

RIGHTS OF GUARDIANSHIP AND ADOPTION UNDER UNIFORM CIVIL CODE (UCC)

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Abstract

In adoption and guardianship, Indian personal law regime presents an exemplary manifestation of national pluralism. While ensuring elementary attributes of equality and secularism through the Constitution, there prevails an overwhelmingly religion-divided legal framework, which has an uneven and discriminative impact. The debate over the Uniform Civil Code (the "UCC"), as enshrined under Article 44 of the Constitution, acquires specific significance in the case of

The welfare of children, alongside parental rights and gender equity, constitutes the focal point of this research. This investigation examines the disparities in adoption and guardianship stemming from various personal laws, frequently placing women and religious minorities, other than Hindus, at a disadvantage. The study systematically explores pertinent statutory regulations, constitutional restrictions, judicial interpretations, and the Uttarakhand UCC Rules 2025. It contends that, from a legal perspective, the establishment of a cohesive framework of regulations would concurrently fulfill the objectives of child welfare and constitutional equality, whilst also acknowledging and honoring the principle of religious pluralism.

Keywords:

Uniform Civil Code, Adoption, Guardianship, Constitutional Laws, Personal Laws, Gender Justice, Child Rights, Indian Legal System, Religious Minorities, Legal Reform

Overview

Indian family law, particularly with respect to marriage, divorce, inheritance, and guardianship as well as adoption, is fundamentally shaped by religious principles. While the presence of diverse family law reflects India's multi-cultural character, it concurrently leads to instances of unequal treatment. Regarding adoption and guardianship, the absence of a cohesive legal framework within India results in varying degrees of protection for both children and parents concerning a parent's custody rights, and there remains an unresolved issue regarding the State's obligation to uphold a child's inheritance rights.

Families belonging to Hindu, Buddhist, Sikh, and Jain traditions, among others, enjoy assured adoption rights under the Hindu Adoptions and Maintenance Act of 1956 (HAMA); conversely, Muslims, Christians, and Parsis frequently resort to different guardianship laws or the Juvenile Justice Act of 2015 (JJ Act), which inadequately addresses essential parental rights and the notion of inheritance as it pertains to the child in the role of a parent.

The Constitution promises equality (Articles 14 and 15), as well as safeguarding of "life" and "dignity" (Article 21), but legal and social paradigms in India continue to correlate these rights to one's religious collectivity identity. The

judiciary appears to acknowledge certain inequalities during case hearing such as *Shabnam Hashmi v. Union of India* and *Githa Hariharan v. RBI*; still, legal recourse through case law cannot be premised upon disconnected methods, and the legal regime continues to be far removed from across-the-board reform to reach all families. The paper to come will explore how India's plural model may violate equality, especially in regard to rules regarding guardianship and adoption, and how the Universal Children's Charter (UCC) can fill these systemic gaps. Families from different religious communities face certain challenges in the adoption process, often being placed in legal uncertainties without a single act providing clear directive. The lack of a uniform paradigm forces such families to deal with different legal regimes, leading to confusion in relation to statutes to be applied and rights to which their adopted child would be entitled to. This confusion is particularly troubling in India's fast urbanizing and cosmopolitan culture, wherein inter-religious marriages and adoptions have become increasingly common phenomena.

Those problems individually and together violate numerous constitutional safeguards, including the right to equality (Article 14), prohibition of discrimination on the grounds of religion (Article 15), and the right to life and personal liberty, which has been interpreted to include dignity and family life (Article 21). The persistence in denying certain religious minorities equality in rights to adoption, and in assigning an inferior position to females in guardian legislation, is representative of the institutionalized discrimination to be removed by the Constitution.

Problem Statement

Legislative regimes for guardianship and adoption in India are fragmented, and as such, continue to entrench and magnify prevailing systemic inequalities. The Hindu Adoption and Maintenance Act (HAMA) allows members of Hindu, Buddhist, Sikh, and Jain faiths to enact an

exhaustive legal bond between parent and child, subject to the condition that children under this act of adoption have inheritance privileges. The Islamic legal regime, by contrast, only provides for a "kafala" relation, which provides for care without entitling to legal family status. Similarly, Christians and Parsis match this same absence of substantive legal rights to adoption, as legal protection can only be obtained under these faiths through a guardianship arrangement, which lacks inheritance privileges and legal recognition for the adopted child.

