



INHERITANCE RIGHTS OF ADOPTED CHILDREN IN CHRISTIAN LAW

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INTRODUCTION

Justice Rebello, in 1999, posed a question that emphatically captures the central point of discussion in this paper. He said:

“[Can] a civilized State committed to the Rule of law, governed by a written constitution and signatory to International Conventions on the Rights of a Child, deny to a Section of its own citizens the right to adopt a child and to give that child, a home, a name and nationality?”¹

Under present statutory provisions, Christians in India cannot legally adopt a child under personal law. In a bizarre quirk, Indian personal law has developed a way that gives only a Hindu² the full right to adopt and raise a child as their own under Statute.³ Christian personal law does not statutorily recognize adoption and one who wishes to adopt must proceed under the Guardians and Wards Act, 1880,⁴ (‘GWA’) and apply for ‘guardianship’ of the child.

Guardianship does not provide the child with the same status as that of a biologically born child. In Hindu law, the adopted child steps into the same shoes as a natural child, but in the case of non-Hindus proceeding under GWA, the child does not become their own, take their name or inherit their property by virtue of automatic right. This disparity rises due to the fact that personal law in India is governed by the customs and practices of the individual community to whom the law extends. Prevalence of customs in personal law has always been an attribute of it, aiming to accommodate for India’s incredibly diverse population.⁵

CUSTOMARY LAWS GOVERNING ADOPTION IN INDIA

In the famous succession case *Abraham v. Abraham*,⁶ the Court had to decide whether a wealthy Tamil Christian who died intestate would be succeeded by his Anglo-Indian wife, as was the law among Christians, or by his brother, as was the prevalent custom at the time among newly-converted Christians.⁷ The case was examined on a question of fact regarding customs and it was decided that since this particular family practiced Christian customs, the succession would be by the wife.⁸ In an attempt to unify the laws regarding succession for Indian Christians

¹ Manuel Theodore v. Unknown, 2000 (2) Bom CR.

² According to §2, Hindu Adoptions and Maintenance Act, 1956, (‘HAMA’) this definition includes Buddhists, Sikhs and Jains, apart from the normal meaning of “Hindus”.

³ Hindu Adoptions and Maintenance Act, 1956, (‘HAMA’).

⁴ R. Jaganmohan Rao, *A Uniform Law of Adoption: A Critique on the Adoption of Children Bill, 1972*, JOURNAL OF THE INDIAN LAW INSTITUTE, 17 (2) (April-June, 1975).

⁵ Chandra Mallampalli, *Escaping the Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-ness*, LAW AND HISTORY REVIEW 28 (4) (2010).

⁶ *Abraham v. Abraham*, (1868) 9 M.I.A. 195.

⁷ *Abraham v. Abraham*, (1868) 9 M.I.A. 195.

⁸ Chandra Mallampalli, *How Christian Personal Laws have grappled with Equality*, The Times of India September 25, 2017, available at <https://timesofindia.indiatimes.com/india/how-christian-personal-laws-have-grappled-with->



and answer the questions and ambiguity that arose in this case,⁹ inheritance among Indian Christians was first codified in the Indian Succession Act, 1865.¹⁰

Custom still remains an extremely important part of personal law and in the absence of law of adoption for Christians in India, personal and customary law has been recognized by Courts as a way of legally recognizing adoption.¹¹ Among the Syrian Christians of Kerala, there existed a custom of adopting the son-in-law when daughters were sole inheritors.¹² *Deth kalam*, as this was called, would give the son-in-law of the youngest daughter the same status as a son of the house.¹³ He would live with the parents of the daughter, have a share to their property, and in some cases would even take on the family name.¹⁴

ADOPTION IN CHRISTIAN BELIEFS

The main reason for this ambiguity and irregularity in the matter of personal law is the simple fact that different religions have different beliefs and priorities. For instance, Islam explicitly prohibits the ascribing of parentage to those other than the real, biological fathers.¹⁵ This means that in Islam, adoption of children as one's own and ascribing unto them the same rights and duties, particularly those rights relating to

inheritance, as that of a natural child is strictly prohibited.¹⁶

Christianity, however, does not hold the same view. There are multiple verses and anecdotes from the Bible that show that the Scriptures allow and even explicitly endorse adoption, or as it is described “[the act of being a] father to the fatherless”.¹⁷ Apart from many central figures in the Bible being adopted and raised as natural children by their adoptive parents, there is even special reference to inheritance accruing out of such adoption.¹⁸ In fact, Jesus Christ Himself is “adopted” by Joseph and Joseph is consistently described as his “foster father”.¹⁹

