willing to adopt or there is a need of Special Uniform Law for exclusively for adoption of Children.

Keywords: Uniform Law, Adoption, Hindu, Religion, Guardian, Personal Law.

I. INTRODUCTION

Adoption means a process of creating a parent-child relationship between parents and child or legal transfer of child to adopting parents. Adoption is considered as a good way to give a good life to those children who do not have parents or the ones whose parent abandon them for some reason (Fundamental Right to Adopt, 2022). Adoption is also a way of the adopting couples to have a better and happy life. But since Adoption falls within the scope of Personal laws, the Indian scenario is unlikely to have a scope for a uniform law among the different communities. Therefore, the different religions have their own personal law related to adoption. The practice of adoption is present in India since Ramayana and Mahabharata times. Although, the purpose for which adoption is done changes with the change in culture, traditions, and other practices. This often ranges from the humane motive of caring for and raising an abandoned or impoverished child, to affection toward children, and to have a child who can take care of their guardian in old age and can perform the last ritual rites after their death (B.M. Gandhi, 2021).

In 1915, privacy council in landmark case held that under Hindu law, the purpose of Adoption is not only to carry forward the name of the father, but also it is a mean through which various religious and cultural rights and practice can be done in which the involvement of a son is mandatory (Bal Gangadhar Tilak v. Shrinivas Pandit, 1915). However, adoption is not allowed under the Muslim, Parsis, Jews and Christian's law in India. So, the adoption is done through the Guardians and Wards Act, 1890 in these communities. Under the Hindu adoption and Maintenance act, 1956 (HAMA), Indian citizens who are Hindu, Sikhs, Buddhist, and Jains, are allowed to adopt a child. This act brought new reforms that liberalize the institution of adoption (The HAMA, 1956).

II. KINDS OF ADOPTION

Adoption is a legal way to get a child from an adoption agency and to raise the kid as your own by taking on all that child's responsibilities. Different types of adoptions are accessible in India based on their impact on adoptive parents and mother birth. The different types of adoption available are as follows:

1. Open Adoption

It involves open contact between both the parties. The birth mother or parents may stay in touch through letters, e-mails, phone calls and may even visit each other and the birth mother can meet the child⁹. This type of implementation includes drawing up a plan that can meet the expectations and needs of everybody. Access is generally given when the adopted child (in most nations) reaches the age of 18. The birth mom can also meet potential relatives and decide which pair to go to (Akshita Prasad, 2019).

2. Semi-Open Adoption

A semi-open adoption resembles an open adoption, except that after adoption the birth giver has no physical contact with the kid. Prior to the adoption, the mother is permitted to meet the adoptive parents. After the child is placed with them, she may continue to receive letters and photographs of the child, either directly or through the adoption agency she registered with¹⁰. This may be for

a couple of years or until adulthood reaches the kid. A semi-open adoption can develop into an open or closed form of adoption at any stage.

3. Closed Adoption

A closed adoption is one where no birth family or adoptive family data is shared between the two and there is no family contact. As the adoptive family, you will receive non-identifying information about the child and birth family before he or she joins your family. After your adoption is finalized, the records are sealed. Depending on local law and what paperwork was signed and filed when the adoption was finalized, these records may or may not be available to the adopted child when they reach 18.

4. Domestic Adoption

Domestic adoption relates to adoption involving a mother and parents of adoption who are citizens of the same nation. It can also be called intra-country adoption of this sort of adoption. In this process, a couple wishing to adopt a child will register themselves with a government recognized agency. After registration, their personal details will be checked, and the investigating officer will certify if they are eligible to adopt a child.

5. International Adoption

This is the process of adopting a child outside of the India. It is mostly done through private lawyers, or an international adoption agency. Only 88 countries in the world allow international adoption. These countries include 6 countries in Africa, 20 in Asia, 32 in Europe, and 30 in Latin America. The age range would be from infants to teens. The approximate cost averages between 5 lakh Indian Rupees to 21 lakh Indian Rupees. It depends on the agency country to decide who can adopt. It may take six months to several years to actually receive a child depending on the age.

