



The Uniform Civil Code in India: A Deep Dive into Its Application and Transformative Impact on Adoption Law Across Religious Communities

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ABSTRACT

The concept of a Uniform Civil Code (UCC) in India, enshrined in Article 44 of the Constitution, has remained a contentious yet persistent subject in legal and political discourse since independence.¹ Aimed at establishing a common set of laws governing personal matters such as marriage, divorce, inheritance, and adoption for all citizens, the UCC promises to dismantle the existing mosaic of religious personal laws. This research paper undertakes an in-depth study of the potential application of a UCC in India, with a special analytical focus on the transformative changes it could bring to adoption law across Hindu, Muslim, Christian, and Parsi communities. It will explore the historical context, constitutional imperatives, and current legal frameworks governing adoption under various personal laws, juxtaposing them with the proposed uniformity. The paper argues that a UCC, while facing significant implementation challenges, holds the potential to standardize adoption procedures, prioritize child welfare universally, and rectify existing gender and religious disparities, thereby fostering a more equitable and child-centric legal landscape for family formation in India.

1. Introduction: The Enduring Quest for a Uniform Civil Code

India, a nation celebrated for its diversity, operates under a unique legal system where personal matters are largely governed by a patchwork of religious laws. This pluralistic approach, a legacy of colonial rule and post-independence constitutional compromises, stands in contrast to the directive principle enshrined in Article 44 of the Constitution of India, which mandates the State to "endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."² The UCC, if implemented, would replace these diverse personal laws with a single set of secular laws applicable to all citizens, irrespective of their religion.³

The debate surrounding the UCC is multifaceted, touching upon constitutional ideals of equality and secularism, the delicate balance of religious freedom, national integration, and the modernization of social practices.⁴ While proponents argue for its necessity in promoting gender justice and national unity, opponents express concerns about potential infringements on religious autonomy and cultural identity.⁵

This paper focuses specifically on one critical aspect of family law: adoption. Adoption laws in India currently vary significantly across religious communities, leading to disparities in rights and procedures.⁶ This research aims to provide an in-depth analysis of how a UCC might be applied in India and, crucially, what transformative changes it could bring to the current landscape of adoption law for Hindus, Muslims, Christians, and Parsis.

2. Historical Context and Constitutional Mandate of UCC

The idea of a Uniform Civil Code traces its roots to the colonial era, when British judicial reforms observed the complexities arising from diverse personal laws.⁷ The Lex Loci Report of 1840, for instance, stressed the need for uniform laws in areas like crimes and evidence but recommended keeping personal laws outside this ambit.⁸ Post-independence, the framers of the Indian Constitution, while acknowledging the immediate sensitivities of a newly partitioned nation, included the UCC as a Directive Principle of State Policy (Article 44) in Part IV of the Constitution.⁹ This placement signaled it as an aspirational goal, guiding the State towards eventual uniformity without making it immediately enforceable, thereby allowing for gradual social evolution and reform.

2.1. Arguments for and against the UCC:

The UCC debate is characterized by strong arguments from both sides, reflecting the complex interplay of legal principles, social realities, and political considerations.¹⁰

• Arguments in Favour of UCC:

- National Integration and Unity: Proponents argue that a common civil code would foster a sense of shared identity and national unity by eliminating legal distinctions based on religious affiliation. This would move India closer to the ideal of "one nation, one law."
- Gender Justice and Equality: A primary argument for the UCC is its potential to rectify discriminatory practices prevalent in various religious personal laws, particularly those that disadvantage women in matters of marriage, divorce, maintenance, and inheritance.¹¹ A uniform code could ensure equal rights and status for all citizens,

irrespective of gender or religion, aligning with the constitutional mandate of equality before the law (Article 14) and non-discrimination (Article 15).¹²