ATTEMPTS MADE TO CODIFY ADOPTION LAWS FOR CHRISTIANS

There have been several attempts made to codify the laws surrounding adoption for non-Hindus in India. In 1972, the Union introduced the Adoption of Children Bill, 1972,²⁰ in the Rajya Sabha. This was ultimately dropped owing to strong opposition from many communities, particularly the Muslims, averse to the existence of such a uniform law of adoption. Keeping these religious sentiments in mind, the Adoption of Children Bill, 1980, was introduced in the Lok Sabha with the express provision that it shall not be applicable to

equality/articleshow/60821440.cms (Last accessed on September 7, 2019).

⁹ Nandini Chatterjee, *Religious change, social conflict and legal competition: the emergence of Christian personal law in colonial India*, 1149 MODERN ASIAN STUDIES 44 (6) (November, 2010).

¹⁰ The Indian Succession Act, 1865.

¹¹ Sohan Lal v. A Z Makuin, AIR 1929 Lahore 230.

¹² Susan Visvanathan, *Marriage, Birth and Death: Property Rights and Domestic Relationships of the Orthodox/Jacobite Syrian Christians of Kerala*,

ECONOMIC AND POLITICAL WEEKLY, 24 (24) (July 17, 1989).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Quranic verse (XXXIII:5).

¹⁶ Ali Raza Naqvi, *Adoption in Muslim Law*, ISLAMIC STUDIES 19 (4) (Winter, 1980).

¹⁷ Exodus 1: 15-22; Exodus 2: 1-10; Deuteronomy 10:18; James 1:27; Psalms 68:5-6a.

¹⁸ Colossians 3:24.

¹⁹ Matthew 1:18.

²⁰ Adoption of Children Bill, 1972.



Muslims.²¹ This too could not be enacted into law.

Finally, on an initiative taken by none other than the Christian community of India, with unqualified approval by the Catholic Bishop's Conference of India and various other Christian denominations across the country, the Christian Adoption and Maintenance Bill, 1995, was forwarded. However, despite the clear indication of the willingness and desire of the Indian Christian community to have a uniform, codified Act governing adoption and maintenance, this Bill has not been enacted.²²

EVOLUTION OF CHRISTIAN PERSONAL LAW REGARDING THE ADOPTION OF CHILDREN

The preceding parts clearly highlight how irrational and counter-intuitive the current scenario is with respect to Indian Christian couples looking to adopt. Going by just the lack of statutory provisions, the standing of law would have been that since Christian law does not recognize adoption, an Indian Christian couple cannot fully adopt a child. Their only recourse would be to proceed under GWA and become guardians of the child. This only creates a temporary relationship until the child achieves majority, with the child having no rights similar to that of a natural child. There would no automatic right to inherit the property of the adoptive parents. It is into this unlegislated area of law that the Courts have stepped in. By way of

cases and ancillary statutes, such the Juvenile Justice (Care and Protection of Children) Act, 2015,²³ ('JJ Act') this part will illustrate the current position of the judiciary and other sources of primary law on adoption by Christian adoptive parents and the rights accruing to these adopted kids.

The High Court of Kerala held for the first time in *Philip Alfred Malvin v. Gonsalvis* that it is accepted fact that Christian law does not prohibit adoption, and that Canon law allows it. Simply because there is no separate statute providing for adoption, it cannot be said that Christians cannot legally and fully adopt children.²⁴ This decision held that the position of the adopted child with respect to inheritance and maintenance would be the same as a biological child.²⁵

In *Ajit Datt v. Mrs. Ethel Walters and Ors*, Justice S.R. Singh interpreted §3(57) of the General Clauses Act, 1904,²⁶ to say that an adopted child has all rights to inherit. Adoption is not prohibited in Christianity – neither in the statutes of Christian personal law nor in the religious scriptures governing the beliefs and practices of the peoples. Hence, interpreting §3(57) accordingly, it was held that an 'adopted son' is also a 'son', and would have all the rights and duties as a natural son. This means that the bond will not be severed upon the child attaining majority, and there will exist nothing barring the child from inheritance.²⁷ This was re-affirmed in *Vasanti v. Pharez John Abraham* where the

²¹ Christian Fort, *Christian Law of Adoption in India*, available at <https://www.christianfort.com/ICAA.htm> (Last accessed on September 7, 2019).