III. RIGHT TO ADOPT CHILD A FUNDAMENTAL RIGHT

In the matter of adoption, a landmark case which brought into the judicial sphere the question of adoption as a fundamental right. In this case, the petitioners already had a daughter and they assumed the guardianship of another surrendered baby girl of five months. The girl remained with them for 4 years after which the couple formally applied to adopt the child. The High Court of Bombay observed that adoption is a basic facet of right to life under Art. 21 of the Indian Constitution. The Court held that the right to life is asserted parents and individuals, men and women seek to adopt to give meaning and fulfilment to their lives. Also, the right to life also protected the interests of children who are in need of special care and protection. Therefore, the court held that the embargo on adoption of same sex children by the HAMA would have to give way to statutory provisions in the J. J. Act that allowed the parents to adopt a child irrespective of the number and sex of their biological children (*Payal Sharinee v. Vinayak Patha*, 2010).

The Court held an adoption through the church valid even in the absence of any customary law (*Philips Alfred Marvin v. V. J. Gonsalves*, 1999).

In all these cases, we see that the Court took the role of judicial activism and safeguarded the right of adoption as an inherent right implied in the right to life under Art. 21 of the Indian Constitution. However, this stance changed with the recent decision in the case of (*Shabnam Hashmi v. Union of India and Ors*, 2014). In the instance case, the question came up regarding the right of Muslim's to adopt. The Court took a liberal view and awarded adoptive right to Muslims under the J. J. Act. It upheld the status of J. J. Act as a secular law of adoption in India and granted the right to adoption across all religious communities in India, irrespective of what their personal laws said. However, the Court rejected the stance that the right to adoption was a right envisaged under the right to life of Art. 21. The court stressed that it is for Parliament to meet the constitutional obligations of Article 44, that it is for future generations to craft a UCC once there is "a dissipation of conflicting thought processes prevailing in the country".

The Supreme Court tried to discharge the matter in this case by taking recourse to Art. 44 and the controversy behind a Uniform Civil Court. This decision came as a major blow against the right of adoptive parents and children eligible to be adopted alike.

However fair it maybe to grant the right of adoption the status of a fundamental right, we are unable to do so due to the Supreme Court's decision in the *Shabnam Hashmi case*. The decision brought about a need to revise our adoption laws so that the joy of parenthood can be enjoyed by everyone. Every child in India should have the right to family and often the child adopted is too young at the time of adoption and does not know about biological parents.

Thus, in conclusion we can say, since the Supreme Court has expressly mentioned, the right to adopt is not a fundamental right in India. However, it strongly needs to be so since it would provide a respite to childless couples and parentless children. A nurturing home is essential for a child to grow into a healthy human being, mentally and psychologically. It becomes the responsibility of the Courts to make sure to adopt and to be adopted is a fundamental right for both children and parents so that countless orphans and childless parents get some form of respite. However, there must also be suitable and strict guidelines, rules, and regulations to ensure that such an absolute right is not being misused as recent cases have shown us that many a times, adopted children are trafficked, sold, or used for scientific experiments or for child pornography. A strong vigilance system should be put in place to monitor the adopted child as well carefully and consciously.

IV. DIFFERENCES BETWEEN HAMA AND JJ ACT IN REGARD TO ADOPTION OF CHILDREN IN INDIA

Currently, there are two distinct and parallel legal systems for adoption in India under the HAMA and the JJ Act. The two key differences between these laws are: The JJ Act is a secular legislation that legalises and facilitates adoptions for people of all religions (including Hindus), whereas the HAMA applies only to Hindus. The JJ Act provides for adoptions under the supervision of governmental agencies, whereas under the HAMA, Hindu parents can directly adopt a Hindu child without the intervention of a governmental agency (subject to certain conditions set out in the HAMA). This article discusses who can adopt a child under both these legal systems.

1. As to Capacity to adopt a child in India

i. Married couples who have no child

Under the HAMA, when adopting a child of the opposite sex, there must be an age gap of a minimum of 21 years between the adoptive parent and the adopted child. Apart from this, there are no conditions set out for adoption by married couples under the HAMA. Under the JJ Act, married couples are eligible to adopt if they have been in a stable marital relationship for at least two years (Radhika Gaggar, 2021). Further, the following age-related restrictions should be borne in mind: the age of the child that can be adopted will depend on the composite age of both the prospective adoptive parents (PAP). For instance, a child that is younger than four years can be adopted only by a PAP couple whose composite age is below 90. There must be a minimum age gap of 25 years between the child and each PAP. Such age-related restrictions are not applicable to adoptions by relatives or step-parents.

ii. Married couples who have a child

Under the HAMA, a married couple can adopt a son only when they have no other son, son's son, or son's son's son and can adopt a daughter only if they do not have a daughter or a son's daughter living at the time of adoption. The references to "son" and "daughter" include both biological and previously adopted sons or daughters, respectively. There is no such restriction under the JJ Act. However, couples with three or more children will not be considered for adoption except in cases of children with special needs, children who are hard to place (i.e. children without any referrals for a long time) or where the adoption is made by a relative or step-parent.

