

# Chapter-05

## CHILD ADOPTION IN INDIA: NEED UNIFORM CIVIL CODE COMPREHENSIVE STUDY

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## **INTRODUCTION:**

The greatest blessing for a parent is to have children. A child completes a family. The best way to experience this joy, it seems, is for a childless parent to adopt a child. Children who have been abandoned or orphaned find happiness through adoption, which is a noble cause. Adoption is not a new concept. We can see from ancient time childless parent adopted child. Not only for childless couples and single parents, but also for homeless children, adoption can be the most romantic choice. It makes it possible for people who are not biologically related to one another to establish a parent-child relationship. In India, the Hindu Adoption and Maintenance Act 1956 is the only personal law that addresses adoption. Adoption is not covered by the personal laws of Muslims, Parsis, or Christians. This Paper discusses additional adoption-related legal provisions as well as any gaps or flaws in those acts, with a particular emphasis on uniform adoption laws. .

### **What is adoption?**

A child is placed with a married couple or a single woman through the legal process of adoption if they agree to raise her as their own child and accept full responsibility for her. A parent-child relationship can be created through adoption between individuals who are not biologically related to one another. Couples without kids have found it simple to get pregnant thanks to this two-way strategy. The basis of a parent-child relationship is established through a legal and social procedure other than birth. A child of one set of guardians can become a child of a different set of guardians or parent through this process.

### **History of adoption in India:**

Hindu mythology states that an only son can be adopted in order to uphold the family line and carry out final rites. The two such brilliant Hindu epics that allude to adoption are Ramayana and Mahabharata. In ancient India, the adoption ceremony (Dattahoma) was the most important witness to the adoption, and it was crucial to invite family members for the ceremony to be recognised. The adopted child retains his right to the property even if a male is born after his adoption, according to Smrtikaras, and the adoptive parent becomes the owner or successor of all inherited property. But with the introduction of numerous laws, the concept of adoption in relation to different personal laws has significantly changed.

### **Adoption Methods:**

In India, adoptions are categorised according to how they affect the birth mother and the adoptive parents.

#### **Open Adoption:**

It entails free exchange of information between the two parties. The biological mother can meet the child, and the birth mother or parents can communicate with one another through letters, emails, phone calls, or in-person meetings. This method of implementation entails developing a strategy that can satisfy everyone's requirements and expectations. Access is typically permitted when the adopted child reaches the age of 18 (in the majority of nations). Additionally, the birth mother can select which pair to visit after meeting potential relatives.

#### **Semi-open Adoption:**

Similar to an open adoption, a semi-open adoption excludes the birth mother from having any direct contact with the adopted child after the adoption. Before the adoption, the mother is permitted to meet the prospective adoptive parents. After the child is given to them, she might still get letters and pictures from them, either directly or via the adoption agency she registered with. This could last a few years or even until the child reaches adulthood. A semi-open adoption can change from semi-open to open or closed at any time during the adoption procedure.

#### **Closed Adoption:**

A closed adoption is one in which neither the adoptive nor birth families are disclosed, and there is no ongoing family contact. You will be given non-identifying information about the child and his or her biological family before the child joins your family. Following the completion of your adoption, the records are sealed. Depending on local laws and the documentation that was signed and filed when the adoption was finalised, the adopted child may or may not have access to these records when they turn 18 years old..

#### **Domestic Adoption:**

Domestic adoptions are those in which the biological mother and the adoptive parents are both residents of the same nation. Adoption of this kind is also referred to as intra-national adoption. A couple that wishes to adopt a child must first register with an agency recognised by the government. Once they register, their personal information

will be examined, and an investigating officer will confirm whether they are eligible to adopt a child.

### **International Adoption:**

This is how you adopt a child from somewhere other than India. Usually, private attorneys or an international adoption agency are used. Only 88 nations around the world allow for international adoption. There are six nations in Africa, twenty in Asia, 32 in Europe, and thirty in Latin America. The kids' ages would range from young children to teenagers.

### **Child Adoption laws in India:**

The following laws, decrees, and decisions govern adoption of children in India:

There is no general adoption law that is applicable to people of all religions in India. The only law in India that regulates adoption is the Hindu Adoption and Maintenance Act, 1956. Hindus are now able to adopt children legally. In India, only Hindus have the legal right to adopt children; anyone from another faith who wants to adopt a child must place the child under "guardianship" in accordance with The Guardians and Wards Act, 1890. Because their personal law does not recognise complete adoption, Christians, Muslims, Parsis, and Jews are subject to the Guardians and Wards Act.