- Secularism: The implementation of a UCC is seen as a way to reinforce India's secular fabric by separating law from religion in personal matters, ensuring that the state remains neutral and objective in its legal provisions.¹³
- Legal Simplification and Efficiency: A single, comprehensive civil code would streamline legal processes, reduce judicial delays, and simplify the interpretation and application of family laws, making the legal system more accessible and efficient for all citizens.¹⁴
- Modernization of Social Practices: The UCC is viewed as an instrument to encourage progressive reforms in social practices, discarding outdated customs that may be antithetical to modern human rights standards and principles of justice.¹⁵
- Arguments Against UCC:
 - Threat to Religious Freedom: Critics contend that a UCC could infringe upon the fundamental right to freedom of religion (Article 25), arguing that personal laws are an integral part of religious practice and identity.¹⁶
 - Undermining Diversity and Pluralism: India's strength lies in its rich cultural and religious diversity. Opponents fear that a UCC might impose a majoritarian viewpoint, eroding the unique customs and traditions of various minority communities.
 - Minority Concerns: There is apprehension among minority communities that a UCC might not adequately consider their specific customs and concerns, potentially leading to a sense of marginalization or forced assimilation.¹⁷
 - Practical Challenges: Given the vast heterogeneity of Indian society, drafting a comprehensive code that is acceptable to all diverse groups, while addressing their unique socio-cultural nuances, is an extremely difficult and potentially divisive task.
 - Federalism Concerns: Personal laws fall under the Concurrent List of the Constitution, allowing both central and state governments to legislate. A centrally imposed UCC could raise questions about state autonomy and the federal structure.

3. Current Landscape of Adoption Laws in India by Religion

Understanding the existing fragmented legal landscape governing adoption is essential to appreciate the transformative potential of a UCC. India's legal system is characterized by the coexistence of religion-specific personal laws and secular legislation.¹⁸

3.1. Hindu Law: The Hindu Adoptions and Maintenance Act, 1956 (HAMA)¹⁹

HAMA is the primary legislation governing adoption among Hindus, Buddhists, Jains, and Sikhs.²⁰ It significantly codified and reformed traditional Hindu law regarding adoption, shifting its focus from solely spiritual purposes (like providing a son for funeral rites) to primarily the welfare of the child.

- Key Features: HAMA lays down comprehensive eligibility criteria for prospective adoptive parents (e.g., age difference between adopter and adoptee, marital status requirements) and for children eligible for adoption. Crucially, it mandates that upon adoption, the child is completely severed from their biological family and acquires all rights and responsibilities, including inheritance, in the adoptive family, as if born to them.
- Progressive Aspects: HAMA introduced significant reforms, such as allowing a woman to adopt a child in her own right (under certain conditions), and making the spiritual motive optional for the validity of adoption.
- Limitations: Despite its progressive nature, HAMA applies only to specified religious groups, contributing to the legal fragmentation.

3.2. Muslim Law: Guardianship and Absence of Formal Adoption

Traditional Muslim personal law, primarily derived from Islamic scriptures (Quran and Sunnah) and interpreted through various schools of thought, does not recognize "adoption" in the sense of completely severing biological ties and conferring full inheritance rights.²¹

- Concept of *Kafala* (Guardianship): Muslim law recognizes the concept of *kafala*, which is akin to guardianship or fostering.²² This involves the care and upbringing of a child, but crucially, it does not alter the child's lineage or inheritance rights from their biological family. The child retains their biological surname and inheritance from biological parents.
- Legal Recourse: Muslims in India who wish to care for a child typically resort to the Guardians and Wards Act, 1890 (GWA). This secular Act allows for the appointment of a guardian for the person and/or property of a minor. However, guardianship under the GWA does not confer the status of a biological child; it merely establishes a custodial relationship. Property cannot be automatically inherited by the ward; it must be transferred through a will, subject to the specific rules of Islamic inheritance, which limit the proportion of property that can be bequeathed outside specific heirs.
- Challenges: The absence of formal adoption under Muslim personal law leads to complexities regarding legal status, surname, and most significantly, inheritance for children raised outside their biological families, often leaving them in a vulnerable legal position.

3.3. Christian and Parsi Law: Reliance on Guardianship

Similar to Muslim personal law, Christian and Parsi personal laws in India do not possess specific statutory provisions for formal legal adoption that confer full parental rights and inheritance.²³

- Reliance on Guardians and Wards Act, 1890: Members of these communities also primarily utilize the GWA to assume guardianship of a child.²⁴ As with Muslims, this creates a guardian-ward relationship rather than a full parent-child relationship. The child's legal ties to their biological family generally remain intact, and inheritance does not flow automatically.
- Absence of Legal Parentage: The guardian's role is predominantly custodial and managerial of the child's property. The adopted child does not become a legal heir to the adoptive parents automatically and would not inherit directly as a biological child would.
- Challenges: The lack of specific adoption laws for these communities has meant that children cared for under guardianship do not enjoy the same legal security, social integration, and inheritance rights as children adopted under HAMA or the secular JJ Act.