2. As to Married person, without consent of their spouse

Under both the HAMA and the JJ Act, a married person, whether male or female, can adopt only with the consent of their spouse. This may be a practical hurdle where spouses are separated as their partner will still have to consent to the adoption.

3. As to Unmarried (single or divorced) person

The HAMA permits both unmarried men and women to adopt if they are adults and of sound mind. As noted above for married couples, when a Hindu adopts a child of the opposite sex, there must be an age gap of 21 years or more between the adoptive parent and the adopted child. An unmarried person can also adopt under the JJ Act. However, while an unmarried female can adopt a child of any gender, an unmarried male is not permitted to adopt a girl. The age of the child that can be adopted will depend on the age of the PAP; As noted above in the case of married couples, there must be a minimum age gap of 25 years between the child and the PAP. A single parent above the age of 55 cannot adopt. Such age-related restrictions are not applicable to adoptions by relatives or step-parents. If an unmarried person already has a child, the aforementioned restrictions on adoption of a child by a married couple are applicable.

4. As to Queer Couples

The HAMA does not expressly provide for adoption by same-sex couples. Under the JJ Act, a child cannot be adopted unless the couple has been in a stable marital relationship for at least two

years. Since same-sex marriages are not yet legal in India, same-sex couples are currently ineligible to adopt a child as a couple. However, any one of the partners may consider adopting a child individually and the partners may raise the child together.

5. As to Couples in live-in relationships

As in the case of same-sex couples, heterosexual couples in a live-in relationship are not expressly permitted to adopt together under the HAMA or the JJ Act. In 2018, the Central Adoption Resource Authority issued a circular to foreign adoption agencies that facilitate adoptions from India. The circular denied single persons in live-in relationships the right to adopt, stating that such individuals cannot be considered as part of a stable family. This circular was subsequently withdrawn. Irrespective of the withdrawn circular, the position under the JJ Act remains clear that a couple cannot adopt a child unless they have been in a stable marital relationship for at least two years, thereby implying that persons in live-in relationships cannot adopt as a couple. However, any one of the partners may consider adopting a child individually and the partners may raise the child together.

6. As to Step-parents

The JJ Act expressly permits step-parents to adopt a child of their spouse from an earlier marriage if such child is surrendered by the biological parent(s). The HAMA does not contain similar provisions for adoption by step-parents, but such adoptions are not prohibited.

7. As to Relatives

The procedure for adoption by a relative under the JJ Act is more liberal than that for adoption by a non-relative. Certain preconditions of age gaps and child limits are not applicable for PAPs who are relatives. The relatives recognised for this purpose are the child's paternal or maternal uncle or aunt and the child's paternal or maternal grandparent. The HAMA does not contain similar provisions for adoption by relatives, but such adoptions are not prohibited.

8. As to Adoption of two Child of same gender- Harmonious construction between HAMA and JJ Act

In (Re: Adoption of Payal Sharinee Vinay Pathak and Sonika Pathak, 2010), If couple who already have a biological kid can adopt a child who is of the same gender as their existing child was the question before the Bombay High Court. When adopting a harmonic interpretation between the JJ Act and the HAMA, the court determined that the JJ Act would take precedence over general legislation since it specifies special procedures for the adoption of a small category of people, abandoned, relinquished, or orphaned children (i.e., HAMA). In light of the fact that the JJ Act does not restrict parents' capacity to adopt a kid of the same gender as their current child, the court concluded that a couple may adopt a child of the same gender as their existing child. The act is an exclusive and specific authority which is resorted in cases of orphaned or surrendered children. Also, the as per sec 56(4), all the inter country adoptions are governed and regulated by this piece of legislation (Yash Arjariya, 2022).

