

**FUNDAMENTAL RIGHT TO ADOPT: A CRITICAL ANALYSIS OF
COMPETENCY OF PERSONS IN ADOPTION PROCESS**

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Abstract

This study has been purposefully taken up to study the extent of adoption rights by various religious communities in India. The first section deals with the competency and requirements needed of a person for the adoption process. It deals with question such as who may adopt and who may be adopted. It also talk about the Guardianship and Wards Act, 1980, which is the only codified legislation in the country as far as adoption rights are concerned. The next part deals with the ambiguity of the proposed Uniform Civil Code and why has it not been implemented even after getting the accent of the Parliament. Also, couple of constituent assembly debated have been reviewed concerning adoption rights of the citizens. The third part of the research analysis draws a comparison between the two landmark cases concerning Adoption Process in India Vis a vis Shabnam Hashmi v. Union of India, 2005 and In re Theodore Manuel v Unknown, 1999. Further, the former case has been criticised because for no sound reason has it opined that such a time has not come when the country can dwell into a uniform civil code concerning adoption laws. And conclusively, extensive research has been carried out regarding the right to adopt as a fundamental right in keeping into account the various religious ongoing practices in the country.

Scheme of Research

The research project has been divided into 4 different parts:

A) Competency of Person in Adoption Process

1. Hindu Law

1.1 Requirements for a valid Adoption

1.2 Who may adopt

1.3 When can the person can be adopted

1.4 Other conditions for a valid adoption are fulfilled

2. Guardianship and Wards Act, 1980 : For adoption Under

2.1 Muslims

2.2 Parsis and Christians

B) Common Civil Code (UCC) and the Right to Adopt

1. Constituent Assembly Debate: 30th August 1947

C) Case Analysis: Shabnam Hashmi v. Union of India, 2005 and In re Theodore Manuel v Unknown, 1999

1. Need for a UCC

D) The Right to Adopt as a Fundamental Right

1. Present Scenario

2. Adoption and The Indian Constitution

3. Juvenile Justice (Care and Protection of Children) Act, 2000: a Hope for Orphan, Abandoned and Surrendered children.

4. Adoption Under Muslim Law with reference to JJ Act, 2000:

5. Adoption and Christianity

“This debate is not about the right to adopt, political correctness or parenting. It’s a debate about children’s chance for a family.”

A) Competency of Person in Adoption Process

1. Hindu Law

Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956.

The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act and include any person, who is a Hindu by religion, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, or a Buddhist, Jaina or Sikh by religion, to any other person who is not a Muslim, Christian, Parsi or Jew by religion. It also includes any legitimate or illegitimate child who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh.

1.1 Requisites for a valid adoption

In the Hindu law the requirements for a valid adoption. The Act¹ reads,

- a. No adoption is valid unless
- b. The person adopting is lawfully capable of taking in adoption
- c. The person giving in adoption is lawfully capable of giving in adoption
- d. The person adopted is lawfully capable of being taken in adoption

1.2 Who May Adopt

Capacity of male²

Any male Hindu, who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption. Provided that if he has a wife living, he shall not adopt except with the consent of his wife, unless his wife has completely and finally renounced the world or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind. If a person has more than one wife living at the time of adoption the consent

¹ Section 6 of HAMA, 1956

² Section 7 of HAMA, 1956

of all the wives is necessary unless the consent of one of them is unnecessary for any of the reasons specified in the preceding provision.

Capacity of female³

Before 2010, the women did not have the right to adopt a child despite the husbands consent. Post the 2010 amendment, any female Hindu who is of sound mind who is not a minor has the capacity to take a son or daughter in adoption.

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband, unless the husband has completely and finally renounced the world or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind.

1.3 When can the person can be adopted⁴:

No person can be adopted unless

- a. he or she is a Hindu;
- b. he or she has not already been adopted;
- c. he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- d. he or she has not completed the age of fifteen years unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

1.4 Other conditions for a valid adoption are fulfilled⁵:

- a. if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son living at the time of adoption
- b. if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter living at the time of adoption;
- c. if the adoption is by a male and the person to be adopted is a male, the adoptive father is at least twenty one years older than the person to be adopted;
- d. if the adoption is by a female and the person to be adopted is a male, the adoptive mother s at least twenty one years older than the person to be adopted;

³ Section 8 of HAMA, 1956

⁴ Section 10 of HAMA, 1956

⁵ Section 11 of HAMA, 1956

e. the same child may not be adopted simultaneously by two or more parents; the child to be adopted must be actually given and taken in adoption with an intent to transfer the child from the family of birth.