As a result, families are pressed into a dual system where the same act of care by the two parties, the parents, creates disparate legal effects based on religion, and thus breaches Article 14's right to equality. Gender inequality is exacerbated by the Hindu Minority and Guardianship Act of 1956, which confers fathers the status of "natural guardian," while women rank behind in the guardianship hierarchy. Recently, the Supreme Court in *Githa Hariharan*, expanded the guardianship rights of mothers, but the original statute integrates patriarchal norms that impose a heavy lens on women's day to day choice making on behalf of their children.

In multi-faith family contexts, the circumstances are characterized by increased indecisiveness and unpredictability. The crosscutting legal systems bring confusion and unevenness. Such irregularities have detrimental effects on child welfare, as well as equality and dignity, under articles 14, 15, and 21.

Infringement of Constitution in Existing System

Article 14 – Equal Before Law

The laws underlying adoption provide Hindus with absolute rights but instead force Muslims, Christians, and Parsis into unequal legal alternatives. The categorization of people into religions has no rational basis and, no rational basis relates to the ability to parent. The Court further stated in *M.G. Badappanavar v. State of*

Karnataka unequal treatment of equals violate the Constitution, and this holds true here.

Article 15 - Gender and Religious Discrimination

Adoption procedure varies as per religion, thus breaching Article 15 forbidding discrimination on the ground of religion. Gender discrimination as put in Hindu Minority and Guardianship Act also breaches Article 15, as noted in National Legal Services Authority v. Union of India, reestablishing significance to substantive equality.

Article 21 - Right to Life, Dignity, and Family Structure

The court has recognized that setting up of family comes under personal freedom, as enunciated in Justice K.S. Puttaswamy v. Union of India. The limitation of adoption rights to specific communities becomes an infringement of dignity and, therefore, imperils security to children, as emphasized in Gaurav Jain, wherein the Court underlined ensuring children's rights.

UCC Implementation: Uttarakhand Rules 2025

The Uttarakhand UCC Rules 2025 are a pragmatic example. They do away with religious discrimination and apply a secular and gender-fair methodology to all, except Scheduled Tribes. Its prominent aspects include equal rights to adoption for all citizens without religion, equal parental recognition of mothers and fathers, and registration and procedural guidelines to ensure uniformity and minimize confusion. While progressive in intent, there are challenges in front of these rules. There is an internal social issue in terms of communities who feel the UCC enables state intrusion into religion. There are also administrative challenges involving record keeping, training of authorities, and public sensitization necessary for successful practice. Despite being progressive in intent, there are challenges potential to obstruct the successful practice of the Uttarakhand UCC for guardianship and adoption. These include foremost social and cultural resistance, notably by communities

who consider the UCC to be an intrusion into religious freedom and tradition. Administrative preparedness consists of another issue involving uniform laws, updated records, streamlined legal infrastructure, sensitized authorities, and statewide public information campaigns to ensure practice and minimize misconception. State-level reforms also raise an issue of being taken beyond Uttarakhand, notably in cross-state or inter-communitarian legal cases.

By introducing a secular and gender-neutral paradigm, the Uttarakhand UCC Rules 2025 stand to significantly boost child welfare while at the same time empowering guardians without regard to sex, and thus eradicating patriarchal discrimination and religious intolerance in areas of guardianship and adoption. The enactment of standardized legal provisions might also lead to procedural expeditiousness, reduce instances of litigation, and ensure nondiscriminatory access to options for family creation. Additionally, these laws conform to universal human rights standards, and indeed those incorporated in the United Nations Convention on the Rights of the Child and the Hague Adoption Convention, inasmuch as they seek to promote the best interest of the child as paramount.

In summary, the Uttarakhand UCC Rules 2025 mark an important legal milestone in India's journey to create an empirically uniform civil law regime. The success of these rules, and especially those of equity, efficiency, and social cohesion, will depend on vigilant governance, extensive public participation, and continuing legal training that conveys both local and national priorities in keeping with constitutional imperatives of equality and justness.