9. As to Scope of Adoption

From a reading of Section 1(4) of the JJ Act, 2015, it is clear that the Act provides for the adoption of children in need of care and protection and children in conflict with law and lays down various standards and conditions under which their welfare, including adoption, is regulated. Insofar as direct adoptions are concerned, direct adoptions from the biological parents of the child are permitted under Section 56(2) of the JJ Act, 2015. In (Rajwinder Kaur & Anr vs. Central Adoption Resource Agency, 2019), According to the Delhi High Court, if a child is adopted in accordance with HAMA rules, it is not necessary to use the rules of the JJ Act, 2015 to ensure that the adoption is legal. Without assistance from anybody else, without acknowledgement from CARA or any governmental authority, an adoption carried out in accordance with the conditions outlined in HAMA would be significant. In this way, the JJ Act of 2015 and CARA Guidelines of 2017 would not be relevant in relation to adoptions under HAMA, whether domestic or international, direct, or indirect. In any event, this does not mean that Hindus governed by HAMA are ineligible to pursue adoptions under the JJ Act of 2015. Even persons regulated by HAMA have the option of enrolling a child in adoption under the JJ Act, 2015, according to enabling provision Section 56 (2).

The Supreme Court in (Smt. Anokha v. The State of Rajasthan & Ors, 2003) has held that for inter-country direct adoptions, the JJ Act, 2015 would not be applicable as the children are not orphans, abandoned or surrendered children. Further, in (Sivarama K. & Ors. v. State of Kerala & Ors, 2020), Kerala High Court held that if the child was not an orphan, abandoned or surrendered child, the JJ Act, 2015 would have no applicability.

V. DIFFERENCE BETWEEN HINDU ADOPTION AND MAINTENANCE ACT, 1956 AND GUARDIANS AND WARDS ACT, 1890

There is no general law of adoption in India to people belonging to different religions. In India only law related to adoption is governed through The Hindu Adoption and Maintenance Act, 1956, which provides to Hindus to adopt a child legally. In India only Hindus can adopt a child legally and people belonging to other religions who are desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardians and Wards Act, 1890.

The GAWA is applicable to Christians, Muslims, Parsis, and Jews because their personal law do not recognise complete adoption. Under the GAWA, the relationship which is established after adoption is only of guardian and ward respectively. Adoption under GAWA does not confer status of the child on the adopted child, it is different from the HAMA.

The HAMA is applicable to Hindus, Jain, Buddhists, and Sikhs. Under this act, the adoption is irrevocable and it gives full status to the child as natural child born to the family, it also gives the right to inherit the property. Only restriction in HAMA is that parents cannot adopt a child of a particular sex, if they already have or adoption of child of the same sex. Under the GAWA, when children turn 21 years of age, they no longer remain wards and assume individual identities. They do not have an automatic right of inheritance. Adoptive parents have to leave whatever they wish to bequeath to their children through a will, which can be contested by any 'blood' related child.

The aforesaid enactments remain silent about the orphan, abandoned, and surrendered children. There was no codified legislation dealing with the adoption of the children of these categories. As a result, several misconceptions or irregularities appeared in respect of the custody, guardianship, or adoption of these types of children, which were prejudicial to the interest of the children.

VI. CHILD ADOPTION UNDER VARIOUS RELIGIONS IN INDIA

Although there is no general law of adoption in India, yet it is permitted by a statute amongst Hindus. Since adoption is legal affiliation of a child so it forms the subject matter of personal law. Muslims, Christians and Parsis have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. In case the court has given permission for the child to be taken out of the country, adoption according to a foreign law, i.e., law applicable to guardian takes place outside the country.

1. ADOPTION UNDER HINDU LAW

The Shastric Hindu Law looked at adoption more as a sacramental than secular act. Some judges think that the object of adoption is twofold: 1) to secure one's performance of one's funeral rites and 2) to preserve the continuance of one's lineage. Hindus believed that one who died without having a son would go to hell and it was only a son who could save the father from going to Poota. This was one of the reasons to beget a son. Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956 (Niraj Meena, 2020). The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act and include any person, who is a Hindu by religion, including a Buddhists, Jain, and Sikhs and to any other person who is not a Muslim, Christian, Parsi or Jew by religion. It also includes any legitimate or illegitimate child who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jain, or Sikh. Prior to this Act only a male could be adopted, but the Act makes a provision that a female may also be adopted. This Act extends to the whole of India except the state of Jammu and Kashmir.

