

Adoption In Hindu Society: Examining The Enduring Impact Of The Hindu Adoptions And Maintenance Act, 1956 In The Era Of Criminal Law

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ABSTRACT

The landscape of personal laws in India is a complex interplay of religious traditions and secular legislative interventions.¹ Adoption within Hindu society has historically been governed by the Hindu Adoptions and Maintenance Act, 1956 (HAMA), a landmark legislation that codified and reformed traditional Hindu law on the subject.² With the recent enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), replacing the Indian Penal Code, 1860, a critical question arises: what are the legal implications and potential shifts in the dynamics of adoption in Hindu society? This research article posits that while the BNS primarily reconfigures India's criminal law framework, its indirect implications, particularly concerning child welfare, protection against illegal adoption, and the broader push for a modern legal ecosystem, may subtly influence the practices and interpretations surrounding HAMA. This article will delve into the historical evolution of Hindu adoption law, the salient features of HAMA, the limited but significant intersections with criminal law provisions now under BNS, and the overarching legal policy considerations, including the ongoing discourse on a Uniform Civil Code (UCC), that shape the future of adoption in Hindu society.

Keywords-: *Bharatiya Nyaya Shastra; Adoption; Familial Obligations; Bharatiya Nyaya Sanhita, 2023*

INTRODUCTION

Adoption, rooted in ancient Hindu scriptures and customs, has traditionally held a profound spiritual and social significance within Hindu society. It was primarily conceived as a means to ensure the continuation of lineage, perform religious rites for ancestors, and provide spiritual benefits to the adopter. Prior to the mid-20th century, the rules governing adoption varied significantly across different schools of Hindu law and local customs. This diverse and often fragmented legal landscape presented challenges in terms of uniformity, gender equality, and the paramount welfare of the child.

The enactment of the Hindu Adoptions and Maintenance Act, 1956 (HAMA), marked a pivotal moment in the codification and modernization of Hindu personal law. As one of the four major Hindu Code Bills, HAMA aimed to bring about significant reforms, addressing gender discriminatory practices and establishing a secularized framework for adoption among Hindus, Buddhists, Jains, and Sikhs. It laid down comprehensive provisions regarding who can adopt, who can be adopted, the conditions for a valid adoption, and the legal consequences of adoption.

However, the legal environment is not static. The recent legislative overhaul of India's criminal justice system, culminating in the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), signals a paradigm shift in how criminal offenses are defined, investigated, and adjudicated. While the BNS primarily concerns itself with substantive criminal law, it is crucial to examine whether and how its provisions might indirectly impact the sphere of Hindu adoption, particularly in areas related to child protection, illegal adoptions, and broader legal policy.

This article will proceed by first outlining the foundational principles and key provisions of HAMA. Subsequently, it will explore the direct and indirect interfaces between criminal law (now BNS) and adoption,

focusing on issues such as child trafficking, illegal adoptions, and protection of child rights. Finally, it will analyze the legal implications of these developments for Hindu society and discuss the continuing debates surrounding the Uniform Civil Code, which invariably touches upon the future of diverse personal laws, including those related to adoption.

Family law in India, encompassing marriage, divorce, child custody, adoption, inheritance, and domestic violence, is a dynamic and intricate field. Influenced by both the Constitution and religious tenets, it has seen substantial changes, notably with the **Bharatiya Nyaya Sanhita (BNS), 2023**, replacing the colonial-era Indian Penal Code. While BNS primarily overhauls criminal law, its emphasis on child protection indirectly impacts family law, particularly by strengthening safeguards against illegal adoptions.

The Hindu Adoptions and Maintenance Act (HAMA), 1956, remains the cornerstone for adoption within Hindu, Buddhist, Jain, and Sikh communities, defining legal procedures and rights. For other communities, or when HAMA isn't applicable, the **Guardians and Wards Act, 1890**, governs guardianship, emphasizing the child's welfare and a nurturing environment. These legal frameworks aim to ensure children's rights and stability, with BNS providing a stricter criminal deterrent against related offenses like child trafficking. India's family law, often termed "marriage law" due to its extensive coverage of marital issues, continues to evolve, balancing diverse personal traditions with constitutional principles of equality and justice.