²² Manuel Theodore v. Unknown, 2000 (2) Bom CR.

²³ Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act').

²⁴ Philip Alfred Malvin v. Gonsalvis, AIR 1999 Ker. 187.

²⁵ Philip Alfred Malvin v. Gonsalvis, AIR 1999 Ker. 187.

²⁶ The Bombay General Clauses Act, 1904.

²⁷ Ajit Datt v. Mrs. Ethel Walters and Ors, 2000 (4) AWC 3270.



Court also held that adoption has spiritual as well as secular values.²⁸ This puts it outside the sole jurisdiction of religion, and into the joint jurisdiction of civil rights.

While providing a home, family and better life to an abandoned or orphaned child might have religious connotations, the desire for an heir, a companion in old age, and a child to raise, is all temporal in nature.²⁹ It has even been pled that these are some things that everyone, irrespective of caste, religion and creed must have the right to as part of their Right to Life under Article 21 of the Constitution of India, 1950.³⁰ After being adopted and raised as one's own, the right of that child to then inherit the property and status of his parents is also a right that must accrue to him. It would be unfair to the child to bar him from inheriting the assets of his adoptive parents, especially when such desire has been clearly displayed.

Such was the case of *Maxim George v. Indian Oil Corporation*, where it was held that despite the adopted child having been only seven days old at the time of adoption, despite every Holy Sacrament like Baptism and Confirmation having been done to the child as though he were a biological child of the adoptive parents, and even despite the fact that the adoptive parents had made a will bequeathing their property in the name of this child, the adoption cannot be said to be legal

in the absence of concrete proof of adoption. It was held that mere guardianship does not amount to adoption.³¹ The problem with this case was that it made the express desire of the adoptive parents to raise the child in the same stead as a naturally born child secondary to the requirement of "concrete evidence of adoption", which is hard to obtain owing to the ambiguous nature of adoption among Indian Christians.

In *R. R. George Christopher and Another*, the Court held that aspiring parents who are not prohibited by their personal and religious laws are entitled to adopt a child abiding by the terms laid down by the JJ Act, under §40 and §41 of the JJ Act which speak of rehabilitation of the child by "adoption".³² The Code of Canon Law, 1983, compiled by Pope John Paul II is the "fundamental body of ecclesiastical laws for the Latin church".³³ Canon-110 says that children that have been adopted in accordance with civil law are considered to be, in full stature and status, the children of the people who have adopted them.³⁴ This can be considered the law with regards to the religion, Christianity. Not only do the personal laws of Christianity not prohibit adoption, but it also recognises it as a way of conferring full rights on the adopted child if it is done according to civil law.

The JJ Act, as can be seen from its preamble, was made with the aim of fulfilling international obligations as well as the

²⁸ Vasanti v. Pharez John Abraham, 2007 (5) KLJ 194.

²⁹ Joyce Pushapalath v. Shameela Nina Ravindra Shiri, RFA 849/2010 (September 12, 2013).

³⁰ Joyce Pushapalath v. Shameela Nina Ravindra Shiri, RFA 849/2010 (September 12, 2013).

³¹ Maxim George v. Indian Oil Corporation, WP(C) No. 26644 of 2003(V).

³² R. R. George Christopher and Another, (2009) 8 Mad LJ 309.

³³ Pope John Paul II, *Apostolic Constitution (Sacrae Disciplinae Leges) of The Supreme Pontiff Pope John Paul II For The Promulgation of The New Code of Canon Law*, January 25, 1983, available at http://w2.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_25011983_sacrae-disciplinae-leges.html (Last accessed on September 8, 2019).

³⁴ Canon-110, Code of Canon Law, 1983.



obligations laid down in Part IV of the Indian Constitution, particularly Article 44, pertaining to the desirability of a uniform civil code.³⁵ §41 of the JJ Act speaks of primary responsibility that accrues to the adoptive family in cases where the child has been surrendered, orphaned or abandoned. This, being a statute enacted by the Parliament, is civil law. It does not speak of religion, and is secular in nature. Reading §41 of the JJ Act, along with Canon-110, it is evident that such an adoption would grant the adopted child the same rights as a biological child, including the right of succession.