This example of adoption occurred among Hindus: In This case of adoption included Hindus; the deceased left a widow in this instance. At the precise moment of his demise, the widow of the deceased had given some of her grandfather's estate's holdings to the granddaughter niece and had rented out an assortment of other homes. The respondent filed a suit alleging claimed the borrowing arrangement and the passing on of possessions were illegal given that the one who applied served as the deceased's greatest relative. The surviving spouse had a child while the law suit was underway, therefore the legal proceeding were rejected (Sawan Ram V. Kalawanti, 1967). When the surviving spouse died away, the party in controversy filed again an appeal for a portion of the bequest, saying the deceased widow's parenting was fraudulent and that government authorities had not granted it the rights to possess the asset. The tribunal decided that a Hindu woman's admission would entitle her and her recently deceased husband to citizenship within their deceased husband's family. He would get benefits if he transferred the wife's son because became a privileged neighbours in the family since when a child is adopted, he or she forfeits the rights of

their original members' rights and liberties, and those privileges should ultimately be replaced with powers equal to the ones of his or her adopt group (Sheetal Dattaram, 2023).

In (*Shrinivas krishnarao kango v. Narayan deviji kango*, 1954) the adopted child filed a petition for the share in the property of his joint undivided property. It was argued that if the child is adopted, he can only claim ancestral property not self-acquired property. In this case the court ordered that where the child was adopted, the effect of adoption is that it creates legal fiction and the child becomes the natural heir. So, the child has full right in the property of his family in which he was adopted but the only effect is that he has the eligible share in the property of his adoptive father only not in someone else's property (Manvi Garg, 2020).

2. ADOPTION UNDER ENGLISH LAW

The English adoption law evolved due to industrial revolution and it was started recognizing during the latter half of the 19th century. English law of adoption is very similar to Hindu law of adoption. Adoption under English law is governed by the Adoption Act 1976, but it is phased out under the Adoption and Children Act 2002. It also recognizes intercountry adoption and ratified by International Convention on adoption. In England adoption results in the adopters and the adopted child assuming the same legal relation as if the child had been born to the adopter within marriage. English courts has been given the responsibility for making adoption. Before the final order for adoption is made, the child is usually placed temporarily with the future adopters by the English Adoption Agencies.

3. ADOPTION UNDER MUSLIM LAW AND PRACTICE

Mohammedan law is of the view that adoption such as is known to Hindu law, creating a relationship of parentage, is unknown to Mohammedan law. They take into account the concept of acknowledgement. The paternity of the child cannot be established by a Muslim if he adopts a child of whom he is not the actual father. According to various authors on Mohammedan law are of the view that adoption amongst Hindu creates a relationship of parentage, which is unknown to Mohammedan law. The Muslim law does not recognise the validity of any mode of filiations where the parentage of the person adopted is known to belong to a person other than the adopting father (Bhartiya, V. P, 1996 & Syed Khalid, 2009). According to authors like Ameer Ali, Wilson and Abdur Rahim are also of the view that adoption is unknown to Mohammedan law. They think that the Holy Quran prohibits adoption but the impression that adoption is not permissible or adoption is not known to Muslim law is totally based on improper application of Shariat law (A.K. Bhandari,2005).

Before the Shariat Act, 1937, adoptions amongst some Muslims were recognised and permissible by customs. But in matters of adoption Muslim personal law does not automatically apply on a person. So, a Muslim never acknowledges another's child as his own and the child is considered to be the direct descendent by legitimate means. If an adoption takes place, then an adopted child retains his or her own biological family name and does not change his or her name

to match that of the adoptive family. In all sense, unlike the Hindu law, adoptive parents are not given the status of the natural parents.

The custom of adoption was prevalent in pre-Islamic Arabia based on a sense of comradeship in arms in some instances. The system of adoption seems to have received some recognition by the adoption of Zaid. Even Mohammad the prophet himself took Zaid, the son of Haris in adoption. The custom of adoption remained prevalent amongst Mohammedans. It is, however, on the basis of a verse in the Quran, it has been held by the various authors that the Prophet himself disapproves adoption. The relevant verse of Quran as contained in S.33. A.4-6 reads as under: "Allah has not made for any man two hearts in his breast: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah Tells (you) the Truth, and He shows the (right) way. Call them by after their fathers: that is just in the sight of Allah. But if ye know not their father's names, (then they are) your brothers in faith, or your friends but there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts: and Allah is Oft-Forgiving, most merciful. The Prophet is closer to the Believers than their own selves, and his wives are their mothers. Blood relations among each other have closer personal ties, in the Book of Allah, than (the Brotherhood of) believers and Muhajirs."