Implications of the Bharatiya Nyaya Sanhita, 2023, on Adoption in Hindu Society

The legal framework governing family matters in India, including adoption, is a complex tapestry woven from religious traditions, parliamentary enactments, and judicial interpretations. For Hindu society, the cornerstone of adoption law has been the Hindu Adoptions and Maintenance Act, 1956 (HAMA), a landmark legislation that codified and reformed ancient Hindu practices. However, the recent overhaul of India's criminal justice system with the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), replacing the Indian Penal Code, 1860, prompts a critical examination of its indirect implications on adoption in Hindu society. While the BNS is not a family law statute and does not directly amend HAMA, its provisions concerning offenses against children and human trafficking are poised to subtly but significantly influence the practices and safeguards surrounding adoption.

The Foundational Role of HAMA, 1956 in Hindu Adoption

The Hindu Adoptions and Maintenance Act, 1956, stands as a pivotal piece of legislation that modernized and codified the traditional Hindu law of adoption. Prior to HAMA, adoption practices were diverse, rooted in varied customs and schools of Hindu law, often leading to inconsistencies and gender disparities. HAMA's core objective was to move beyond the purely spiritual or religious rationale for adoption, emphasizing instead the paramount welfare of the child and granting greater rights to women in the adoption process.

Key Features of HAMA:

HAMA meticulously delineates the capacities of individuals involved in the adoption process and the conditions for a valid adoption.

- **Capacity to Adopt (Sections 7 & 8):** Any Hindu male or female of sound mind and not a minor has the capacity to adopt. For a married male, the consent of his wife (or all wives, if polygamous) is mandatory, unless specific exceptions apply (e.g., wife having renounced the world or declared of unsound mind). A female Hindu, if unmarried, widowed, or divorced, can adopt independently.
- **Capacity to Give in Adoption (Section 9):** Only the father, mother, or a court-appointed guardian can give a child in adoption. The parents' consent is paramount, and a guardian requires prior court permission, with the court's primary consideration being the child's welfare.
- **Capacity of the Person to be Adopted (Section 10):** The child must be a Hindu, unmarried, below fifteen years of age (unless custom permits otherwise), and not previously adopted.
- **Conditions for a Valid Adoption (Section 11):** Strict conditions apply, including an age difference of at least 21 years between the adopter and adoptee if they are of the opposite sex, and the absence of a biological child of the same gender as the one being adopted (with certain exceptions). The actual "giving and taking" of the child with the clear intention of transfer is crucial, while the traditional "Datta Homam" ceremony was made optional.
- **Effects of Adoption (Section 12):** This is a cornerstone of HAMA. An adopted child gains all the rights, duties, and privileges of a biological child from the date of adoption. This involves a complete severance of legal ties with the biological family (except for marriage prohibitions) and full integration into the adoptive family, including inheritance rights.
- **Prohibition of Dual Relationship (Section 13) and Irrevocability (Section 15):** HAMA ensures the permanency of the adoption, stating it cannot be cancelled by either party and an adopted child cannot divest property vested in another before the adoption.

HAMA's comprehensive nature transformed adoption within Hindu society, establishing a clear, legally binding process aimed at securing the welfare and rights of adopted children. However, it applies exclusively to Hindus (including Buddhists, Jains, and Sikhs) and does not govern other religious communities.

The New Criminal Reform : Indirect Catalysts for Change

The Bharatiya Nyaya Sanhita, 2023 (BNS), replacing the colonial-era Indian Penal Code, 1860, represents a significant overhaul of India's criminal law. While its primary focus is on defining and penalizing criminal offenses, its heightened emphasis on child protection and its stringent provisions against human trafficking have profound, albeit indirect, implications for adoption practices in Hindu society.

Human Trafficking and Illegal Adoption:

A critical area of intersection is the BNS's robust framework against human trafficking, especially concerning children. Section 143 of the BNS, mirroring and often strengthening provisions from the erstwhile IPC, directly addresses human trafficking, a crime that frequently encompasses illegal adoptions. These are situations where children are illicitly procured, transferred, or sold under the guise of adoption, bypassing the legal and ethical safeguards stipulated by HAMA and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The BNS's enhanced penalties for child trafficking, which can include rigorous imprisonment up to life, act as a significant deterrent. This strengthened criminal law provides a crucial protective layer, aiming to prevent and punish practices that undermine the welfare of children and exploit the vulnerabilities of both biological and prospective adoptive parents.