2. Guardianship and Wards Act, 1890

Personal law of Muslims, Christians, Parsis and Jews does not recognise complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, those desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardian and Wards Act, 1890.

This however does not provide to the child the same status as a child born biologically to the family. Unlike a child adopted under the Hindu Adoption and Maintenance Act, 1956 the child cannot become their own, take their name or inherit their property by right. This Act confers only a guardian-ward relationship. This legal guardian-ward relationship exists until the child completes 21 years of age. Foreigners who seek to adopt an Indian Child, do so under this Act to assume legal Guardianship of the child, after giving an assurance to the court, that they would legally adopt the child as per the laws of their country, within two years after the arrival of the child in their country.

2.1 Muslim Law

Adoption is the transplantation of a son from the family in which he is born, into another family by gift made by his natural parents to his adopting parents. Islam does not recognise adoption. In Mohammed Allahabad Khan v. Mohammad Ismail⁶ it was held that there is nothing in the Mohammedan Law similar to adoption as recognized in the Hindu System. Acknowledgement of paternity under Muslim Law is the nearest approach to adoption. The material difference between the two can be stated that in adoption, the adoptee is the known son of another person, while one of the essentials of acknowledgement is that the acknowledgee must not be known son of another. However an adoption can take place from an orphanage by obtaining permission from the court under Guardians and Wards Act, 1980.

2.2 Parsis and Christians

The personal laws of these communities also do not recognize adoption and here too an adoption can take place from an orphanage by obtaining permission from the court under

⁶(1886) ILR 8 All 234

Guardians and wards act. A Christian has no adoption law. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Christians have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. National Commission on Women has stressed on the need for a uniform adoption law. Christians can take a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance.

The general law relating to guardians and wards is contained in the Guardians and Wards Act, 1890. It clearly lays down that father's right is primary and no other person can be appointed unless the father is found unfit. This Act also provides that the court must take into consideration the welfare of the child while appointing a guardian under the Act.

B) Common Civil Code (UCC) and the Right to Adopt

Article 44 of the Constitution enjoins that the State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. A bill on uniform civil code was introduced in the Indian Parliament. But there was a hue and cry from Muslim Community and this bill never became an act. The grounds on which objections were raised was that Islam does not recognise adoption, so it would be violative of article 25 of the Constitution of India which provides right to practise and profess religion.

There have been many judgements laid down which inform us about the UCC in India, but the most celebrated of them was Smt. Sarla Mudgal v Union of India⁷ which supported the idea of a common code for all.

In the distant past the Bar Council of India on the occasion of its Silver Jubilee had presented a report and a plan of action on the Common Civil Code. The Common Civil Code proposed was in respect only of personal laws. The apex Court have had occasions also to consider Articles supporting Common Civil Code written by various distinguished Judges. In an article published in the Radical Humanist of March, 1997 under the heading Personal Law Reform in Human Rights Perspective by Iqbal A. Ansari. The learned Author observed as under: ---

⁷1995 AIR 1531

"Let rights oriented people who are genuinely interested in improving human condition, work for sociological reform while warning the wider citizenry of the counter-productiveness of the politics of Personal Law, entering round U.C.C."

1. Constituent Assembly Debates

Dr. B. R. Ambedkar, in the assembly debate relating to Fundamental Rights, observed as under:

"Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform Code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, then there are the Negotiable Instruments Act: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this later corner which we have not been able to invade so far and it is the intention of those who desire to have Article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

My attempt in referring to the uniform Civil Code is to point out that the right of such child to be adopted, is not pursuant to any personal law. The right of the child is independent, as a human being, and flows from his right to life as contained in Article 21 of the Constitution. Any eligible parent or parents irrespective of religion can apply to adopt a child."