From the above passage of the Quran, it has been asserted that adoption in technical sense is not allowed in Muslim law. It is submitted that a careful reading of this passage will show that it nowhere prohibits adoption. The intention of the Prophet was that if a man called another's son "his son" it might create complication with natural and normal relationship if taken too literally. The idea of the Prophet was to convey that the real son is a real son and adopted son is not a real son. To treat an adopted son, as a real son if one has no real son is not a mistake as what counts is the intention of the heart. Even if according to this verse, the adopted sons are to be called by the name of their father and if their father's name is not known then to call them as mulla or brother, this verse nowhere says that if any adoptions made by a man who has no son of his own, it will be against the dictates of Allah. If you will recognize a man by the name of his natural father it will be more just in the sight of Allah. But if you call him as your son it will not be unjust nor Allah will be displeased. The Prophet has not barred adoption in absolute terms. What is intended is erecting of false relationship to the detriment or loss of true blood relation. The believers should follow him rather than their fathers, mothers or brothers where there is conflict of duty.

As will be discussed later on, the custom of adoption is valid amongst Mohammedans, and Shariat law does not prohibit such custom of adoption. It cannot, therefore, be said that the Holy Quran prohibits adoption. If the above verse is interpreted to mean that the prophet has prohibited adoption, it cannot be assumed that what is prohibited by the Holy Quran can be permissible by custom and usage. The conclusion, therefore, is that the Holy Quran nowhere prohibits adoption.

The Muslim personal law (Shariat) application act, 1937 and its effect on adoption All the Islamic countries have restriction in child adoption. There are countries like Afghanistan,

Bangladesh, Iraq, Israel, and Kuwait who either does not recognise adoption or do not permit the adoption. In Pakistan, adoption is formalised only when a guardian court issues a decree or a guardianship certificate to an individual under the Guardian and Wards Act, 1890 (Naqir Iqbal, 2014). Islam does not recognize adoption. In (Muhammad Allahdad Khan v. Muhammad Ismail, 1988) Mahmood, J., remarked that, “There is nothing in the Mohammedan Law similar to adoption as recognised in Roman and Hindu system. The Mohammedan law does not recognize adoption as a mode of filiation.” In 1972, the Adoption of Children Bill was introduced in the parliament in order to make a uniform law of adoption applicable to all the citizens of India regardless of their religion. However, the Bill was withdrawn by the Government in 1978 and could not be passed.

The objection to the concept of adoption in the Muslims under the Muslim Personal law as made by Muslim Personal law Board was that Muslim Personal law does not allow adoption. Though the ‘Kafala system’ exist for the purpose of welfare of children. As per this system a Muslim cannot adopt a child but he can always become a kafil to the child and he can provide for the maintenance and well-being of the child which includes a financial support to the child even though he is not a biological parent to the child. Despite all that the child will still be considered to be child of biological parents and being Kafil would not amount to adopting a child. The Hon’ble Supreme Court held, that Juvenile Justice Act, 2000 as amended on 2006 is a secular law and applies on all including the Muslim and the act has been enacted for the welfare of children and it enables any person to adopt a child. Thus, a Muslim also even if he is governed by Muslim Personal law can adopt a child. The existence of the Muslim Personal law will not prevent a Muslim to apply JJA. Thus, a Muslim may choose to be governed by Muslim personal law and hence may not adopt a child or he may choose to be governed by the JJA and may therein adopt a child (Shabnam Hashmi vs. Union of India, 2014).

It was also held that as if today the right to adopt or to be adopted is not a fundamental right. The reason is that there are conflicting religious views and practices in the matter and at present the circumstances are not right enough to make it a fundamental right. In (Re: Manuel Theodore Dsouza, 2000 and Philips Alfred Malvin Vs. Y. J. Gonsalvis & Ors, 1999). The Board objects to such a declaration on the grounds already been noticed, namely, that Muslim Personal Law does not recognize adoption though it does not prohibit a childless couple from taking care and protecting a child with material and emotional support. Adoption which is provided under GAWA gives the couple only the right of guardianship, which means that the couple are not the exclusive parents of the child, they are just his/her guardians and the child can go away and end this guardianship after he attains the age of 18. Even the child is not secure after attaining the age of 18 because the child will have weaker inheritance rights as this can be challenged by other children and relatives of the family (S. Aarthi Anand and Prema Chandra, 2002).