The relationship that is established after adoption is only that of guardian and ward, respectively, according to the Guardians and Wards Act. Unlike the Hindu Adoption and Maintenance Act, adoption under the Guardians and Wards Act does not grant the adopted child the status of a child. Hindus, Jain, Buddhists, and Sikhs are all eligible for the Hindu adoption and maintenance. The adoption is final under this law. Additionally, it grants the child full status as a member of the family and the right to inherit property. Hindu adoption and maintenance are only prohibited if a parent already has a child of the same sex. They are unable to adopt another identical-sex child. Under the Guardians and Wards Act, children who turn 21 are no longer regarded as wards and are given independent identities. They are not automatically entitled to inherit.

Adoptive parents are required to leave everything they own to their kids in a will, which any 'blood' child may contest. None of the aforementioned enactments specifically mention orphaned, abandoned, or surrendered children. The adoption of children from these groups was not subject to any written laws.

The Indian government is working to ensure the welfare and full rights of children.

Chapter III of the Indian Constitution outlines Fundamental Rights.

Article 21 states that "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law," which is one of these rights. Article 21 thus guarantees that every person can live in dignity. The right against child exploitation is provided in Article 24 of the "Fundamental Rights of the Citizens" document.

The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India, according to Article 44 of the Constitution. This objective has not yet been fully attained Constitution.

According to Article 39, the State must focus its policies on giving children a healthy environment and making sure that the facilities are available. Youth are shielded from exploitation, forced labour, and material and moral abandonment by having a sense of freedom and dignity.

### **The Juvenile Justice (Care & Protection of Children) Act 2000:**

All Indian citizens are covered by the Juvenile Justice (Care & Protection of Children) Act 2000. It defines the adoption of two identical children. It grants parental and child status rather than guardian and ward status. Additionally, it grants the adopted child the same rights as a child. Act Concerning Juvenile Justice and Child Protection. It was established to deal with issues involving children who need care and protection, as well as the care, protection, development, and rehabilitation of young people who are in trouble with the law. It is comparable to the Special Marriage Act of 1954, which permits any Indian citizen to marry under its provisions regardless of faith.

It applies to children under the age of 18 and creates a uniform legal framework for justice throughout the nation. Prior to the JJ Act, there was no codified legislation.

### **Adoption among India's various religions:**

Adoption is legal among Hindus even though there is no general regulation regarding it in India. Because adoption involves a child's legal affiliation, it is a matter of personal law. Muslims, Christians, and Parsis are not covered by adoption laws, so they must use the Guardians and Wards Act to file a lawsuit. If the court has given permission for the child to be taken outside of the country, adoption under foreign law – law that applies to guardians – takes place outside the country.

### **Legal gaps regarding adoption:**

Adoption is a lengthy process that requires attention. Second, there are a lot of strict rules and regulations. Domestic adoptions must abide by strict regulations, and adoptive families' eligibility is closely inspected. Last but not least, the adoption is in India. According to the Child Adoption Resource Information and Guidance System (CARINGS), there is only one child available for every 10 adoptive parents in India. innate bias against women Gender discrimination still exists in the real world, despite claims to the contrary made after the Act's passage.

### **Uniform Civil Code Is Needed:**

The historic decision in Mohd. Ahmed Khan v. Shah Bano Begum revealed the critical importance of having a uniform civil code. With the exception of family law, all laws in India are uniform. This needs to be changed, and the same laws must apply to all Indian citizens. There ought to be a single set of guidelines for adoption. Adoption of children is not solely based on religion. As a result of their religious convictions, childless parents are completely denied the right to adopt a child. They are not permitted to identify themselves as the child's adoptive parents. Every effort has been made by personal laws to make adoption and custody as easy as possible. The legislature also introduced the GWA to give people whose personal laws do not include adoption provisions a remedy. No one should be bothered about this. The fact that the current laws have produced results does not make them ineffective, but as time goes on and there are more instances leading to discrepancies, it is necessary to close the gaps and establish uniform laws to guarantee everyone has the same status and the same rights. All religions' personal laws have become outdated and unable to change along with society, so a uniform civil code is necessary.

### **CONCLUSION:**

Adoption is a very noble cause that makes orphaned or abandoned kids happy. This allows us to showcase the human side of civilization. It's a beneficial programme where the child receives the same love, care, and attention as if he or she were a natural born child. It also fills the void in the hearts of parents who yearn for their kids' mischievous laughter to reverberate off the walls of their house. Although there could be a few changes made to make all adoption laws a little more uniform. The current legal framework cannot be deemed ineffective because it produced results, but it is time to fill in the gaps created by the passing of a uniform legal framework in order to guarantee that everyone is treated equally and has access to the same rights. There has been a call for a universal civil code because the personal laws of all religions have

become outdated and cannot change as quickly as society. The most valuable resource in the country is its youth. The nation is accountable for their upbringing and isolation. Kids should grow up to be good citizens who are physically fit, mentally aware, and morally healthy, with the skills and motivation that society requires, so children's programmes should play a significant role in domestic human resource development plans. The objective is to give every child a fair chance to develop because doing so will advance bigger objectives like reducing inequality and promoting social justice.