C) Case Analysis: Shabnam Hashmi v. Union of India, 2005 and In re Theodore Manuel v Unknown, 1999

In Re: Manuel Theodore D'souza 1999:

A Christian couple wanted to adopt a child. But the petitioner being Christians are only entitled to be appointed as a guardians.

The question arose that whether a civilised state committed to the rule of law, governed by a written constitution and signatory to International Conventions on the Rights of a child, could 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. To answer this question, the following points were postulated:

1. Does an abandoned or orphaned or destitute child has a right to a family, a name and nationality as a part of the right to life?
2. Is the right of being adopted a fundamental right guaranteed to a child by Article 21 of the Constitution?
3. Can the State deny to a orphaned, abandoned or destitute child the right to be adopted because of its constitutional failure to enact legislation to give effect to Entry 5 of List III of the Seventh Schedule to the Constitution of India?
4. Whether a married childless couple has the fundamental right to adopt a child?
5. Is adoption purely a part of personal law?
6. If the right to adopt is a fundamental right, can Civil Courts enforce this right, in the absence of legislation and/or administrative instructions having the force of law?
7. Can this Court in exercise of the power conferred on it under Clause 17 of the Amended Letters Patent give a child in adoption?

The court gave the following concluded by stating that the fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. **The right to be adopted, therefore is an enforceable civil right which is justiciable in a Civil Court. In the absence of any legislation setting out who can adopt, person or persons who has/have taken a child in guardianship under the Guardians & Wards Act will have the right to petition the courts to adopt the child.** Further, as jurisdiction to pass orders on guardianship is in the District Court and/or a High Court having jurisdiction under its Letters Patent, pending legislation, it will be these courts which have the right to give the child in adoption by way of a miscellaneous application in the petition for Guardianship. Considering that it is the welfare of the child which is paramount the Court before giving the child in adoption must satisfy itself, that it is in the best interest of the child that the person or persons whom guardianship of the child is given is and/or are suitable parent or parents. A period of 2

years must elapse before the Court considers the petition for adoption from the date the Court passes the order of guardianship.

Before making an order of adoption the following directions will have to be satisfied. A home study should be available which must contain amongst other information the following: ---

- (a) The financial status of the adoptive parent or parents and their capacity to look after the needs of the child.
- (b) The health and the medical Report of the adopted parent/parents.
- (c) The opinions formed by the interviewer, after interviewing the adoptive parent/parents and the child of possible.
- (d) Progress Report of the child after having been given in guardianship, including state of health.
- (e) The cost of preparing the Report shall be borne by the adoptive parent/parents.
- (f) Before passing final orders on the petition, the views of I.C.S.W. shall be heard. The costs of I.C.S.W. will be borne by the adoptive parent/parents. The adoptive parent/parents will have to deposit a sum of Rs. 500/- initially. Any additional expenses will be reimbursed by the adoptive parent/parents.

The court further observed that as a child can be given in guardianship to person/persons eligible under the Indian Guardianship & Wards Act and as they also have been given the right to adopt, the issue whether a childless couple has a fundamental right to adopt need not be answered, though prima facie it may be possible to arrive at that conclusion. A Guardian/Guardians who have been appointed by courts in the past and whose guardianship continues, can apply for adoption if the period of two years has elapsed, since the date of order of appointment of guardianship. The legal consequences of an order of adoption will be that the personal law of the adoptive parent/parents would be applicable to the child whose right of inheritance will be the same as that of a natural born child.

As a consequences of adoption the adopted parent/parents will have the right to apply and get rectified the Register of Births showing the adopted parent/parents as parents of the adopted child and bearing their name and surname if so desired by the adoptive parents.

Contradicting this cases' view, the Supreme Court in *Shabnam Hashmi*⁸ was of the view that while it is correct that the dimensions and perspectives of the meaning and content of fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adoptor to be adopted to the status of a Fundamental Right **will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country.** The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting viewpoints prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution.

1. Need for a UCC

Below are some points which can be put forth to criticize the abovementioned Supreme Court Judgement:

First and foremost comes the fact that the country has already suffered a lot in the absence of a uniform code for all. It is rather a pity that the longest and most elaborately written constitution in the history of mankind, the Indian constitution is responsible for creation of erosion in society. The society has been fragmented in the name of religions, sects and sex.