3.4. Secular Alternative: The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)

The JJ Act represents a crucial secular alternative for adoption in India, providing a uniform framework for certain categories of children.²⁵

- Universality: This Act applies to all citizens of India, irrespective of their religion, caste, or creed, for the adoption of orphaned, abandoned, and surrendered (OAS) children.
- CARA: It established the Central Adoption Resource Authority (CARA) as the central regulatory body for both domestic and inter-country adoptions, ensuring standardized procedures and oversight.²⁶
- Child's Best Interest: The Act firmly places the "best interest of the child" as the paramount consideration in all adoption decisions.
- Full Legal Status: Critically, children adopted under the JJ Act acquire the same legal status, rights, and responsibilities as biological children in the adoptive family, including full inheritance rights.²⁷ This completely severs their ties with the biological family.
- Significance: The JJ Act has been pivotal in providing a robust and secular pathway to adoption for individuals from communities without specific adoption laws (Muslims, Christians, Parsis) and for inter-faith adoptions.²⁸ It has also been hailed by the Supreme Court as a step towards the objectives of a UCC in the context of adoption (e.g., *Shabnam Hashmi v. Union of India*, 2014, where the SC recognized the right of any person to adopt a child under the JJ Act, irrespective of religious personal law).²⁹

4. Transformative Changes in Adoption Law under a Uniform Civil Code

The implementation of a UCC would usher in a paradigm shift in Indian adoption law, replacing the existing fragmented system with a singular, comprehensive, and secular framework.

4.1. Unification and Standardization of Adoption Procedures:

- Single, Comprehensive Law: A UCC would replace HAMA and the current reliance on the GWA for other communities with a single, comprehensive adoption statute applicable to all citizens. This would eliminate the need to navigate different religious personal laws for adoption.
- Universal Eligibility Criteria: Standardized eligibility criteria for prospective adoptive parents (e.g., age, marital status, financial stability, health, and capacity to parent) and for adoptees would be uniformly applied. This would remove any current religious or customary biases in criteria, ensuring a level playing field for all potential adopters.
- Streamlined Process: The entire adoption process, from initial application to home study, child matching, and the final court order, would be standardized.³⁰ This promises to reduce bureaucratic complexities and delays currently inherent in a multi-layered legal system.³¹ CARA's role could be further consolidated as the exclusive national authority for all adoptions, ensuring consistency and efficiency.
- Enhanced Transparency: A unified system under a UCC could lead to greater transparency and accountability in the functioning of adoption agencies and overall processes across the country, minimizing scope for illegal practices.

4.2. Impact on Hindu Adoption (HAMA):

- Supersession and Integration: A UCC would largely supersede HAMA. While many progressive elements of HAMA, particularly its emphasis on the child's welfare and the complete severance of ties with the biological family upon adoption, would likely be integrated into the UCC, the religious specificities and optional customary practices would be removed.
- Loss of Religious Nuances: Traditional practices and ritualistic requirements that HAMA still accommodates (e.g., the historical emphasis on a son for spiritual lineage, or age limits for adoptees linked to customary puberty norms) would likely be phased out in favor of universal, secular, and child-centric criteria.
- Unified Legal Status: The legal status of adopted children would be uniformly defined for all citizens, upholding the principle of the adopted child becoming "as if born" to the adoptive parents, consistent with HAMA's current provision.

4.3. Impact on Muslim, Christian, and Parsi Communities:

- **Introduction of Formal Legal Adoption:** This would be the most profound change for these communities. Individuals from Muslim, Christian, and Parsi backgrounds would, for the first time, have a clear and specific law allowing them to formally adopt a child with all the rights, duties, and responsibilities equivalent to those of a biological child, crucially including full inheritance rights. This would represent a significant departure from the limited scope of the Guardians and Wards Act, 1890.
- **Full Integration into Adoptive Family:** The adopted child would legally become an integral part of the adoptive family, acquiring their surname and familial identity. This directly challenges the *kafala* system in Muslim law, where the child's biological lineage is always preserved.
- **Rectifying Inheritance Disparities:** The automatic inheritance rights conferred by a UCC-based adoption would address a long-standing challenge faced by children raised under guardianship, who currently lack automatic inheritance from their guardians. This would ensure financial security and social integration for these children.
- **Addressing the "Gap" for Childless Couples:** For couples or individuals from these communities who currently face legal hurdles under their personal laws to adopt and provide full legal recognition to a child, a UCC would open clear, universal pathways to family formation.