The bad part about guardianship is that, legally the child reverts to the guardianship of the state in the unfortunate event of the death of the guardians but in an adoption, the grandparents, uncles and aunts take care, as happens with any other child. India has many religions therefore every religion should be governed by different adoption law, but our legislature are not at all giving importance

to adoption by non-Hindus. Because of failure on part of our legislature Muslims and Christians in India are facing emotional and legal problems. They are uncertain about the child as the member of family. Another bad thing adoption in India is that a Hindu cannot adopt a Muslim child.

The Hon'ble Supreme Court of India saying that it is unlikely that it will be possible to reform the personal laws of the religious minorities, like they have been constantly reformed and changed in the case of Hindu personal law. However, a Muslim may choose to be governed by Muslim personal law and hence may not adopt a child or he may choose to be governed by the JJA and may therein adopt a child. In this instance, a petition was filed by a person claiming to be the married couple's adopted kid and to be entitled to a portion of their assets. The prosecution claimed that since both were Muslims as Muslim law forbade adoption, he was not entitled to a portion of the inheritance. Sponsorship is not legally authorised under Muslim law, the court found, although it may sometimes be allowed where there is a widespread cultural norm that thus provides. Only when rights is not impliedly formed in the property by a practise that is permissible for implementation. It was further stated that in order to establish that he received the property as a gift or provision, a person would need to provide some kind of proof of the creation of his estate interest, such as an accounting or act. Since the person making the claim was residing in the deceased's home, the appeals court had determined that this was a valid abduction in this instance. The court of appeals overruled this conclusion and ruled that there was not no adoption to be found as well as that they were no proof whether the petitioner had received the asset, even after taking into account customary law (Yaqoob Laway V. Gulla, 2005).

4. ADOPTION UNDER CHRISTIAN LAW AND PARSI LAW

Although adoption is not recognised by these areas' individual laws, it is nevertheless possible to adopt through an institution for orphans within these areas with the court's approval in accordance with the laws governing the Guardians as well as the Guardians Act. No adopting legislation applies to a Christian. Since adoption constitutes a child's legal affiliation, it falls within the purview of personal law. Because there are no adoption rules for Christians, they must apply to the legal system under the provisions of the Guardians and Wardens Act of 1890. The country's Commissioner on Women has emphasized the need for uniform adoption laws. According of the stated Act, adoption of children by Christians is only authorized according to foster care. Whenever an adopted child reaches maturity, he is free to sever all connections. Therefore, a child also has no legal claim to an investment.

The personal laws of these communities also do not recognize adoption and here too an adoption can take place from an orphanage by obtaining permission from the court under Guardians and wards act. A Christian has no adoption law. Christians have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. It clearly lays down that father's right is primary and no other person can be appointed unless the father is found unfit. This Act also provides that the court must take into consideration the welfare of the child while appointing a guardian under the Act. There is no specific statute enabling or regulating adoption among Christians in India. In

the absence of a statutory or customary adoption recognized by courts, foster children are not treated in law as children. On death of the foster parents, their estate is distributed among legal heirs of the intestate, to the detriment of foster children. Christians in India can adopt children by resort to section 41 of the Juvenile Justice (Care and Protection of Children) Act 2006 read with the Guidelines and Rules issued by various State Governments. The personal laws of these communities also do not recognize adoption and here too an adoption can take place from an orphanage by obtaining permission from the court under Guardians and wards act. A Christian has no adoption law. In Re: Manuel Theodore D'souza 1999: A Christian couple wanted to adopt a child. But the petitioner being Christians are only entitled to be appointed as a guardian.

The question arose that whether a civilised state committed to the rule of law, governed by a written constitution and signatory to International Conventions on the Rights of a child, could deny to a section of its own citizens the right to adopt a child and to give that child, a home, a name, and nationality.