Secondly, even at present, in India, there are different laws governing rights related to personal matters or laws like marriage, divorce, maintenance, adoption and inheritance for different communities. The laws governing inheritance or divorce among Hindus are thus, very different from those pertaining to Muslims or Christians and so on.

Thirdly it can be said that in India, most family law is determined by the religion of the parties concerned. Hindus, Sikhs, Jains and Buddhists come under Hindu law, whereas Muslims and Christians have their own laws.

⁸ Supra Note 2 at 5

Fourthly, the need for uniform civil code has been felt for more than a century. It is high time that India had a uniform law dealing with marriage, divorce, succession, inheritance and maintenance. But, it must be realized that the scenario in India is extremely complex. India has a long history of personal laws and it cannot be given up easily. Unless a broad consensus is drawn among different communities, the Uniform Civil Code can't do much good to the country. The reality in India is much more complex than Western societies which have been totally secularised. The need is to work on the existing laws in such a way that they don't go against any particular faith or religion⁹.

Conclusively, another point which can be put forth supporting the idea of UCC is that the Uniform Civil Code will in the long run ensure Equality. While other personal laws have undergone reform, the Muslim law has not. It perhaps makes little sense to allow Muslims, for example, to marry more than once, but prosecute Hindus or Christians for doing the same. Therefore, there is the demand for a uniform civil code for all religions. Also, UCC will help to promote Gender equality. Several liberals and women's groups have argued that the uniform civil code gives women more rights.

The High Court is correct in its demand for a common code governing all laws. But this has not been enforced because it is the Supreme Court's decision which will prevail, even though not rational. In another Supreme Court's decision¹⁰, it stated that there is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country. Thus its decision can be easily criticized as mentioned above.

D) The Right to Adopt as a Fundamental Right.

1. Present Scenario

In India the only existing legislation on Adoption is the Hindu Adoption and Maintenance Act, 1956. Non-Hindus have can only avail of the Guardianship & Wards Act, 1890. As a result of canvassing by child welfare groups, the Joint Select Committee of Parliament approved the Adoption of Children Bill of 1972 which was introduced in Parliament in 1978 but later withdrawn. A modified bill known as Adoption of Children Act, 1980 was introduced which excluded Muslims. However, nothing came out of the same. In fact on the initiative of the Christian Community of India, a Bill was forwarded known as Christian

⁹Hazarika, Raya, Should India Have a Uniform Civil Code? (October 25, 2010). Available at SSRN: <http://ssrn.com/abstract=1697580> or <http://dx.doi.org/10.2139/ssrn.1697580>

¹⁰ Supra Note 1 at 8

Adoption and Maintenance Act, 1995. It had the support of the Catholic Bishops' Conference of India as also of the various other Christian denominations throughout the country. However, nothing has emerged inspite of the readiness of Christian community in the country to accept the bill on Adoption & Maintenance. The Maharashtra Legislative Assembly introduced a bill on 9th August, 1995 known as "Maharashtra Adoption Act, 1995". The Act was made applicable to every person adopting a child in the State irrespective of the person's religion, caste and creed. The Bill sought to displace The Hindu Adoption and Maintenance Act, 1956 in the State of Maharashtra. Section 27 of the bill, is a saving provision whereby on coming into force of the Maharashtra Adoption Act the provisions of Hindu Adoption and Maintenance Act, 1956 will cease to have effect in the State of Maharashtra. In the Statement of Objects and Reasons it is set out that the Legislation was enacted to give effect to Articles 32 and 44 of the Constitution. The Bill is pending assent of the President of India. There I believe are various objections filed by some groups.

The Hindu Adoption and Maintenance Act, 1956 (HAMA) covers Hindus, Buddhists, Jains or Sikhs. Some relevant parts of the Act are:

- Married couples or single adults can adopt;
- Legally the man adopts with the consent of his wife;
- A single man or woman can adopt;
- If a biological child already exists in the family, a child of the opposite sex has to be adopted;
- Children adopted under this Act get the same legal rights as a biological child might;
- Children under the age of 15 years can be adopted;
- A single man adopting a girl should be at least 21 years older than the child;
- A single woman adopting a boy should be at least 21 years older than the child; and
- Adoption under this act is irrevocable.