4.4. Universal Prioritization of Child Welfare:

- A UCC would unequivocally enshrine the "best interest of the child" as the paramount consideration in all adoption matters. This principle, already robustly present in the JJ Act, would become the universal legal standard for all adoptions, overriding any customary practices or religious interpretations that might compromise child welfare.
- This could lead to stricter regulations on pre-adoption home studies, mandatory post-adoption support and follow-ups, and enhanced safeguards against exploitation and trafficking, aligning with international best practices.

4.5. Gender Justice in Adoption:

- A UCC would ensure absolute gender equality in the right to adopt, and to give a child in adoption, uniformly across all communities. This would eliminate any lingering gender biases or discriminatory provisions that might still exist in uncoded personal laws or customary practices concerning single parents, widows, or divorcees wishing to adopt.
- It would standardize the capacity requirements for all prospective parents, promoting a more equitable and inclusive approach to family formation.

5. Challenges in Implementing UCC and its Impact on Adoption

While the potential benefits of a UCC for adoption law are transformative, its implementation in India faces formidable challenges that must be carefully addressed.

- **Religious and Cultural Sensitivities:** The most significant challenge lies in the deeply rooted religious and cultural sensitivities surrounding personal laws. Strong resistance is anticipated from communities whose personal laws do not traditionally recognize formal adoption (e.g., Muslims and to some extent Christians and Parsis) or whose practices might differ significantly from a uniform code. This necessitates extensive public dialogue, careful consultation with religious and community leaders, and a process of consensus-building rather than imposition.³²
- **Public Acceptance and Awareness:** A lack of clear understanding about the UCC's provisions and its benefits, especially concerning adoption, could lead to misinformation and apprehension among the populace. Comprehensive public awareness campaigns are crucial to clarify the UCC's objectives and dispel fears.³³
- **Drafting Complexities:** Crafting a single, comprehensive code that harmonizes the diverse customs, traditions, and existing legal principles of various communities, while upholding constitutional values of equality and justice, is an immense legislative and jurisprudential challenge. The code must be equitable, non-discriminatory, and pragmatic.
- **Balancing Rights:** A delicate balance must be struck between the state's constitutional directive to provide uniform laws and the fundamental right to religious freedom (Article 25). The UCC must be perceived not as an infringement on religious identity but as an advancement of universal civil rights.
- **Transitional Issues:** Managing the transition from multiple personal laws to a single code, including addressing the validity of existing adoptions, inheritance rights, and potential retrospective application of certain provisions, could lead to legal complexities and disputes. A phased implementation or clear guidelines for transition would be necessary.
- **Socio-Political Opposition:** The UCC has historically been a politically charged issue. Strong socio-political opposition, particularly from religious groups and opposition parties, could hinder its passage and effective implementation. Building broad-based political consensus is vital.

6. Conclusion: A Step Towards Legal Uniformity and Child-Centric Justice

The debate surrounding the Uniform Civil Code in India is undeniably complex, deeply intertwined with notions of identity, tradition, and the secular fabric of the nation.³⁴ However, its potential application, particularly in the realm of adoption law, offers a clear and compelling path towards legal uniformity, enhanced child welfare, and rectifying long-standing disparities across various religious communities.

A UCC would fundamentally transform adoption in India by establishing a single, secular, and comprehensive legal framework, replacing the current fragmented system. For Hindu society, it would mean a shift from HAMA to a broader, universal statute, integrating its progressive elements while shedding religious specificities. Crucially, for Muslim, Christian, and Parsi communities, a UCC would introduce formal legal adoption with full parental rights and automatic inheritance, moving beyond the limited scope of guardianship.³⁵ This standardization would simplify legal processes, reduce ambiguity, and, most importantly, unequivocally prioritize the "best interest of the child," ensuring every child receives legal security, identity, and belonging regardless of the religious background of their biological or adoptive families.³⁶

While significant challenges remain in its implementation, primarily navigating deeply entrenched religious and cultural sensitivities, the UCC holds the promise of fostering a more equitable, standardized, and truly child-centric adoption landscape in India. The successful realization of this constitutional aspiration would not only simplify legal procedures but also strengthen the fabric of a secular and just society, where every child has an equal opportunity to thrive within a loving and legally recognized family, free from the complexities and disparities imposed by religious personal laws. A nuanced, consultative, and inclusive approach to drafting and implementing the UCC will be paramount to its success, ensuring that it is perceived as a force for positive social reform rather than an imposition.

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Online Resources/Databases:

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- SCC Online (scconline.com)⁵¹
- Manupatra (manupatrafast.com)⁵²
- Press Information Bureau (PIB), Government of India (pib.gov.in) - for recent government stance and initiatives.⁵³