To combat illegal adoption and child trafficking effectively, specific legislative actions and enhanced cooperation are vital. Requiring adoption agencies to undergo frequent audits and submit detailed reports would bolster transparency and accountability. Mandating ethical adoption training for social workers and facilitators would ensure that child welfare remains the paramount consideration at every stage. Furthermore, international cooperation, through intelligence sharing, resource mobilization, and the establishment of robust legal frameworks, is essential to dismantle cross-border trafficking networks. Case studies, such as those from Southeast Asia demonstrating a reduction in illegal adoptions due to stronger laws and improved law enforcement training, underscore the tangible benefits of robust legal frameworks on community safety and child welfare. Training programs for legal practitioners are equally crucial, equipping them to identify warning signs in adoption procedures, understand the psychological impact of illegal adoptions on children and families, and hone communication techniques with affected parties. Advocacy tactics, including social media campaigns and community engagement, can significantly raise public awareness about the dangers of child trafficking and unauthorized adoptions, fostering community action and demanding stricter protective laws.

Child Welfare and Protection:

Beyond direct anti-trafficking measures, Chapter VI of the BNS dedicates provisions to crimes against children. While these laws broadly aim to shield children from various forms of abuse and exploitation, they subtly reinforce the fundamental importance of the child's welfare – a principle that is also central to legal adoptions under HAMA. By aligning criminal law with the overarching goal of child protection, the BNS helps ensure that policies are both punitive and preventative, creating an environment where children can thrive without fear of exploitation. This necessitates vigilance from all authorities and citizens to report suspicious activities, as a fragmented approach to child protection can complicate enforcement. The BNS, by providing a robust criminal deterrence, indirectly strengthens the legal and social ecosystem within which HAMA operates.

Legal Implications for Adoption in Hindu Society

The enactment of BNS, despite being a criminal statute, has several nuanced implications for adoption practices within Hindu society:

1. Enhanced Deterrence and Scrutiny: The stricter penalties under BNS for child trafficking and related offenses will likely deter individuals from engaging in illegal adoption practices or exploiting children under the guise of informal child transfers. This increased criminal liability will naturally lead to greater scrutiny of any non-statutory arrangements for child care, encouraging adherence to the prescribed legal routes under HAMA or the JJ Act.

2. Reinforcement of Child Welfare Principle: The BNS's heightened focus on protecting children from harm complements HAMA's emphasis on the welfare of the adopted child. While HAMA outlines the civil process, BNS provides the criminal teeth to punish actions that compromise a child's well-being, thus reinforcing the overarching child-centric approach in all matters concerning children.

3. Cross-Statutory Interpretation and Harmonization: Courts, in interpreting HAMA, may increasingly do so in light of the enhanced child protection principles embedded in the BNS. This could lead to a more rigorous application of the "best interest of the child" standard in adoption cases, ensuring that adoption is not merely a formality but truly serves the child's optimal development.

4. Influence on Future Legal Reforms: The comprehensive nature of the BNS, along with other recent legislative reforms, signals a broader governmental intent to modernize and rationalize Indian laws. This

momentum, coupled with ongoing discussions about a Uniform Civil Code (UCC), could potentially influence future reforms in Hindu family law, including HAMA. While BNS does not directly amend HAMA, it contributes to a legislative environment where existing laws are continuously reviewed for their efficacy and alignment with modern principles of justice and human rights.

HAMA, JJ Act, and the Uniform Civil Code: A Broader Context

It is crucial to understand HAMA's position within the larger Indian legal framework concerning adoption. Alongside HAMA, the **Juvenile Justice (Care and Protection of Children) Act, 2015**, provides a secular and universal framework for the adoption of orphaned, abandoned, and surrendered children by any Indian citizen, irrespective of their religion. This means a Hindu individual or couple can choose to adopt under HAMA (e.g., in cases of relative adoption where biological parents are known and consent) or under the JJ Act (typically through an adoption agency for children in state care). The BNS's criminal provisions apply equally to illegalities occurring under the purview of either HAMA or the JJ Act, providing a common criminal umbrella for child protection.