Significance of Research

This study enhances the discourse surrounding the ongoing challenge of balancing equality with the advancement of religious pluralism. It illustrates the ways in which discriminatory personal laws infringe upon the rights of vulnerable populations, notably in that children

are deprived of equitable access to familial security, women are subjected to laws of patriarchal guardianship, and religious minorities face obstacles in their rights to adopt children. This inquiry offers a framework for assessing how uniform legislation can foster dignity, equality, and child welfare by scrutinizing constitutional mandates, judicial processes, and international rights, including the UN Convention on the Rights of the Child. The research contributes to the developing comprehension of how constitutional doctrines of equality and secularism should be reconciled with cultural diversity and religious autonomy. As courts increasingly confront the challenges posed by discriminatory personal law provisions, this examination presents a thorough analysis of the constitutional structure and judicial precedents that could inform future legal advancements. The study is particularly relevant in light of the Supreme Court's recent focus on substantive equality and its role in safeguarding fundamental rights from majoritarian overreach. With India housing the largest child population globally, this research specifically tackles policies that impact millions of at-risk children. The examination of guardianship and adoption laws through the lens of child rights bolsters advocacy efforts aimed at enhancing legal protections for children while ensuring their access to nurturing, stable families, irrespective of religious or cultural barriers. This aspect is especially critical considering India's commitments under international conventions and the increasing acknowledgment of children as rights-bearing individuals rather than mere subjects of adult decisions.

The investigation of gender discrimination within guardianship legislation significantly enhances feminist legal scholarship and informs policy advocacy directed at dismantling patriarchal frameworks entrenched in legal systems. As India confronts challenges related to gender equality across different domains, this study offers a detailed examination of how legal reforms can further

women's rights while simultaneously considering issues surrounding familial autonomy and cultural preservation. By analyzing the capacity of legal reforms to foster equality while honoring diversity, this study contributes to extensive discussions regarding national integration and social cohesion within India's multifaceted democracy. The analysis addresses apprehensions regarding minority rights and cultural preservation, demonstrating that uniform laws may indeed reinforce, rather than undermine, the richness of India's diverse society.

Parameters and Constraints

This study comprises evolutions from 1956, i.e., Hindu Code Bills until 2025, i.e., Uttarakhand UCC Rules. While in this analysis constitutional, statutory, and judicial requirements would be scrutinized equally, there would be some illustrations from international practices utilized, predictions and trends in terms of political evolutions would be outside analytical horizon. The research would pay greater attention to legal and constitutional dimensions of the subject under review than to voting political developments.

Objectives of the Study

The overall objective of this research is to examine current regulations of adoption and guardianship in personal and secular legal frameworks. The research inquiry also attempts to record infringements of constitutional rights and cases of discrimination as they happen in these legal frameworks. The research study will also review judicial machinery and failings in dealing with such cases. Moreover, research tries to examine Uttarakhand UCC Rules of 2025 as an example of national possibility for transformation. Finally, it tries to recommend an equilibrium approach in which child welfare, dignity, equality, and legal protection would come first, while remaining sensitive to different facets of diversity.

Methodology

Doctrinal legal research methodology has been followed in the study, examining laws, constitutional articles, and seminal cases, e.g., Shabnam Hashmi, Githa Hariharan, Sarla Mudgal and Shayara Bano. Secondary materials used include research commentary, child rights commissions' reports, and feminist studies. The study, in some instances, refers to jurisdictions having an integrated family law.

Literature Review

Academics, H.M. Seervai and Basu, assert Indian society possesses an egalitarian constitution in family law. Flavia Agnes criticizes patriarchal tendencies in guardianship of minors laws, and Sen represents poor treatment of women's voices in deliberations over UCCs in India. Empirical studies by the Centre for Child Rights outline grave failings of access to adoption by certain marginalized communities. Early academic commentary, "We Resist UCC," on the Uttarakhand attempt to adopt a UCC shows adopting an UCC in itself does not assure success; administrative and outreach are elements for achieving success. Under Hindu Law, HAMA adoption completely severs all connections to biological family and grants completely complete rights of inheritance to adopted child. The Hindu Minority and Guardianship Act still privileges fathers, although this rigidity was relaxed by Githa Hariharan. Under Muslim Law, Islamic law sanctions kafala, caring for children without cutting bonds to biological family and also means there are no inheritance rights for children in adoptive parent's family, resulting in legal insecurity. There exist now no specific guidelines to adoption for the Christian or Parsi people. Instead, families utilize Guardians and Wards Act, implementing guardian but not securing complete parental rights. Children's inheritance rights remain somewhat unclear.