2. Adoption and the Indian Constitution

Right to life becomes a fountain head in so far as adoption is concerned. Therefore, custom must be in conformity with Part III. It cannot be opposed to Part III. If that be so, the adoption of a child will flow from Part III of the Constitution more specifically Article 21.

Custom amongst Hindus after the coining into force of the Constitution has a secondary rote. This is because 'adoption' as a custom amongst Hindus before the Hindu Adoption and Maintenance Act was restrictive. It could be, therefore, supported by Article 25. However, after the coming into force of 'The Hindu Adoption & Maintenance Act' adoption is not restricted to custom only, it is much wider. This part of adoption, therefore, can only be traceable to Article 21. Custom must confirm to Part III and not the other way. In so far as the adoptive parents are concerned, it flows from the right of such parents from Article 14 of the Constitution of India even amongst those couples whose belief or customs do not provide for adoption. They cannot be discriminated from adopting a child without the State being accused of arbitrariness and infracting Article 14 of the Constitution. Once a couple is permitted under the Guardians and Wards Act of being capable of taking a child in guardianship the consequence must follow that the legal guardian can move the Court for adoption of the child in order to fulfill the constitutional objective of such a child to have a home, a name and a nationality. The Court no doubt has strayed into the area of personal law in what I may describe as the post adoption stage. Though adoption by itself is a fundamental right of an orphaned, abandoned or destitute child, the legal consequence of being given in adoption will entail application of Family Law or what we term as Personal law. This to my mind will not have the effect on the rights of any citizen to profess his religion guaranteed under Article 25 of the Constitution. The Special Marriage Act is in force. Any citizen of the country can marry under the said Act. Marriages and Divorce of those who marry under the said Act are governed by the said Act. Succession by the Indian Succession Act. People professing different faiths marry under that said Act. The vision of the new millennium must guide our religious leaders. Their broad vision can lead their flock to understand religions, as the founders of Religions would have wanted their followers to follow, love and tolerance must be the cornerstone. Religious teachings must undergo the same interpretative processes much as Judges to through for finding answers to justice social, economic and political. ¹¹

The case *Shabnam Hashmi v. Union of India*¹² sought recognition of the right to adopt and to be adopted as a fundamental right under Part-III of the Constitution. It further prayed to lay down optional guidelines enabling adoption of children by persons irrespective of religion, caste, creed etc. and further for a direction to the respondent Union of India to enact an optional law the prime focus of which is the child with considerations like religion etc. taking

¹¹In The Matter Of Manuel Theodore vs Unknown on 27 October, 1999, 2000 (2) BomCR 244

¹² AIR 2005, Writ Petition (Civil) No. 470

a hind seat. It was held that a person, irrespective of religion he or she follows and even if the personal laws of the particular religion does not permit it, can adopt a child with full rights as natural parents under provisions of S. 41 of Juvenile Justice (Care and Protection of Children) Act, 2000.¹³

3. Juvenile Justice (Care and Protection of Children) Act, 2000: a Hope for Orphan, Abandoned and Surrendered children.

In stark contrast to the provisions of the JJ Act, 2000 in force as on date, the Juvenile Justice Act, 1986¹⁴ dealt with only “neglected” and “delinquent juveniles”. The JJ Act, 2000 introduced a separate chapter i.e. Chapter IV under the head ‘Rehabilitation and Social Reintegration’ for a child in need of care and protection. Such rehabilitation and social reintegration was to be carried out alternatively by adoption or foster care or sponsorship or by sending the child to an after-care organization. Section 41 contemplates adoption though it makes it clear that the primary responsibility for providing care and protection to a child is his immediate family. Sections 42, 43 and 44 of the JJ Act, 2000 deals with alternative methods of rehabilitation namely, foster care, sponsorship and being looked after by an after-care organisation.¹⁵

In exercise of the rule making power vested by Section 68 of the JJ Act, 2000, the JJ Rules, 2007 have been enacted Chapter V of the said Rules deal with rehabilitation and social reintegration. Under Rule 33(2) guidelines issued by the CARA¹⁶, as notified by the Central Government under Section 41 (3) of the JJ Act, 2000, were made applicable to all matters relating to adoption.