The discourse surrounding a **Uniform Civil Code (UCC)** further complicates and contextualizes the future of HAMA. Article 44 of the Indian Constitution envisages a UCC, aiming to create a single, secular law governing personal matters for all citizens. If implemented, a UCC would likely supersede existing personal laws, including HAMA, leading to a unified adoption law for all Indians. The arguments for a UCC often center on promoting equality, ensuring gender justice, fostering national integration, and standardizing child welfare provisions across diverse communities. The BNS, by harmonizing and modernizing criminal law, might be seen as paving the way for similar uniformity in civil laws, including family law.

The Bharatiya Nyaya Sanhita, 2023, while focused on criminal law reform, has tangible, albeit indirect, implications for adoption practices in Hindu society. It does not displace the Hindu Adoptions and Maintenance Act, 1956, which remains the specific personal law governing adoption for Hindus. Instead, the BNS strengthens the criminal deterrence against illegal adoptions and child trafficking, thereby buttressing the legal framework established by HAMA and the Juvenile Justice Act, 2015.

The implications for Hindu society include enhanced legal scrutiny of child transfers, a reinforced commitment to child welfare, and potentially a more rigorous interpretation of HAMA by courts in light of broader child protection principles. As India's legal landscape continues to evolve, shaped by the push for modernization and the ongoing debate surrounding a Uniform Civil Code, the interplay between HAMA, the secular JJ Act, and the robust criminal provisions of the BNS will undoubtedly continue to influence the future of adoption in Hindu society, striving for a system that is both rooted in tradition and aligned with contemporary principles of justice, human rights, and the paramount welfare of the child.

The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the Indian Penal Code, 1860 (IPC), represents a comprehensive overhaul of India's substantive criminal law. Its primary objective is to modernize and rationalize criminal offenses, introduce stricter penalties for certain crimes, and prioritize justice for victims.²¹ While the BNS is not a family law statute and does not directly amend HAMA, its provisions concerning offenses against children and human trafficking bear indirect but significant implications for adoption in Hindu society.

While the Bharatiya Nyaya Sanhita, 2023 (BNS), primarily revamps India's criminal law, its provisions hold significant indirect implications for adoption in Hindu society, even though it doesn't directly amend the Hindu Adoptions and Maintenance Act, 1956 (HAMA). The BNS serves a complementary role, providing a robust criminal framework that bolsters safeguards against illegal activities related to adoption.

A key intersection lies in **combating human trafficking and illegal adoption**. The BNS introduces stringent provisions, including Section 143, to penalize illicit transfers of children, often disguised as adoptions. This addresses the black market in adoption and the coercion of parents, deterring practices that violate HAMA's spirit and a child's fundamental rights with enhanced penalties, including potential life imprisonment.

Furthermore, the BNS strengthens **child welfare and protection**. Chapter VI, focusing on crimes against children (e.g., abandonment under Section 91), subtly emphasizes the child's welfare—a paramount consideration in legal adoptions under HAMA and the Juvenile Justice Act, 2015. This comprehensive approach ensures that legal frameworks are both punitive and protective, fostering a safer environment for children.

Indirectly, the BNS's emphasis on **digitalization of evidence and processes** (through related laws like BNSS and BSA) could impact adoption. Digital records for birth certificates or consents might become more prevalent, necessitating robust digital security to prevent fraud, which could then be prosecuted under BNS. Finally, the BNS's **victim-centric approach**, particularly for children, means faster adjudication and better support for victims of illegal adoption or trafficking, thus indirectly enhancing safeguards against malpractices. In essence, while HAMA governs legitimate adoptions, the BNS provides the crucial criminal deterrence against unlawful acts that might occur within or around the adoption ecosy

Potential Intersections of new Criminal law reform with Hindu Adoption

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Adoption in Hindu Society: Navigating Contemporary Challenges in the Wake of the criminal law

The legal framework governing adoption in Hindu society, primarily anchored by the Hindu Adoptions and Maintenance Act, 1956 (HAMA), faces a unique set of contemporary challenges. While HAMA has been instrumental in codifying and reforming traditional Hindu adoption practices, its implementation in a rapidly evolving societal and legal landscape presents ongoing complexities. The recent enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the Indian Penal Code, 1860, adds another layer to this intricate system. While BNS doesn't directly alter HAMA, its provisions related to child protection and human trafficking have indirect implications that shape the environment for adoption in Hindu society.