Scheme of Study (Body of the Paper)

The prevailing law regarding guardianship and adoption in India represents an involved

compromise of colonial enactments, post-independence statutory modifications, and subsequent judicial interpretations. This system, characterized by religious pluralism and significant internal incoherences, creates an environment in which critical life options significantly depend on one's religion instead of the constitutional principles of non-discrimination and equality.

Hindu Law: A Comprehensive Code

Hindu law, as codified through Hindu Code Bills in the 1950s, presents the most complete and rational framework as far as adoption and guardianship in the range of different legal systems operating in India. Hindu Adoptions and Maintenance Act, 1956 (HAMA) and Hindu Minority and Guardianship Act, 1956 (HMGA) in tandem provide an integrated system of regulations, which prevail over about 80% of India's citizens and thus highlight marked differences in law as regards treatment to other religious minorities. Under HAMA, the act of adoption causes an absolute legal transformation of family relations. Section 12 unequivocally states that, after adoption, the child "shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption." This all-inclusive legal framework goes beyond mere guardianship by creating entire parent-child relations in terms of inheritance rights, social recognition, and legal status. The adopted child inherits all privileges of biological offspring and, at the same time, breaks all legal connections to birth family, save in cases of matrimonial prohibitions imposed through gotra laws.

The Hindu Minority and Guardianship Act of 1956 regulates the rights and responsibilities of guardianship, instituting a hierarchical structure that has given rise to considerable constitutional debate. Section 6(a) identifies the father as the primary guardian of a Hindu minor, while the mother is designated as guardian "subsequent to" the father. Initially understood to pertain exclusively to the father's demise, this provision has undergone significant

alterations through judicial interpretation, especially in the pivotal Githa Hariharan case, to encompass scenarios in which the father is unavailable, apathetic, or unable to perform guardianship duties.

Muslim Personal Law: The Kafala System and Its Boundaries of Legality

Muslim personal law, based in Islamic jurisprudence and substantially uncodified in the context of Indian statutory law, embraces significantly different methodology in regard to child care and family formation. The Islamic legal system recognizes kafala as a type of guardianship securing a child's care, support, and upbringing while retaining legal attachments of the child to their birth family. In modern Indian contexts, Muslim families who seek to avail themselves of child care typically form kafala relationships through Islamic court proceedings or community organizations. These arrangements cultivate strong moral and religious obligations in regard to child care, but they do not establish legally recognized parent-child relationships under Indian civil law. The child retains surname, inheritance rights, and legal status of birth family and reaps benefits of care, education, and emotional support from kafala family.

Christian and Parsi Jurisprudence: Deficiencies and Doubts in Law

Adoption and guardianship legal framework of Parsi and Christian communities identifies weaknesses in India's fragmented personal law regime. The two communities do not have extensive statutory laws dealing directly with adoption, and thus, these families have to find their way through an intricate mix of personal law enactments, British-era laws, and civil laws. Indian Christian personal law is regulated through numerous statutes, i.e., Indian Christian Marriage Act 1872, Indian Divorce Act 1869, and Indian Succession Act 1925; none of these legal tools, however, sets out detailed procedures for adoption. Though Indian Succession Act deals with inheritance, it does not take into account ramifications of an act of adoption upon

Succession rights and, as such, creates confusion in property inheritance and admissibility of maintenance rights in adopted offspring.

The Parsi community faces similar challenges, although it has a relatively cohesive legal framework for marriage and divorce in the Parsi Marriage and Divorce Act of 1936. This law includes provisions regarding child custody in divorce proceedings; it does not provide, however, for the process of adoption or legal recognition of adopted children. Parsi families would usually have recourse to the Guardians and Wards Act to set up guardianship, but these do not provide for the eternal family relationship or inheritance rights upon which adoption conventionally figures.