The court gave the following concluded by stating that the fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. The right to be adopted, therefore is an enforceable civil right which is justiciable in a Civil Court. In the absence of any legislation setting out who can adopt, person or persons who has/have taken a child in guardianship under the Guardians & Wards Act will have the right to petition the courts to adopt the child. Further, as jurisdiction to pass orders on guardianship is in the District Court and/or a High Court having jurisdiction under its Letters Patent, pending legislation, it will be these courts which have the right to give the child in adoption by way of a miscellaneous application in the petition for Guardianship.

Considering that it is the welfare of the child which is paramount the Court before giving the child in adoption must satisfy itself, that it is in the best interest of the child that the person or persons whom guardianship of the child is given is and/or are suitable parent or parents. A period of 2 years must elapse before the Court considers the petition for adoption from the date the Court passes the order of guardianship. Before making an order of adoption the following directions will have to be satisfied. A home study should be available which must contain amongst other information the following: --- (a) The financial status of the adoptive parent or parents and their capacity to look after the needs of the child. (b) The health and the medical Report of the adopted parent/parents. (c) The opinions formed by the interviewer, after interviewing the adoptive parent/parents and the child of possible. (d) Progress Report of the child after having been given in guardianship, including state of health. (e) The cost of preparing the Report shall be borne by the adoptive parent/parents. (f) Before passing final orders on the petition, the views of I.C.S.W. shall be heard. The costs of I.C.S.W. will be borne by the adoptive parent/parents. The adoptive parent/parents will have to deposit a sum of Rs. 500/- initially. Any additional expenses will be reimbursed by the adoptive parent/parents.

The court further observed that as a child can be given in guardianship to person/persons eligible under the Indian Guardianship & Wards Act and as they also have been given the right to adopt, the issue whether a childless couple has a fundamental right to adopt need not be answered, though prima facie it may be possible to arrive at that conclusion. A Guardian/Guardians who have been appointed by courts in the past and whose guardianship continues, can apply for adoption if the period of two years has elapsed, since the date of order of appointment of guardianship. The legal consequences of an order of adoption will be that the personal law of the adoptive parent/parents would be applicable to the child whose right of inheritance will be the same as that of a natural born child. As a consequence of adoption, the adopted parent/parents will have the right to apply and get rectified the Register of Births showing the adopted parent/parents as parents of the adopted child and bearing their name and surname if so desired by the adoptive parents.

VII. CONCLUSION

In a nutshell, it has been determined that there are various laws in India for the adoption of children. The HAMA only deal with adoption of children by the Hindus and adoption of Hindus. While members of other religion and community cannot adopt child but can become guardian of the child as per the Guardians and Wards Act 1890. The Indian government keeping in mind the need of adoption of children by the other religious people enacted the Juvenile Justice Act 2000 which deals with the adoption of children by the any religion or community people but child shall be a child who are orphan, surrendered and abandoned child through the government agency namely CARA. This Juvenile Justice Act has been replaced by the Juvenile Justice (Care and Protection of Children) Act 2015. The attempt of the government was very remarkable but has failed to fulfil the need of childless parents to adopt child and to make their family.

The HAMA and JJ Act 2015 both are at place but these two acts together are not sufficient to fulfil the needs of childless parents. Hence the Uniform Adoption code is required and such Uniform Act should be a Separate Act dealing especially for adoption and provisions of adoption of children under HAMA, GAWA and JJ Act should be removed. Such Separate Adoption Act should be made keeping in mind the needs of childless parents so the right to adopt child as fundamental right can become meaningful. In Shabnam Hashmi vs Union of India case the Apex Court held that adoption should be allowed as a fundamental right as well as on the basis of humanism. The judgment further stated that any person can adopt a child under the JJ (Care and Protection of Children) Act, 2000, irrespective of their religion. Same view was adopted by the Delhi High Court in State vs. Ashabuddin and held that a Muslim person cannot be prohibited from availing the rights of the JJ (Care and Protection of Children) Act just because he is governed under the personal laws of a Muslim.

The Chief Justice Chagla, an eminent Muslim Judge said: “An (Article 44) is a mandatory provision binding on the government. The constitution was enacted for the whole country, it is binding on the whole country, and every section and community must accept its provisions and its directives.” By enacting Uniform civil code, it will also allow other religions of India to adopt a child legally and it will also improve the social life of a childless parents. A child will get proper

care and protection and he will have bright future. It is a very complicated process but if it is enacted then every parentless child will go to school and have a life which he could not even dreamt of. And the gender bias should not be criteria to adopt a child.

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