The Interplay of BNS and HAMA: Indirect but Significant Influence

The Bharatiya Nyaya Sanhita, effective from July 1, 2024, is primarily a criminal law reform. It doesn't explicitly modify HAMA's regulations on adoption. However, legal experts suggest that BNS's modernized approach to criminal offenses, particularly those against children, may subtly influence the interpretation and implementation of existing adoption legislation.

A crucial intersection lies in **combating illegal adoptions and child trafficking**. The BNS introduces stringent provisions, notably Section 143 (corresponding to the former IPC Section 370), to address human trafficking, a grave concern often intertwined with illicit adoption practices. This section imposes severe penalties for coercing parents into giving up children, exploiting them for labor or begging, or engaging in black-market adoption. By providing a stronger legal framework to deter and penalize such activities, BNS indirectly safeguards the welfare of children who might otherwise fall victim to unlawful transfers. This enhanced criminal deterrence strengthens the integrity of legal adoption processes under HAMA and the Juvenile Justice Act, 2015 (JJ Act).

Furthermore, the BNS emphasizes **child welfare and protection**. Chapter VI of the BNS dedicates provisions to crimes against children, reinforcing the paramount importance of a child's well-being—a core principle of HAMA. While BNS focuses on deterring abuse (e.g., Section 91 BNS for child abandonment), its overarching child-centric approach encourages a more robust and protective environment for children. The BNS's shift towards **digitalization of evidence and processes** (through related laws like BNSS and BSA) also has an indirect impact. Increased reliance on digital records for birth certificates and consent forms in adoption processes will necessitate robust digital security measures to prevent fraud, which could be prosecuted under BNS. Finally, the BNS's **victim-centric approach**, including provisions for faster adjudication and support for victims of crimes against children, indirectly enhances safeguards against malpractices in adoption, ensuring that the child's rights and well-being are prioritized.

It is critical to reiterate that the BNS does not directly amend or repeal HAMA. HAMA remains the specific personal law governing adoption for Hindus. The BNS's role is complementary, providing the criminal framework to punish illegal acts that might occur under the guise of adoption or involve children eligible for adoption.

Current Challenges in Hindu Adoption and Recommendations for Enhancement

Despite HAMA's foundational role, several contemporary challenges persist in adoption within Hindu society, requiring concerted efforts for improvement:

1. Absence of Awareness: Many prospective adoptive parents are unaware of the specific legal protocols and requirements under HAMA. This necessitates comprehensive awareness programs and accessible resources to streamline the adoption journey and enhance navigation. Protracted and arduous procedures

often deter potential parents, underscoring the need to simplify processes and remove bureaucratic impediments for expedited placements.

2. Complex Processes with Extended Delays: The legal adoption process can be protracted, involving multiple agencies and court appearances. To mitigate these challenges, implementing a uniform approach across agencies and simplifying documentation could significantly improve the experience. Fostering collaboration among stakeholders is key to establishing an efficient system prioritizing children's welfare.

3. Restricted Availability of Children for Adoption: The demand from potential adoptive parents often outweighs the number of children legally eligible for adoption. This disparity stems from societal preferences for biological offspring, complexities in declaring children legally free for adoption, and insufficient mechanisms to identify and place children in need. This leads to children remaining in foster care longer, potentially impacting their psychological well-being. Augmenting mechanisms for identifying children requiring care, improving childcare institutions, and facilitating the prompt legal declaration of children's eligibility for adoption are crucial to address this.

4. Rigorous Eligibility Requirements: While intended to safeguard child welfare, stringent eligibility criteria (e.g., age restrictions, marital status mandates, financial prerequisites) can inadvertently exclude suitable individuals or couples. Re-evaluating these criteria to embrace greater flexibility and emphasize the child's best interests, while being receptive to diverse family configurations, is paramount.