Constitutional Analysis

Article 14 – Principle of Non-discrimination

Such distinctions prevailing between religions fail to withstand the test of rational classification. In Anuj Garg v. Hotel Association of India, laws based on stereotyping were set aside by the Court. Similarly, religion-based distinctions being alleged as grounds for disparate treatment for some to adopt would be unconstitutional.

Article 15 – Prohibition of Discrimination

Religious identity must not define rights related to family unit establishment. Family formations can occur in spite of current gender imbalances in legal systems in relation to guardianship, in combination with the partial judicial remedy encroaching upon Article 15.

Article 21 – Dignity and Family

Indian Supreme Court interpreted family rights beyond Article 21 in Olga Tellis v. Bombay Municipal Corporation and Puttaswamy. Withholding the rights to adopt from people not just contravenes the right to family, but reduces human dignity owed to all citizens under the Constitution.

Historic Judicial Decisions

- Shabnam Hashmi v. Union of India (2014) – Enshrined adoption as an inherent right for all those who fall under the category of JJ Act, without regard to religion.
- Githa Hariharan v. RBI (1999) – Holds that "after" a father can be construed in an elastic sense in order to enlarge safeguards of a mothers' rights as guardians.
- Sarla Mudgal v. Union of India (1995) – Re-affirmed constitutional directive for UCC.
- Justice K.S. Puttaswamy v. Union of India (2017) – Enlisted privacy and family rights in Article 21.

Such cases demonstrate the role of the judiciary under an efficacious adjudicative process; nevertheless, they also demonstrate extensive limitations to the power of the judiciary to ensure structural transformation without parliamentary action.

Findings

Systemic discrimination endures as guidelines on adoption continue to be inconsistent, disparate, and arbitrary, thereby violating Articles 14, 15, and 21. Gender inequality also becomes evident, as laws governing guardianship continue to embody patriarchal arrangements discriminatively excluding women. Additionally, legal uncertainties over a child and their new family's legal protection negate child welfare, as millions of children hover on the brink of attachment to family; removed from their original family circumstances, but without any stable and secure attachment to new family. Lastly, inadequacy in judicial intervention manifests as the Courts have grown to extend rights in judicial proceedings, yet remain helpless to develop judicial infrastructure for promoting reform of discriminative entrenched arrangements. Lastly, the UCC manifests as an ideal through the Uttarakhand Rules, although complete operationalization of a UCC remains contingent on administrative capability, civil society support, and safeguards of minority rights.

Conclusion

India's customary law regime in adoption and guardianship directly contravenes constitutional equality and child welfare doctrines. The religion- and sex-based distinctions rob millions of citizens of access to stable homes. While positive in localities, judicial efforts have stayed at the case-specific level. While a UCC would provide the best avenue, as of an overall regime of equality, laicism, and child welfare, this can be provided without sacrificing regard for divergence. The Uttarakhand experiment shows it is possible to bring transformation in adoption through compassion, cooperation, and proper training.

Continuation of discriminative paradigms on an everyday basis means another day in which children continue to be deprived of equal access to nurturing surroundings, women are deprived of equal rights in relation to guardianship, and people continue to receive disparate legal protection based on mere religious identities. The constitutional promise of equality demands immediate action to resolve these long-standing duties while, at the same time, cultivating an inclusive and equal society it aims to and to which Indian citizens equally deserve.

Such mandate imposed under Article 44 of the Constitution can no longer remain an aspiration. The prevailing regime entrenches continuing discrimination against women, and religious, cultural, and ethnic minorities, and children. Adopting an identical code in adoption and guardianship signifies not just law reform but indeed a constitutional obligation to ensure India's promise of parity, equality, and dignity becomes an actual reality.

In this area of guardianship and adoption law, where the stakes for vulnerable children and potential families are greatest, the moral argument in support of reform is strongest still. Every day those discriminative arrangements continue to exist means another day in which children lose equal access to affectionate family life, women lose equal guardianship

rights, and citizens lose common legal protection solely due to their religious identities. The constitutional promise of equality demands immediate action to rectify these long-outstanding commitments and to build responsive, non-discriminatory society contemplated by India's Constitution and demanded by Indian citizens.

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