The analysis in this judgement has been repeated with approval in a number of subsequent cases.³⁶ In *Mrs. Mary Rani Swamy and Another* the Court upheld the validity of the adoption of a child by a Christian single woman and declared that the minor child is entitled to legal status of a biological child under §41(1) and §41(2) of the JJ Act.³⁷ It was also held by the Hon'ble Supreme Court of India that there is no bar to adoption under Christian personal law for a couple who already has a biological child.³⁸ This decision, dated July 3, 2019, bypasses the requirement of R. R. George Christopher that said that the adoption must not be prohibited by religious and personal laws. Decree XXI of the Acts and Decrees of the Synod of Diamper, 1599, prohibits adoption of sons when the couple has natural

children.³⁹ Such by-passing could only be done owing to the current stance of Indian law on adoption by non-Hindus, as laid down in *Shabnam Hashmi v. Union of India*.

Shabnam Hashmi v. Union of India

This is a landmark case that held adoption by any person, irrespective of religion, caste or creed is permissible and fully valid.⁴⁰ It said that prospective parents have the option of adopting a child under §41 of the JJ Act.⁴¹ This is a choice, with the alternative being that they could choose to submit to the personal laws governing them. However, personal laws cannot dictate the operation of an enabling statute like the JJ Act and cannot come in the way of a couple wishing to adopt under the JJ Act.⁴² The JJ Act is a secular enactment, one more step in pursuance of the goals enshrined in Article 44 of the Constitution, and barring certain groups of people from availing its benefits due to the impact of personal laws would go against Articles 14 and 15 of the Constitution of India.⁴³

Fundamental Right to Adopt and to be Adopted

India has ratified the Convention of the Rights of the Child, 1992.⁴⁴ The Convention levies a commitment on the State to provide for the welfare and protection of children. This contains within itself the need for adoption and rehabilitation of the destitute or

³⁵ Preamble, *supra* note 23, JJ Act.

³⁶ *Adlin Maria(Minor) vs The Accountant General, W.P.(MD)No.6823 of 2008; Oriental Insurance Co. Ltd. v. Jayapriya (2010) 3 MLJ 417.*

³⁷ *Mrs. Mary Rani Swamy and Another (in the matter of Jency Jothika), 2012 SCC OnLine Mad 4109.*

³⁸ *Phrez John Abraham v. Arul Jothi Sivasubramaniam K., Civil Appeal Nos. 7207-7208/2008 (July 3, 2019).*

³⁹ Decree XXI, Acts and Decrees of the Synod of Diamper, 1599.

⁴⁰ *Shabnam Hashmi v. Union of India, 2014 SCC OnLine SC 144.*

⁴¹ §41, *supra* note 23, JJ Act.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 3 United Nations, Treaty Series (1577).



orphaned children in the State. In the matter of *Manuel Theodore*, Justice Rebello contemplated the right to adopt as coming within the purview of Article 21, and as such under the Right to Life.⁴⁵ It held that on consideration of precedents on fundamental rights, directive principles and international conventions that India has ratified, the abandoned, the orphaned, the destitute or a similarly situated child has a right to be adopted as an extension of their Right to Life because the fundamental right to life of such a child becomes meaningful only if it includes the right to be adopted along with it.⁴⁶ It even went on to say that in the event of failure of the Legislative and Executive to make measures in this direction, it is permissible for the Judiciary to exercise its power of *parens patriae*.⁴⁷

This contemplation was rejected by the Supreme Court in *Shabnam Hashmi v. Union of India* where it was held that “mental preparedness of the entire citizenry” is best evaluated by the Legislature and that their decisions regarding enactments must be respected.⁴⁸ As, at present, they have enacted the JJ Act and considered that sufficient, the laws of adoption must be governed by that. The opinion of the Court was that India has not yet reached a point where the Uniform Civil Code is a possible reality. As an extension of this, the Court decided that the Right to Adopt presently cannot be construed to be a fundamental right encompassed within Article 21 of the Constitution.⁴⁹

NEED FOR CODIFICATION

Although after *Shabnam Hashmi* the law officially allows for valid and full adoption of children by non-Hindus under provisions of the JJ Act, it was held in 2018 that the holding with regards to the validity of adoption and accrument of subsequent rights in a particular case would be on the basis of the facts of that case.⁵⁰ This kind of case-to-case examination every time there rises a question as to the inheritance rights of the adopted children wastes the time of the Judiciary as well as causes unnecessary hassle for the parties involved.