5. Social Stigma and Lack of Public Awareness: Despite increasing acceptance, residual social stigma associated with adoption persists in some segments of society, often stemming from insufficient public awareness about legal procedures and the positive aspects of adoption. Initiating national public awareness campaigns through social media and community events can combat this stigma, promoting adoption as a viable and rewarding choice.

6. Inter-country Adoption Complexities: Inter-country adoptions involving Hindu individuals are governed by supplementary legislation and international treaties, adding layers of complexity. Prospective parents need comprehensive support systems, including legal counsel and counseling, to navigate these intricate rules, cultural considerations, and emotional challenges.

7. Inconsistent Post-Adoption Support Systems: Despite legal mandates, there are inconsistencies in the effective development and delivery of comprehensive post-adoption support services, such as mental health treatments, community support groups, and educational materials. The creation of a comprehensive framework for post-adoption care is essential for the overall well-being of families and enduring placements.

8. Financial Burden of Adoption: The significant costs associated with adoption, including agency fees and legal charges, can deter prospective parents. Exploring financial assistance or incentives could enhance accessibility for a broader demographic, motivating more households to welcome children in need.

9. Ensuring Consistency and Streamlining Procedures: Given India's diverse communities, uniform application of adoption laws can be challenging. Implementing uniform standards and training for adoption agencies, along with digitalizing records, establishing timelines, and optimizing court proceedings, can create a more equitable and efficient system. Enhancing support services for adoptive and birth parents through counseling and parenting programs is also vital.

10. Revisiting Eligibility Criteria: Evaluating eligibility requirements to ensure inclusivity and a primary focus on the ability to provide a safe, stable, and caring environment can expand the pool of prospective adoptive parents and recognize diverse family configurations.

11. Periodic Review and Revisions of HAMA: HAMA requires frequent evaluations and adjustments to address evolving challenges and ensure alignment with the child's best interests and contemporary social standards. Innovative ideas, like integrating orphans with old age homes, could foster mutually beneficial environments, providing emotional support for children and addressing loneliness among seniors.

While the Bharatiya Nyaya Sanhita, 2023, does not explicitly regulate adoption laws, its stipulations regarding child protection and human trafficking significantly fortify the legal framework against illicit adoptions and impose more severe penalties on offenders. This indirect influence, combined with a focused effort to address the current challenges within HAMA, offers a pathway towards a more transparent, efficient, and child-centric adoption system within Hindu society. The ongoing commitment to modernizing laws and prioritizing child welfare will be crucial in ensuring that every child has the opportunity to thrive in a nurturing and secure environment.

5. Conclusion

The Bharatiya Nyaya Sanhita, 2023, while fundamentally a criminal law statute, casts a significant, albeit indirect, shadow over the practices and legal implications of adoption in Hindu society. It does not replace or directly amend the Hindu Adoptions and Maintenance Act, 1956, which remains the specific personal law governing adoption for Hindus. Instead, the BNS provides a crucial criminal framework that strengthens the safeguards against illegal adoptions, child trafficking, and the exploitation of vulnerable children, thereby indirectly reinforcing the integrity of legal adoption processes under HAMA and the Juvenile Justice Act.

The legal implications for Hindu society are multifaceted: an enhanced deterrence against malpractices, increased scrutiny of child transfers, a reinforced emphasis on the paramount principle of child welfare, and the potential for a more harmonized interpretation of HAMA in light of broader child protection mandates.

As India continues its journey towards legal modernization, the interplay between specific personal laws like HAMA, the secular framework of the JJ Act, and the robust criminal provisions of the BNS will remain dynamic. The ongoing discourse on a Uniform Civil Code further underscores the evolving nature of personal laws, with the BNS perhaps serving as a silent, yet powerful, testament to the state's increasing commitment to a cohesive and child-centric legal ecosystem that transcends religious boundaries. The future of adoption in Hindu society, therefore, will continue to be shaped by these converging legal forces, aiming for a system that is both rooted in tradition and aligned with contemporary principles of justice and human rights.

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