Section 41(6) of the JJ Act, 2000 allows a child to be given in adoption to a person irrespective of marital status or; to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters or; to a childless couple.¹⁷

4. Adoption Under Muslim Law with reference to JJ Act, 2000:

In an Article 'Adoption on Muslim Law' on introduction in the Rajya Sabha of "Adoption of Children Bill", Danial Latifi had written an Article. He observed that the Holy Quran has

¹³ As amended in 2006 hereinafter for short 'the JJ Act, 2000'. Infra.

¹⁴ Hereinafter for short 'the JJ Act, 1986'

¹⁵ Supra Note 2

¹⁶ Central Adoption Resource Agency

¹⁷ Infra. Unlike Hindu Adoption and Maintenance Act, 1956 which has some restrictions regarding the same. Hereinafter called HAMA, 1956.

placed two restrictions on adoption or, more precisely, on the effects of adoption and the second Lineage.

This article was contributed for the purpose of suggestion that possibly there is no total ban on adoption and by bringing in some amendments it could be brought in conformity to what is contained in the Holy Qur'an.

The All India Muslim Personal Law Board¹⁸ which has been allowed to intervene in the present proceeding has filed a detailed written submission wherein it has been contended that under the JJ Act, 2000 adoption is only one of the methods contemplated for taking care of a child in need of care and protection and that Section 41 explicitly recognizes foster care, sponsorship and being look after by after-care organizations as other/ alternative modes of taking care of an abandoned/surrendered child. It is contended that Islamic Law does not recognize an adopted child to be at par with a biological child. According to the Board, Islamic Law professes what is known as the “Kafala” system under which the child is placed under a ‘Kafil’ who provides for the well-being of the child including financial support and thus is legally allowed to take care of the child though the child remains the true descendant of his biological parents and not that of the “adoptive” parents. The Board contends that the “Kafala” system which is recognized by the United Nation’s Convention of the Rights of the Child under Article 20(3) is one of the alternate system of child care contemplated by the JJ Act, 2000 and therefore a direction should be issued to all the Child Welfare Committees to keep in mind and follow the principles of Islamic Law before declaring a Muslim child available for adoption under Section 41(5) of the JJ Act, 2000.

5. Adoption and Christianity

Christian Law also does not recognise adoption. But it is an admitted fact that the Christian Law does not prohibit adoption. The Canon Law does not prohibit adoption. In *Philips Alfred Malvin vs Y.J. Gonsalvis and Ors*¹⁹, It was stated that the Code of Canon Law, commissioned by the Canon Law Society of America, goes to show that Canon 110 relates to adoption, which reads as follows:

"Children who have been adopted according to the norm of civil law are considered as being the children of the person or persons who have adopted them.

¹⁸ Hereinafter referred to as ‘the Board’

¹⁹AIR 1999 Ker 187

Adopted children are usually not at all, or occasionally not wholly, related to the parents adopting them, Church law adopts the civil law pertinent to the area and states that adopted children are held to be the equivalent of natural children of an adopting couple in those instances in which adoption has been duly formalized according to the Civil Law."

Canon 111 provides, that-

"A child of parents who belong to the Latin Church is ascribed to it by reception of baptism, or, if one or the other parent does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism but, if the agreement is lacking, the child is ascribed to the Ritual Church to which the father belongs."

From the above Canon Laws, it can be seen that the Church has adopted civil law pertaining to the area.

Conclusion

It can be concluded from the above discussion the while Hindus have a codified law for Adoption procedure, the Muslims, Christian and Parsis still lack this privilege. It was for this reason that the idea for Uniform Civil Code was discussed and suggested to be enforced. Despite this, the apex court in *Shabnam Hashmi v Union of India* did not comply with this idea and said that time has not yet come to elevate the right to adopt as a fundamental right. It also observed that the idea of UCC can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date. With regard to this, the project lays down criticism and supports the Kerala High Court Judgement in the case of *In Re Theodore Manuel v Unknown* which supports the aforesaid idea and hence the need for a Uniform Civil Code. Further the last part of the project, which deals with Competency of a Person in Adoption Process, has laid down the legal provision with respect to the Hindus, Muslims, Christians and Parsis, covering the Hindu Adoption and Maintenance Act and the Guardianship and Wards Act.

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