Unlike Islamic law, Christian law does not prohibit adoption. In fact, it even endorses “fathering the fatherless”.⁵¹ There is nothing in the teachings of the Bible or the Church that suggests that the adoption of a child as one’s own is prohibited. On the contrary, there are countless anecdotes in the Bible that show that adoption is a commonly accepted practice in the Biblical context. Moreover, the moral aspects of adoption, namely the betterment of life of a helpless child, is something that is said to be specially rewarded in Christianity. Therefore, in the absence of any motive or reason contrary to adoption, there exists no reason for adoption among Indian Christians to *not* be codified. In fact, the Christian Adoption and Maintenance Bill, 1995, which was tabled with unequivocal approval by the Catholic Bishop’s Conference of India, is an indicator of the desire of the Christian community to have codified sanction for adoption. Here, there exists a glaring void in the legislation

⁴⁵ *Manuel Theodore v. Unknown*, 2000 (2) Bom CR.

⁴⁶ *Manuel Theodore v. Unknown*, 2000 (2) Bom CR.

⁴⁷ *Manuel Theodore v. Unknown*, 2000 (2) Bom CR.

⁴⁸ *Shabnam Hashmi v. Union of India*, 2014 SCC OnLine SC 144.

⁴⁹ *Shabnam Hashmi v. Union of India*, 2014 SCC OnLine SC 144.

⁵⁰ *Navin David v. M/O Railways*, Central Administrative Tribunal Original Application No.200/00056/2014.

⁵¹ Psalm 68:5.



regulating personal laws of adoption and succession among Indian Christians. The result of this void is that children adopted by Christians under GWA, as mere ‘wards’, do not get the right to inherit their parents’ properties, while the children adopted by Hindus enjoy full rights with the same legal status as natural-born child.⁵²

While judicial interventions have corrected certain anomalies in relation to personal laws, they cannot be a substitute for statutory guarantees of substantive rights.⁵³ The corresponding procedural safeguards that make the right effective come only with statutory guarantees.⁵⁴ Codifying the judicial stance taken in *Shabnam Hashmi* and *R. R. George Christopher* would eliminate the need to examine every case on a case-by-case basis. This would reduce ambiguity in decisions, preserving the Right to Equality under Article 14 of the Constitution, and would make the delivery of justice more efficient for the Courts as well as the parties affected. For the true deliverance of justice and an equal status for the children adopted by Christian parents, it is necessary that their rights must not be contingent on them approaching the Courts, fighting the case for around five years, and then finally hoping to get a decree in their favour. The right to live with the same legal status as a biological child and ultimately inherit the property of the (adoptive) parents must be a right arising at the time of adoption into the family, much like the rights of a biological child that arise at the time of birth.

What makes a kid adopted by Hindu parents legally entitled to more rights than a kid adopted by Christian parents of the same country? The poet Kahlil Gibran once said in a couplet:

“Our children are not our children,
they are the sons and daughters of
life, longing for itself”.⁵⁵

In the absence of positive steps undertaken by the State, how long must these kids await justice?⁵⁶ There is an urgent need for codified statutory provisions regulating adoption among Indian Christians. This Statute must be in lieu with fundamental rights, international conventions and the holdings of the Courts in the matter of inheritance rights of adopted children under Christian law. This is required for the true deliverance of justice – to both the adopted, as well as the adopters. There is simply no excuse or reason for this overlook by the Legislative. For the sake of 28 million Indian Christians that depend on these personal laws to govern the most important areas of their life, adoption and subsequent rights to inheritance for Christians must be codified and given the statutory sanction at the earliest.

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⁵² §12, *supra* note 3, HAMA.

⁵³ Vikramjit Bannerjee, Suhaan Mukherjee & Aymen Mohammed, *The Case for Legislating Equality in the Private Sphere*, (2016) 8 SCC J-1.

⁵⁴ *Id.*

⁵⁵ KAHLIL GIBRAN, *THE PROPHET* (1923).

⁵⁶ Manuel Theodore v. Unknown, 2000 (2) Bom CR.



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